

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

**FORM 10-Q**

(Mark One)

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

For the quarterly period ended March 31, 2020

or

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

For the transition period from \_\_\_\_\_ to \_\_\_\_\_.

Commission File Number: 001-36061

**Benefitfocus, Inc.**

(Exact name of registrant as specified in its charter)

**Delaware**

(State or other jurisdiction of  
incorporation or organization)

**46-2346314**

(I.R.S. Employer  
Identification No.)

**100 Benefitfocus Way  
Charleston, South Carolina 29492**  
(Address of principal executive offices and zip code)

**(843) 849-7476**  
(Registrant's telephone number, including area code)

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

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

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

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

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

Large accelerated filer                               Accelerated filer                               Non-accelerated filer  
 Smaller reporting company                               Emerging growth company

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

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

As of May 1, 2020, there were approximately 32,063,446 shares of the registrant's common stock outstanding.

Benefitfocus, Inc.

Form 10-Q

For the Quarterly Period Ended March 31, 2020

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**PART I. FINANCIAL INFORMATION**  
**ITEM 1. FINANCIAL STATEMENTS**

**Benefitfocus, Inc.**  
**Unaudited Consolidated Balance Sheets**  
*(in thousands, except share and per share data)*

	As of March 31, 2020	As of December 31, 2019
<b>Assets</b>		
Current assets:		
Cash and cash equivalents	\$ 114,714	\$ 130,976
Accounts receivable, net	33,450	33,754
Contract, prepaid and other current assets	21,271	21,523
Total current assets	169,435	186,253
Property and equipment, net	31,507	28,669
Financing lease right-of-use assets	75,687	78,520
Operating lease right-of-use assets	1,591	1,715
Intangible assets, net	12,099	12,667
Goodwill	12,857	12,857
Deferred contract costs and other non-current assets	10,445	11,002
Total assets	<u>\$ 313,621</u>	<u>\$ 331,683</u>
<b>Liabilities and stockholders' deficit</b>		
Current liabilities:		
Accounts payable	\$ 6,300	\$ 9,563
Accrued expenses	11,937	10,526
Accrued compensation and benefits	11,245	15,246
Deferred revenue, current portion	29,736	33,429
Lease liabilities and financing obligations, current portion	8,240	6,871
Total current liabilities	67,458	75,635
Deferred revenue, net of current portion	4,803	5,079
Convertible senior notes	190,873	187,949
Revolving line of credit	10,000	-
Lease liabilities and financing obligations, net current portion	82,891	88,572
Other non-current liabilities	68	92
Total liabilities	356,093	357,327
Commitments and contingencies		
Stockholders' deficit:		
Preferred stock, par value \$0.001, 5,000,000 shares authorized, no shares issued and outstanding at March 31, 2020 and December 31, 2019	-	-
Common stock, par value \$0.001, 50,000,000 shares authorized, 31,778,075 and 32,788,980 shares issued and 31,775,214 and 32,788,980 shares outstanding at March 31, 2020 and December 31, 2019, respectively	32	33
Additional paid-in capital	420,393	426,025
Accumulated deficit	(462,897)	(451,702)
Total stockholders' deficit	(42,472)	(25,644)
Total liabilities and stockholders' deficit	<u>\$ 313,621</u>	<u>\$ 331,683</u>

The accompanying notes are an integral part of the Unaudited Consolidated Financial Statements.

**Benefitfocus, Inc.**  
**Unaudited Consolidated Statements of Operations and Comprehensive Loss**  
*(in thousands, except share and per share data)*

	Three Months Ended	
	March 31,	
	2020	2019
Revenue	\$ 66,154	\$ 68,299
Cost of revenue	33,912	32,852
Gross profit	32,242	35,447
Operating expenses:		
Sales and marketing	15,630	19,619
Research and development	11,768	13,090
General and administrative	10,515	11,796
Total operating expenses	37,913	44,505
Loss from operations	(5,671)	(9,058)
Other income (expense):		
Interest income	426	660
Interest expense	(5,891)	(5,814)
Other income	5	9
Total other expense, net	(5,460)	(5,145)
Loss before income taxes	(11,131)	(14,203)
Income tax expense	5	6
Net loss	\$ (11,136)	\$ (14,209)
Comprehensive loss	\$ (11,136)	\$ (14,209)
Net loss per common share:		
Basic and diluted	\$ (0.34)	\$ (0.44)
Weighted-average common shares outstanding:		
Basic and diluted	32,638,805	32,056,934

The accompanying notes are an integral part of the Unaudited Consolidated Financial Statements.

**Benefitfocus, Inc.**  
**Unaudited Consolidated Statements of Changes in Stockholders' Deficit**  
*(in thousands, except share and per share data)*

	Common Stock, \$0.001 Par Value		Additional Paid-in Capital	Accumulated Deficit	Total Stockholders' Deficit
	Shares	Par Value			
Balance, December 31, 2019	32,788,980	\$ 33	\$ 426,025	\$ (451,702)	\$ (25,644)
Cumulative effect adjustment from adoption of credit standard	-	-	-	(59)	(59)
Exercise of stock options	13,584	-	73	-	73
Issuance of common stock upon vesting of restricted stock units	43,315	-	-	-	-
Stock-based compensation expense	-	-	3,677	-	3,677
Common stock repurchased	(1,070,665)	(1)	(9,382)	-	(9,383)
Net loss	-	-	-	(11,136)	(11,136)
Balance, March 31, 2020	<u>31,775,214</u>	<u>\$ 32</u>	<u>\$ 420,393</u>	<u>\$ (462,897)</u>	<u>\$ (42,472)</u>

	Common Stock, \$0.001 Par Value		Additional Paid-in Capital	Accumulated Deficit	Total Stockholders' Deficit
	Shares	Par Value			
Balance, December 31, 2018	32,017,773	\$ 32	\$ 403,631	\$ (413,873)	\$ (10,210)
Cumulative effect adjustment from adoption of lease standard	-	-	-	7,687	7,687
Exercise of stock options	18,600	-	89	-	89
Issuance of common stock upon vesting of restricted stock units	34,255	-	-	-	-
Stock-based compensation expense	-	-	6,253	-	6,253
Net loss	-	-	-	(14,209)	(14,209)
Balance, March 31, 2019	<u>32,070,628</u>	<u>\$ 32</u>	<u>\$ 409,973</u>	<u>\$ (420,395)</u>	<u>\$ (10,390)</u>

The accompanying notes are an integral part of the Unaudited Consolidated Financial Statements.

**Benefitfocus, Inc.**  
**Unaudited Consolidated Statements of Cash Flows**  
*(in thousands)*

	Three Months Ended March 31,	
	2020	2019
<b>Cash flows from operating activities</b>		
Net loss	\$ (11,136)	\$ (14,209)
Adjustments to reconcile net loss to net cash and cash equivalents used in operating activities:		
Depreciation and amortization	5,884	5,335
Stock-based compensation expense	3,677	6,367
Accretion of interest on convertible senior notes	2,924	2,749
Interest accrual on finance lease liabilities	23	-
Rent expense (less than) in excess of payments	(9)	9
Provision for doubtful accounts	55	265
Changes in operating assets and liabilities:		
Accounts receivable, net	189	(6,514)
Contract, prepaid and other current assets	252	(2,495)
Deferred costs and other non-current assets	557	1,568
Accounts payable and accrued expenses	(1,593)	(4,867)
Accrued compensation and benefits	(4,000)	(3,580)
Deferred revenue	(3,969)	(5,089)
Other non-current liabilities	(24)	(23)
Net cash and cash equivalents used in operating activities	<u>(7,170)</u>	<u>(20,484)</u>
<b>Cash flows from investing activities</b>		
Business combination, net of cash acquired	-	(21,033)
Purchases of property and equipment	(3,821)	(2,955)
Net cash and cash equivalents used in investing activities	<u>(3,821)</u>	<u>(23,988)</u>
<b>Cash flows from financing activities</b>		
Draws on revolving line of credit	10,000	-
Payments of debt issuance costs	(154)	(357)
Repurchase of common stock	(9,383)	-
Proceeds from exercises of stock options and ESPP	73	89
Payments on financing obligations	(207)	(655)
Payments of principal on finance lease liabilities	(5,600)	(1,375)
Net cash and cash equivalents used in financing activities	<u>(5,271)</u>	<u>(2,298)</u>
<b>Net decrease in cash and cash equivalents</b>	<u>(16,262)</u>	<u>(46,770)</u>
Cash and cash equivalents, beginning of period	130,976	190,928
<b>Cash and cash equivalents, end of period</b>	<u>\$ 114,714</u>	<u>\$ 144,158</u>
<b>Supplemental disclosure of non-cash investing and financing activities</b>		
Property and equipment purchases in accounts payable and accrued expenses	<u>\$ 31</u>	<u>\$ 382</u>

The accompanying notes are an integral part of the Unaudited Consolidated Financial Statements.

**BENEFITFOCUS, INC.**  
**NOTES TO UNAUDITED CONSOLIDATED FINANCIAL STATEMENTS**  
(in thousands, except share and per share data)

**1. Organization and Description of Business**

Benefitfocus, Inc. (the "Company") provides a leading cloud-based benefits management platform for consumers, employers, insurance carriers and brokers that is designed to simplify how organizations and individuals transact benefits. The financial statements of the Company include the financial position and operations of its wholly owned subsidiaries, Benefitfocus.com, Inc. and BenefitStore, Inc.

**2. Summary of Significant Accounting Policies**

***Principles of Consolidation***

These consolidated financial statements have been prepared in accordance with U.S. generally accepted accounting principles ("GAAP"). The consolidated financial statements include the accounts of the Company and its wholly owned subsidiaries. All intercompany accounts and transactions have been eliminated in consolidation. The Company is not the primary beneficiary of, nor does it have a controlling financial interest in, any variable interest entity. Accordingly, the Company has not consolidated any variable interest entity.

***Interim Unaudited Consolidated Financial Information***

The accompanying unaudited consolidated financial statements and footnotes have been prepared in accordance with GAAP as contained in the Financial Accounting Standards Board ("FASB") Accounting Standards Codification (the "Codification" or "ASC") for interim financial information, and with Article 10 of Regulation S-X. Accordingly, they do not include all of the information and footnotes required by GAAP for complete financial statements. In the opinion of management, the interim financial information includes all adjustments of a normal recurring nature necessary for a fair presentation of the results of operations, financial position, changes in stockholders' deficit and cash flows. The results of operations for the three-month period ended March 31, 2020 are not necessarily indicative of the results for the full year or for any other future period. These unaudited consolidated financial statements should be read in conjunction with the audited financial statements and related footnotes for the year ended December 31, 2019 included in the Company's Annual Report on Form 10-K.

***Use of Estimates***

The preparation of financial statements in conformity with GAAP requires the Company to make estimates and assumptions that affect the reported amounts in the consolidated financial statements and accompanying notes. Such estimates include allowances for doubtful accounts and returns, valuations of deferred income taxes, long-lived assets, capitalizable software development costs and the related amortization, incremental borrowing rate used in lease accounting, the determination of the useful lives of assets, and the impairment assessment of acquired intangibles and goodwill as well as the estimates disclosed in association with revenue recognition. Determination of these transactions and account balances are based on, among other things, the Company's estimates and judgments. These estimates are based on the Company's knowledge of current events and actions it may undertake in the future as well as on various other assumptions that it believes to be reasonable. Actual results could differ materially from these estimates.

***Revenue and Deferred Revenue***

The Company derives its revenue primarily from fees for subscription services and professional services sold to employers and insurance carriers as well as platform revenue derived from the value of products sold on our platform. Revenue is recognized when control of these services is transferred to customers, in an amount that reflects the consideration the Company expects to be entitled to in exchange for those services. Taxes collected from customers relating to services and remitted to governmental authorities are excluded from revenue.

The Company determines revenue recognition through the following steps:

- Identification of each contract with a customer;
- Identification of the performance obligations in the contract;
- Determination of the transaction price;
- Allocation of the transaction price to the performance obligations in the contract; and
- Recognition of revenue when, or as, performance obligations are satisfied.

***Software Services Revenue***

Software services revenue consists of subscription revenue and platform revenue.

***Subscription Revenue***

Subscription revenue primarily consists of monthly subscription fees paid to the Company by its employer and insurance carrier customers for access to, and usage of, cloud-based benefits software solutions for a specified contract term. Fees are generally charged based on the number of employees or subscribers with access to the solution.

Subscription services revenue is generally recognized on a ratable basis over the contract term beginning on the date the subscription services are made available to the customer. The Company's subscription service contracts are generally three years.

Subscription revenue also includes fees paid for other services, such as event sponsorships and certain data services.

#### Platform Revenue

Platform revenue is generated from the value of policies or products enrolled in through the Company's marketplace. Platform revenue from carriers is generally recognized over the policy period of the enrolled products. In arrangements where the Company sells policies to employees of its customers as the broker, it earns broker commissions. Revenue from insurance broker commissions and supplier transactions is recognized at a point in time when the orders for the policies are received and transferred to the insurance carrier or supplier, and is reduced by estimates for risks from collectability, policy cancellation and termination.

#### Professional Services Revenue

Professional services revenue primarily consists of fees related to the implementation of software products purchased by customers. Professional services typically include discovery, configuration and deployment, integration, testing, and training. Fees from consulting services and support services are also included in professional services revenue.

The Company determined that implementation services for certain of its insurance carrier customers significantly modify or customize the software solution and, as such, do not represent a distinct performance obligation. Accordingly, revenue from such implementation services with these insurance carrier customers are generally recognized over the contract term of the associated subscription services contract, including any extension periods representing a material right. In certain arrangements, the Company utilizes estimates of hours as a measure of progress to determine revenue.

Revenue from implementation services with employer customers is generally recognized as those services are performed.

Revenue from support and training fees is recognized over the service period.

#### Contracts with Multiple Performance Obligations

Certain of the Company's contracts with customers contain multiple performance obligations. For these contracts, the individual performance obligations are accounted for separately if they are distinct. The Company allocates the transaction price to the separate performance obligations based on their relative standalone selling prices. The Company determines the standalone selling prices based on its overall pricing objectives, taking into consideration market conditions and other factors, including the value of its contracts, the subscription services sold, customer size and complexity, and the number and types of users under the contracts.

#### Contract Costs

The Company capitalizes costs to obtain contracts that are considered incremental and recoverable, such as sales commissions. Payments of sales commissions generally include multiple payments. The Company capitalizes only those payments made within an insignificant time from the contract inception, typically three months or less. Subsequent payments are expensed as incurred. The capitalized costs are amortized to sales and marketing expense over the estimated period of benefit of the asset, which is generally four to five years. The Company expenses the costs to obtain a contract when the amortization period is less than one year. Deferred costs related to obtaining contracts are included in deferred contract costs and other non-current assets.

The Company capitalizes contract fulfillment costs directly associated with customer contracts that are not related to satisfying performance obligations. The costs are amortized to cost of revenue expense over the estimated period of benefit, which is generally five years. Deferred fulfillment costs are included in deferred contract costs and other non-current assets.

The following tables present information about deferred contract costs:

	As of March 31, 2020	As of December 31, 2019
<b>Balance of deferred contract costs</b>		
Costs to obtain contracts	\$ 6,205	\$ 6,676
Costs to fulfill contracts	\$ 3,055	\$ 3,112
	Three Months Ended March 31,	
	2020	2019
<b>Amortization of deferred contract costs</b>		
Costs to obtain contracts included in sales and marketing expense	\$ 881	\$ 1,047
Costs to fulfill contracts included in cost of revenue	\$ 375	\$ 802

#### Concentrations of Credit Risk

The Company's financial instruments that are exposed to concentrations of credit risk consist primarily of cash equivalents and accounts receivable. All of the Company's cash and cash equivalents are held at financial institutions that management believes to be of high credit quality. The bank deposits of the Company might, at times, exceed federally insured limits and are generally uninsured and uncollateralized. The Company has not experienced any losses on cash and cash equivalents to date.



To manage accounts receivable risk, the Company evaluates the creditworthiness of its customers and maintains an allowance for doubtful accounts. Accounts receivable are unsecured and derived from revenue earned from customers located in the United States. Accounts receivable from one customer represented approximately 13% and 11% of the total accounts receivable as of March 31, 2020 and December 31, 2019, respectively. Accounts receivable from another customer represented approximately 10% of the total accounts receivable as of March 31, 2020. No other customer exceeded 10% of accounts receivable as of December 31, 2019. No customer exceeded 10% of total revenue in the three-month period ended March 31, 2020. Revenue from one customer was approximately 11% of the total revenue in the three-month period ended March 31, 2019.

#### **Allowance for Doubtful Accounts**

Historically, the Company used an incurred loss model to calculate its allowance for doubtful accounts. Upon the adoption of Accounting Standards Update (“ASU”) No. 2016-13, “Financial Instruments - Credit Losses (Topic 326): Measurement of Credit Losses of Financial Instruments” on January 1, 2020, the Company shifted to a current expected credit loss model. Accounts receivable and allowance for doubtful accounts are discussed in Note 5.

#### **Capitalized Software Development Costs**

The Company capitalizes certain costs related to its software developed or obtained for internal use. Costs related to preliminary project activities and post-implementation activities are expensed as incurred. Internal and external costs incurred during the application development stage, including upgrades and enhancements representing modifications that will result in significant additional functionality, are capitalized. Software maintenance and training costs are expensed as incurred. Capitalized costs are recorded as part of property and equipment and are amortized on a straight-line basis to cost of revenue over the software’s estimated useful life, which is three years. The Company evaluates these assets for impairment whenever events or changes in circumstances occur that could impact the recoverability of these assets.

The following tables present information about capitalized software development costs:

<u>Capitalized software development costs</u>	<u>Three Months Ended March 31,</u>	
	<u>2020</u>	<u>2019</u>
Capitalized	\$ 3,472	\$ 2,063
Amortized	\$ 1,519	\$ 1,178

  

<u>Capitalized software development costs</u>	<u>As of</u>	<u>As of</u>
	<u>March 31,</u>	<u>December 31,</u>
	<u>2020</u>	<u>2019</u>
Net book value	\$ 16,412	\$ 14,459

#### **Leases**

The Company periodically enters into finance leases for property and equipment. The leasing arrangements for the Company’s office space at its headquarters campus are classified as finance leases. The Company also leases office space under operating leases.

The Company determines if an arrangement is a lease at inception. Right of use, or ROU, assets represent the Company’s right to use an underlying asset for the lease term. Lease liabilities represent an obligation to make lease payments arising from the lease. Leases with a term of 12 months or less are not included in the recognized ROU assets and lease liabilities for all classes of assets.

ROU assets and lease liabilities are recognized at the lease commencement date based on the present value of lease payments over the lease term. Because the Company’s operating leases do not provide an implicit interest rate, the Company uses its incremental borrowing rate based on information available at commencement date to determine the present value of lease payments. The ROU asset also consists of any prepaid lease payments, lease incentives, or initial direct costs. The lease terms used to calculate the ROU asset and related lease liability include options to extend or terminate the lease when it is reasonably certain that the Company will exercise that option.

Lease expense for operating leases is recognized on a straight-line basis over the lease term as an operating expense while the expense for finance leases is recognized as depreciation expense and interest expense. The Company has lease agreements which require payments for lease and non-lease components (e.g. common area maintenance and equipment maintenance) that are accounted for as a single lease component. Variable lease payment amounts that cannot be determined at the commencement of the lease, such as maintenance costs based on future obligations, are not included in the ROU assets or liabilities. These are expensed as incurred and recorded as variable lease expense.

#### **Comprehensive Loss**

The Company’s net loss equals comprehensive loss for all periods presented.

## Recently Adopted Accounting Standards

### Financial Instruments

On January 1, 2020, the Company adopted ASU No. 2016-13. The purpose of this ASU is to require a financial asset measured at amortized cost basis to be presented at the net amount expected to be collected. Credit losses relating to available-for-sale debt securities should be recorded through an allowance for credit losses. On adoption, the Company recorded an immaterial cumulative-effect adjustment to retained earnings in connection with expected credit losses on its trade receivables.

### Fair Value Measurement

On January 1, 2020 the Company adopted ASU No. 2018-13, "Fair Value Measurement (Topic 820): Changes to the Disclosure Requirements for Fair Value Measurement." The ASU modifies the disclosure requirements required for fair value measurements. The adoption of this guidance did not have a material impact on the Company's consolidated financial statements.

### Accounting Standards Not Yet Adopted

In December 2019, the FASB issued ASU No. 2019-12, "Income Taxes (Topic 740): Simplifying the Accounting for Income Taxes." ASU No. 2019-12 is intended to simplify various aspects related to accounting for income taxes, eliminates certain exceptions to the general principles in ASC Topic 740 related to intra-period tax allocation, simplifies when companies recognize deferred taxes in an interim period, and clarifies certain aspects of the current guidance to promote consistent application. This ASU is effective for the Company for the interim and annual reporting periods starting January 1, 2021. Early adoption is permitted. The Company is currently evaluating the potential effects of this guidance on its consolidated financial statements.

## 3. Net Loss Per Common Share

Diluted loss per common share is the same as basic loss per common share for all periods presented because the effects of potentially dilutive items were anti-dilutive given the Company's net loss.

The following common share equivalent securities have been excluded from the calculation of weighted average common shares outstanding because the effect is anti-dilutive for the periods presented:

	Three Months Ended March 31,	
	2020	2019
<b>Anti-Dilutive Common Share Equivalents</b>		
Restricted stock units	1,508,263	2,013,082
Stock options	179,363	214,647
Convertible senior notes	4,513,824	4,513,824
Employee Stock Purchase Plan	5,982	1,959
Total anti-dilutive common share equivalents	6,207,432	6,743,512

Basic and diluted net loss per common share is calculated as follows:

	Three Months Ended March 31,	
	2020	2019
Numerator:		
Net loss	\$ (11,136)	\$ (14,209)
Net loss attributable to common stockholders	\$ (11,136)	\$ (14,209)
Denominator:		
Weighted-average common shares outstanding, basic and diluted	32,638,805	32,056,934
Net loss per common share, basic and diluted	\$ (0.34)	\$ (0.44)

## 4. Fair Value Measurement

The carrying amounts of certain of the Company's financial instruments, including cash and cash equivalents, accounts payable and other accrued liabilities, and accrued compensation and benefits, approximate fair value due to their short-term nature. The carrying value of the Company's financing obligations approximates fair value, considering the borrowing rates currently available to the Company with similar terms and credit risks.

The Company uses a three-tier fair value hierarchy to classify and disclose all assets and liabilities measured at fair value on a recurring basis, as well as assets and liabilities measured at fair value on a non-recurring basis, in periods subsequent to their initial measurement. The hierarchy requires the Company to use observable inputs when available, and to minimize the use of unobservable inputs when determining fair value. The three tiers are defined as follows:

- Level 1.** Quoted prices (unadjusted) in active markets for identical assets or liabilities.
- Level 2.** Other inputs that are directly or indirectly observable in the marketplace.

**Level 3.** Unobservable inputs for which there is little or no market data, which require the Company to develop its own assumptions.

**Assets and Liabilities Measured at Fair Value on a Recurring Basis**

The Company evaluates its financial assets and liabilities subject to fair value measurements on a recurring basis to determine the appropriate level to classify them for each reporting period. This determination requires significant judgments to be made.

The following tables present information about the Company's assets and liabilities that are measured at fair value on a recurring basis using the above categories, as of the periods presented.

Description	March 31, 2020			Total
	Level 1	Level 2	Level 3	
Cash Equivalents:				
Money market mutual funds(1)	\$ 112,199	\$ —	\$ —	\$ 112,199
Total assets	\$ 112,199	\$ —	\$ —	\$ 112,199

Description	December 31, 2019			Total
	Level 1	Level 2	Level 3	
Cash Equivalents:				
Money market mutual funds(1)	\$ 124,503	\$ —	\$ —	\$ 124,503
Total assets	\$ 124,503	\$ —	\$ —	\$ 124,503

(1) Money market funds are classified as cash equivalents in the Company's unaudited consolidated balance sheets. As short-term, highly liquid investments readily convertible to known amounts of cash with remaining maturities of three months or less at the time of purchase, the Company's cash equivalent money market funds have carrying values that approximate fair value.

**5. Accounts Receivable, net**

Accounts receivable, net include:

	As of March 31, 2020	As of December 31, 2019
Accounts receivable	\$ 37,022	\$ 36,669
Less: Allowance for doubtful accounts	(242)	(155)
Less: Allowance for returns	(3,330)	(2,760)
Total accounts receivable, net	\$ 33,450	\$ 33,754

Accounts receivable are stated at their amortized cost adjusted for any write-offs and net allowances for returns. The Company estimates expected credit losses related to accounts receivable balances based on a review of available and relevant information including current economic conditions, projected economic conditions, historical loss experience, account aging, and other factors that could affect collectability. Expected credit losses are determined individually or collectively depending on whether the accounts receivable balances share similar risk characteristics. The allowance for doubtful accounts is the best estimate of the amount of expected credit losses related to existing accounts receivable. The Company does not have any off-balance sheet credit exposure related to its customers.

Allowance for doubtful accounts	Three Months Ended March 31, 2020
Beginning of period	\$ 155
Provision for credit losses (including effect of adoption)	131
Write-offs and recoveries	(44)
End of period	\$ 242

The allowances for returns are accounted for as reductions of revenue and are estimated based on the Company's periodic assessment of historical experience and trends. The Company considers factors such as historical reasons for adjustments, service and delivery issues or delays, and past due customer billings.

**6. Convertible Senior Notes**

In December 2018, the Company issued \$240,000 aggregate principal amount of 1.25% convertible senior notes ("Notes") due December 15, 2023, unless earlier repurchased by the Company or converted by the holder pursuant to their terms. Interest is payable semiannually in arrears on June 15 and December 15 of each year, commencing on June 15, 2019.

The Notes are governed by an Indenture between the Company, as issuer, and U.S. Bank, National Association, as trustee. The Notes are unsecured and rank: senior in right of payment to the Company's future indebtedness that is expressly subordinated in right of payment to the Notes; equal in right of payment to the Company's unsecured indebtedness that is not subordinated; effectively junior

in right of payment to any of the Company's senior, secured indebtedness to the extent of the value of the assets securing such indebtedness; and structurally junior to all indebtedness and other liabilities incurred by the Company's subsidiaries.

Upon conversion, the Company will pay or deliver, as the case may be, cash, shares of the Company's common stock or a combination of cash and shares of common stock, at the Company's election.

The Notes have an initial conversion rate of 18.8076 shares of common stock per \$1 principal amount of Notes. This represents an initial effective conversion price of approximately \$53.17 per share of common stock and 4,513,824 shares issuable upon conversion. Throughout the term of the Notes, the conversion rate may be adjusted upon the occurrence of certain events. Holders of the Notes will not receive any cash payment representing accrued and unpaid interest, if any, upon conversion of a Note, except in limited circumstances. Accrued but unpaid interest will be deemed to be paid by cash, shares of the Company's common stock or a combination of cash and shares of the Company's common stock paid or delivered, as the case may be, to the holder upon conversion of Notes.

Prior to the close of business on September 14, 2023, the Notes will be convertible at the option of holders during certain periods, only upon satisfaction of certain conditions set forth below. On or after September 15, 2023, until the close of business on the second scheduled trading day immediately preceding the maturity date, holders may convert all or any portion of their Notes at the conversion price at any time regardless of whether the conditions set forth below have been met.

Holders may convert all or a portion of their Notes prior to the close of business on September 14, 2023, in multiples of \$1 principal amount, only under the following circumstances:

- during any calendar quarter commencing after the calendar quarter ending on March 31, 2019 (and only during such calendar quarter), if the last reported sales price of the common stock for at least 20 trading days (whether or not consecutive) during a period of 30 consecutive trading days ending on, and including, the last trading day of the immediately preceding calendar quarter is greater than or equal to 130% of the conversion price on each applicable trading day;
- during the five business day period after any five consecutive trading day period, or the Notes measurement period, in which the "trading price" (as defined in the Indenture) per \$1 principal amount of notes for each trading day of the Notes measurement period was less than 98% of the product of the last reported sale price of the Company's common stock and the conversion rate on each such trading day;
- if the Company calls any or all of the Notes for redemption, at any time prior to the close of business on September 14, 2023; or
- upon the occurrence of specified corporate events.

As of March 31, 2020, the Notes were not convertible.

Based on market data available for publicly traded, senior, unsecured corporate bonds issued by companies in the same industry and with similar maturity, the Company estimated the implied market interest rate of its Notes to be approximately 7.30%, assuming no conversion option. Assumptions used in the estimate represent what market participants would use in pricing the liability component of the Notes, including market interest rates, credit standing, and yield curves, all of which are defined as Level 2 observable inputs. The estimated implied interest rate was applied to the Notes, which resulted in a fair value of the liability component of \$181,500 upon issuance, calculated as the present value of future contractual payments based on the \$240,000 aggregate principal amount. The excess of the principal amount of the liability component over its carrying amount, or the debt discount, is amortized to interest expense over the term of the Notes. The \$58,500 difference between the gross proceeds received from issuance of the Notes of \$240,000 and the estimated fair value of the liability component represents the equity component of the Notes and was recorded in additional paid-in capital. The equity component is not remeasured as long as it continues to meet the conditions for equity classification.

In accounting for the transaction costs related to the issuance of the Notes, the Company allocated the total amount incurred to the liability and equity components in proportion to the allocation of proceeds. Transaction costs attributable to the liability component, totaling \$4,808, are being amortized to expense over the term of the Notes, and transaction costs attributable to the equity component, totaling \$1,550, and were included with the equity component in shareholders' equity.

The Notes consist of the following as of:

	As of	
	March 31, 2020	December 31, 2019
Liability component:		
Principal	\$ 240,000	\$ 240,000
Less: Debt discount, net of amortization	(49,127)	(52,051)
Net carrying amount	\$ 190,873	\$ 187,949
Equity component (a)	56,950	56,950

- (a) Recorded in the consolidated balance sheet within additional paid-in capital, net of \$1,550 transaction costs in equity.

The following table sets forth total interest expense recognized related to the Notes:

	Three Months Ended March 31,			
	2020		2019	
1.25% coupon	\$	750	\$	750
Amortization of debt discount and transaction costs		2,924		2,749
	\$	3,674	\$	3,499

As of March 31, 2020, the fair value of the Notes, which was determined based on inputs that are observable in the market or that could be derived from, or corroborated with, observable market data, quoted price of the Notes in an over-the-counter market (Level 2), and carrying value of debt instruments (carrying value excludes the equity component of the Company's Notes classified in equity) were as follows:

	March 31, 2020		December 31, 2019	
	Fair Value	Carrying Value	Fair Value	Carrying Value
Convertible senior notes	\$ 180,000	\$ 190,873	\$ 207,600	\$ 187,949

In connection with the issuance of the Notes, the Company entered into capped call transactions with certain counterparties affiliated with the initial purchasers and others. The capped call transactions are expected to reduce potential dilution of earnings per share upon conversion of the Notes. Under the capped call transactions, the Company purchased capped call options that in the aggregate relate to the total number of shares of the Company's common stock underlying the Notes, with an initial strike price of approximately \$53.17 per share, which corresponds to the initial conversion price of the Notes and is subject to anti-dilution adjustments substantially similar to those applicable to the conversion rate of the Notes, and have a cap price of approximately \$89.98. The cost of the purchased capped calls of \$33,024 was recorded to stockholders' deficit and will not be re-measured provided it continues to meet the conditions for equity classification.

Based on the closing price of our common stock of \$8.91 on March 31, 2020, the last trading day of the quarter, the if-converted value of the Notes was less than their respective principal amounts.

#### 7. Revolving Line of Credit

On February 20, 2020, the Company's Senior Revolver expired. Other than unused line fees, which have all been paid, there was no outstanding indebtedness under the Senior Revolver when it expired.

On March 3, 2020, the Company entered into a new credit facility with Silicon Valley Bank providing for a revolving line of credit agreement. The three-year agreement has a borrowing limit of \$50,000, with the ability for the Company to increase it to up to \$100,000. Interest is payable monthly. Advances under the agreement bear interest at (a) the higher of (i) the prime rate as published in the Wall Street Journal or (ii) the federal funds effective rate plus 0.50%, plus (b) an applicable margin ranging from (0.50%) to 0.50% based on the Company's Average Daily Usage ("ADU") of the credit facility in the preceding month. The Company also is charged for amounts unused under this arrangement at a rate ranging from 0.00% to 0.40% based on the Company's ADU in the preceding month. Any outstanding principal is due at the end of the term.

The obligations of the Company under the new credit facility are secured by a first priority lien (subject to certain permitted liens) in substantially all of the personal property assets of the Company and its subsidiaries pursuant to the terms of a Guarantee and Collateral Agreement, dated March 3, 2020 and the other security documents.

The new credit facility contains customary representations and warranties and restrictive covenants. In addition, the Company is required to maintain a Consolidated Adjusted Quick Ratio ("AQR") of (i) Consolidated Quick Assets to (ii) Consolidated Current Liabilities minus the current portion of Deferred Revenue of at least 1.25 to 1.00 as of the last day of any fiscal quarter, and, if the AQR is less than 2.00 to 1.00, a Minimum Consolidated EBITDA of at least \$1.00 for any such fiscal quarter calculated on a trailing 12 month basis. The Company has also agreed to fiscal year dollar limits on its capital expenditures.

The new credit facility contains customary events of default, including payment and covenant defaults (subject to grace and cure periods), breaches of representations and warranties, defaults under certain other indebtedness, change of control, insolvency events, and the occurrence of a material adverse effect. If an event of default occurs, the lender would be entitled to take various actions, including the acceleration of amounts due under the credit facility and all actions permitted to be taken by a secured creditor.

As of March 31, 2020, the amount outstanding under the Company's revolving line of credit was \$10,000. The amount available to borrow was \$40,000 and the interest rate was 2.75% as of March 31, 2020. In March 2020, the Company borrowed \$10,000 under its line of credit for general operating purposes.

#### 8. Commitments

Supplemental cash flow information related to the Company's operating and finance leases was as follows:

	Three Months Ended March	
	31, 2020	
<b>Cash Paid for Amounts Included in the Measurement of Lease Liabilities</b>		
Financing cash flows from finance leases	\$	5,600
Operating cash flows from finance leases	\$	2,067
Operating cash flows from operating leases	\$	195
<b>ROU Assets Obtained in Exchange for New Lease Obligations</b>		
Finance lease liabilities	\$	3,593
Operating lease liabilities	\$	-

As of March 31, 2020, the Company had no additional significant operating or finance leases that had not yet commenced.

#### Finance Leases

On March 13, 2020, the Company executed an amendment to its three leases for office space on its headquarters campus. Pursuant to this amendment, the Company paid the lessor, a related party, \$3,993 for future rent due in the first half of 2021, representing an approximately 17% discount on rent due for those periods. The ROU assets and financing lease liabilities were adjusted to reflect the effect of the amendment and associated payments.

In February 2020, the Company entered into a financing lease arrangement for servers and networking equipment used in operations. Total payments under the agreement are \$3,723, including the first annual payment of \$784 and two annual payments of \$1,470, each. In connection with this lease, the Company recorded financing ROU assets and financing lease liabilities of \$3,593.

#### 9. Stock-based Compensation

##### Restricted Stock Units

During the three months ended March 31, 2020, the Company granted 49,800 restricted stock units, or RSUs, to employees and officers with an aggregate grant date fair value of \$890. These RSUs generally vest in equal annual installments over various periods ranging from less than one year to up to four years from the grant date, subject to continued service to the Company. The Company amortizes the grant date fair value of the stock subject to the RSUs on a straight-line basis over the period of vesting. The weighted-average vesting period for these RSUs is approximately 3.88 years from the date of grant.

#### 10. Stockholders' Deficit

##### Common Stock

The holders of common stock are entitled to one vote for each share. The voting, dividend and liquidation rights of the holders of common stock are subject to and qualified by the rights, powers and preferences of the holders of preferred stock.

At March 31, 2020, the Company had reserved a total of 5,415,582 of its authorized 50,000,000 shares of common stock for future issuance as follows:

Outstanding stock options	179,363
Restricted stock units	1,508,263
Available for future issuance under stock award plans	3,622,233
Available for future issuance under ESPP	105,723
<b>Total common shares reserved for future issuance</b>	<b>5,415,582</b>

Under its stock repurchase program, the Company purchased 1,070,665 shares of its outstanding common stock, for an aggregate of \$9,383 during the three months ended March 31, 2020. Of these shares, 1,067,804 have been canceled and returned to its pool of authorized shares to be used for general purposes. The balance of shares repurchased, if any, will be canceled in future periods. As of March 31, 2020, approximately \$10,617 remains available for potential repurchases.

#### 11. Revenue

##### Disaggregation of Revenue

The following tables provide information about disaggregation of revenue by service line:

Service line:	Three Months Ended March 31,	
	2020	2019
Subscription	\$ 45,990	\$ 47,869
Platform	6,005	5,143
<b>Total software services</b>	<b>\$ 51,995</b>	<b>\$ 53,012</b>
Professional services	14,159	15,287
<b>Total</b>	<b>\$ 66,154</b>	<b>\$ 68,299</b>

## Contract Balances

The following table provides information about contract assets and contract liabilities from contracts with customers:

	<u>Balance at Beginning of Period</u>	<u>Balance at End of Period</u>
<b>Three Months Ended March 31, 2020</b>		
Contract assets	\$ 16,685	\$ 13,870
Contract liabilities:		
Deferred revenue	\$ 38,508	\$ 34,539
<b>Three Months Ended March 31, 2019</b>		
Contract assets	\$ 12,798	\$ 12,383
Contract liabilities:		
Deferred revenue	\$ 45,863	\$ 46,895

The Company recognizes payments from customers based on contractual billing schedules. Accounts receivable are recorded when the right to consideration becomes unconditional. Contract assets include amounts related to the Company's contractual right to consideration for completed performance objectives not yet invoiced. Contract liabilities include payments received in advance of performance under the contract and are recognized as revenue when earned under the contract. The Company had no asset impairment charges related to contract assets during the three months ended March 31, 2020 and 2019.

There were no significant changes in the contract assets outside of standard revenue and billing activity.

Revenue recognized during the three months ended March 31, 2020 that was included in the deferred revenue balance at the beginning of the period was \$19,766.

The Company recorded favorable adjustments to revenue arising from performance obligations satisfied or partially satisfied in previous periods \$660 during the three months ended March 31, 2020.

### Performance Obligations

As of March 31, 2020, the aggregate amount of the Company's performance obligations that are unsatisfied or partially unsatisfied were approximately \$190,000, of which a majority are expected to be satisfied within the next three years. The Company excludes from its population of performance obligations contracts with original durations of one year or less, contract renewal periods that renew automatically, and amounts of variable consideration that are allocated to wholly unsatisfied distinct service that forms part of a single performance obligation and meets certain variable allocation criteria.

## 12. Income Taxes

The Company's effective federal tax rate for the three months ended March 31, 2020 was less than one percent, primarily as a result of estimated tax losses for the fiscal year to date offset by the increase in the valuation allowance in the net operating loss carryforwards. Current tax expense relates to estimated state income taxes.

## 13. Segments and Geographic Information

The Company views its operations and manages its business as one operating segment. Segment information matches the consolidated financial information for the current period and prior periods reported.

## 14. Related Parties

### Related Party Leasing Arrangements

The Company leases its office space at its Charleston, South Carolina headquarters campus under the terms of three non-cancellable leases from entities affiliated with an executive who is also a Company director and significant stockholder. The Company's headquarter campus building leases are accounted for as financing lease right-of-use assets and lease liabilities on the Consolidated Balance Sheet as of March 31, 2020. The three lease agreements have 15-year terms ending on December 31, 2031, with Company options to renew for five additional years. The arrangements provide for 3.0% fixed annual rent increases. Payments under these agreements were \$7,358 and \$3,331 for the three months ended March 31, 2020 and 2019, respectively. Other amounts due to these related parties were \$209 and \$791 as of March 31, 2020 and December 31, 2019, respectively, and were recorded in "Accrued expenses." Payments made for the three months ended March 31, 2020 include amounts paid in connection with the amendment of these leases discussed in Note 8.

### Other Related Party Expenses

The Company utilizes the services of various companies that are owned and controlled by an executive who is also a Company director and significant stockholder. The companies provide construction project management services, private air transportation and other services. Expenses related to these companies were \$120 and \$119 for the three months ended March 31, 2020 and 2019, respectively. There were no amounts due to these companies as of March 31, 2020 and December 31, 2019.

During 2018, the Company entered into an agreement to purchase software and services from a company affiliated with a Company director. The aggregate amount of payments due under this contract is \$115. Payments related to this agreement were \$26 and \$35 for the three months ended March 31, 2020 and 2019, respectively. Amounts due to this company were \$26 as of March 31, 2020. There were no amounts due to this company as of December 31, 2019.

## **15. Subsequent Events**

### ***Restricted Stock Units***

During May 2020, the Company granted 1,225,460 RSUs and 785,596 performance RSUs with an aggregate grant date fair value of \$12,524 and \$8,029, respectively. The aggregate grant date fair value of the performance RSUs assuming target achievement was \$6,206. The RSUs generally vest in equal annual installments over four years from the grant date. The number of performance RSUs that will vest will be determined upon the achievement of certain financial targets for 2020, and vesting will then occur in equal annual installments over various periods ranging from less than one to three years. The actual number of shares issued upon vesting could range between 0% and 100% of the number of awards granted. The weighted-average vesting period for these RSUs and performance RSUs is approximately 3.09 and 2.36 years from the date of grant, respectively.

### ***Common Stock***

During April and May 2020, employees exercised stock options and RSUs vested resulting in the issuance of 288,232 shares.

The Company purchased 35,508 shares of its outstanding common stock for an aggregate of \$285 during April 2020.

### ***COVID-19 Pandemic***

On March 11, 2020, the World Health Organization classified the COVID-19 outbreak as a pandemic. The pandemic did not have a material impact on the Company's financial statements for the three months ended March 31, 2020. The Company has implemented actions to maintain its financial health and liquidity. The Company is also monitoring the impacts of COVID-19 on the fair value of assets. Future changes in sales, earnings and cash flows related to long-lived assets to be held and used and goodwill could cause these assets to become impaired. In addition, the Company continues to monitor the impacts of the pandemic on its estimates for allowance for doubtful accounts and expected credit losses associated with its accounts receivable and certain contract assets. COVID-19 is discussed in more detail throughout "Management's Discussion and Analysis of Financial Condition and Results of Operations."

### ***Restructuring Plan***

On April 28, 2020, the Company announced a restructuring plan to as part of the Company's actions to ensure the safety and well-being of its employees and customers, contain costs and further preserve its liquidity profile in response to the impact of the COVID-19 pandemic. This plan entailed a reduction in U.S. workforce of approximately 17% in the second quarter of 2020. The Company estimates that the restructuring plan will result in pre-tax charges of approximately \$5,000 to \$7,000 and will be recorded as restructuring expenses in the second quarter of 2020. The charges will consist of one-time severance charges, acceleration of unvested equity grants, continuation of health benefits and outplacement services. The estimated cash expenditure for these charges is approximately \$5,000.



## SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

This Quarterly Report on Form 10-Q contains "forward-looking statements" that involve risks and uncertainties, as well as assumptions that, if they never materialize or prove incorrect, could cause our results to differ materially from those expressed or implied by such forward-looking statements. The statements contained in this Quarterly Report on Form 10-Q that are not purely historical are forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, or Securities Act, and Section 21E of the Securities Exchange Act of 1934, as amended, or Exchange Act. Such forward-looking statements include any expectation of earnings, revenue or other financial items; any statements of the plans, strategies and objectives of management for future operations; factors that may affect our operating results; statements about our ability to retain and hire necessary associates and appropriately staff our operations; statements about our ability to establish and maintain intellectual property rights; statements related to future capital expenditures; statements related to future economic conditions or performance; statements as to industry trends; and other matters that do not relate strictly to historical facts or statements of assumptions underlying any of the foregoing. Forward-looking statements are often identified by the use of words such as, but not limited to, "anticipate," "believe," "can," "continue," "could," "estimate," "expect," "intend," "may," "might," "will," "plan," "project," "seek," "should," "target," "would," and similar expressions or variations intended to identify forward-looking statements. These statements are based on the beliefs and assumptions of our management based on information currently available to management. Such forward-looking statements are subject to risks, uncertainties and other important factors that could cause actual results and the timing of certain events to differ materially from future results expressed or implied by such forward-looking statements. Factors that could cause or contribute to such differences include, but are not limited to, those discussed in the section titled "Risk Factors" included in Item 1A of Part II of this Quarterly Report on Form 10-Q, and the risks discussed in our other SEC filings. Furthermore, such forward-looking statements speak only as of the date of this report. Except as required by law, we undertake no obligation to update any forward-looking statements to reflect events or circumstances after the date of such statements.

As used in this report, the terms "Benefitfocus, Inc.," "Benefitfocus," "Company," "company," "we," "us," and "our" mean Benefitfocus, Inc. and its subsidiaries unless the context indicates otherwise.

## ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS.

*The following discussion and analysis of our financial condition and results of operations should be read in conjunction with our consolidated financial statements and related notes appearing elsewhere in this Quarterly Report on Form 10-Q and with the financial statements, related notes and Management's Discussion and Analysis of Financial Condition and Results of Operations in our Annual Report on Form 10-K for the fiscal year ended December 31, 2019. The following discussion contains forward-looking statements that reflect our plans, estimates and beliefs. Our actual results could differ materially from those discussed in the forward-looking statements. Factors that could cause or contribute to such differences include, but are not limited to, those discussed in the section titled "Risk Factors" included in Item 1A of Part II of this Quarterly Report on Form 10-Q, and the risks discussed in our other SEC filings.*

### Overview

Benefitfocus provides a leading cloud-based benefits management platform for buyers (consumers, employees and employers) and sellers (insurance brokers, carriers and suppliers). The Benefitfocus Platform simplifies how organizations and individuals transact benefits. Our employer, carrier, broker and supplier customers rely on our platform to manage, scale and exchange benefits data seamlessly. Our solutions drive value for all participants in our benefits ecosystem.

The Benefitfocus platform has a multi-tenant architecture and a user-friendly interface designed for consumers to access all of their benefits in one place. Our comprehensive solutions support medical benefit plans and non-medical benefits, such as, dental, life, disability insurance, income protection, digital health and financial wellness. Our platform includes artificial intelligence functionality designed to help consumers identify and evaluate benefit options offered by their employer. As the number of employer benefits plans has increased, with each plan subject to many different business rules and requirements, demand for the Benefitfocus Platform is growing.

In 2018, we expanded our economic model to include a transaction-oriented, buyer solution, known as Benefit Catalog (formerly BenefitsPlace), designed to align brokers, carriers and suppliers around the needs of employers, employees and consumers. In this model, our seller partners offer their voluntary and specialty benefit products through a holistic, multidimensional marketplace. This marketplace is designed to increase the economic value of the consumer lives on our platform by aligning the product catalog to consumer needs. In exchange for Benefitfocus delivering consumer access, data-driven analysis and operational efficiencies, seller partners pay us a percentage of the purchases completed on our platform. Carrier agreements have terms of two to four years and are typically cancellable upon breach of contract or insolvency. Supplier contracts have terms of one year or less and are generally cancellable upon breach of contract, failure to cure, bankruptcy and termination for convenience.

We classify our revenue into three streams – subscription, platform, and professional services revenue. Subscription and platform revenue are combined and reported as software services revenue. As a result of adding Benefit Catalog to our economic model in 2018, we now manage platform revenue as a separate stream. Accordingly, platform revenue is reported separately for the current and historical periods.

Subscription revenue primarily consists of monthly subscription fees paid to us by our employer and insurance carrier customers for access to, and usage of, cloud-based benefits software solutions for a specified contract term. Subscription fees are generally charged based on the number of employees or subscribers with access to the solution. Subscription revenue accounted for approximately 70% of our total revenue during both of the three-month periods ended March 31, 2020 and 2019.

Platform revenue includes Benefit Catalog transactional revenue, which is generated from the value of the policies or products enrolled in through our marketplace. Benefit Catalog revenue from insured produces is generally recognized over the policy period of the enrolled products. In arrangements where we sell policies to employees of our customers as the broker, we earn insurance broker commissions. Revenue from insurance broker commissions and Benefit Catalog supplier transactions is generally recognized at the time when open enrollment is complete and the orders for policies are transferred to the supplier. Platform revenue accounted for approximately 9% and 8% of our total revenue during the three-month period ended March 31, 2020 and 2019, respectively.

Our professional services revenue stream is largely derived from the implementation of our customers onto our platform, which typically includes discovery, configuration and deployment, integration, testing, and training. We also provide customer support services and customized media content that supports our customers' effort to educate and communicate with consumers. Professional services revenue accounted for approximately 21% and 22% of our total revenue during the three-month period ended March 31, 2020 and 2019, respectively.

Expanding our customer base is a key element of our growth strategy. We believe that our continued innovation and new solutions, such as Benefit Catalog, which extend the functionality of our mobile offerings, provide more robust data analytics capabilities, and enhance our ability to quickly respond to evolving market needs with innovative capabilities, will help us attract additional net benefit eligible lives to our platform through new employer customers, partners, and brokers, and increase our revenue from existing customers and relationships.

We believe that there is a substantial market for our services, and we have been investing in growth over the past several years. In particular, we have continued to invest in technology and services to better serve our larger employer customers, which we believe are an important source of growth for our business. We have also substantially increased our marketing and sales efforts. As we have invested in growth, we have had operating losses in each of the last nine years, and expect our operating losses to continue for at least the next year.

On March 11, 2020 the World Health Organization classified the COVID-19 outbreak as a pandemic. In response to changes in the business environment as a result of the pandemic, we implemented actions to maintain our financial health and liquidity. These actions to control cost by reducing our workforce by approximately 17%, renegotiating vendor service contracts, restricting travel, and reducing discretionary expenditures such as consultants. These actions also target improving efficiencies by investing in automation.

While the ultimate impact of the pandemic on our business and financial results remains uncertain, we believe our business will be impacted by the following in the near term:

- **New sales.** We expect to experience a slowdown in new sales activity which we expect to negatively impact professional services revenue and platform revenue from new business.
- **Unemployment.** We expect the increase in unemployment caused by the pandemic will negatively impact platform revenue by decreasing the rate at which our Benefits Catalog voluntary benefits offerings are purchased. We expect our subscription revenue will be impacted to a lesser extent depending on the level of contractual minimums in our contracts and a delay in when unemployed workers leave our platform. In addition, we expect unemployment to potentially cause a decrease in net benefit eligible lives on our platform in the near term.
- **Participation in Voluntary Benefits.** We expect a decrease in the participation of lives on our platform in purchasing voluntary benefits as a result of the economic impacts of the pandemic on income levels across the country.

As a result of the nature of our customer relationships, the stability of our subscription revenue, the cost restructuring actions taken in the second quarter of 2020 and our ongoing investments in automation, we believe we will be able to achieve profitability in the relatively near future. Of course, our ability to achieve profitability will continue to be subject to many factors beyond our control.

### **Key Financial and Operating Performance Metrics**

We regularly monitor a number of financial and operating metrics in order to measure our current performance and project our future performance. These metrics help us develop and refine our growth strategies and make strategic decisions. We discuss revenue, gross margin, and the components of operating loss in "Management's Discussion and Analysis of Financial Condition and Results of Operations—Components of Operating Results". In addition, we utilize other key metrics as described below.

#### **Adjusted EBITDA**

Adjusted EBITDA represents our earnings before net interest and other expenses, taxes, and depreciation and amortization expense, adjusted to eliminate stock-based compensation and impairment of goodwill and intangible assets, transaction and acquisition-related costs expensed, restructuring costs and costs not core to our business. We believe that the exclusion of the expenses eliminated in calculating adjusted EBITDA can provide a useful measure for period-to-period comparisons of our core business. Accordingly, we believe that adjusted EBITDA provides useful information to investors and others in understanding and evaluating our operating results. However, adjusted EBITDA is not a measure calculated in accordance with United States generally accepted accounting principles, or GAAP, and should not be considered as an alternative to any measure of financial performance calculated and presented in accordance with GAAP.

Beginning in the first quarter of 2020, we revised our definition of adjusted EBITDA to also exclude restructuring charges. This revision to the definition had no material impact on our reported adjusted EBITDA for the three months ended March 31, 2020 or prior periods.

Our use of adjusted EBITDA as an analytical tool has limitations, and you should not consider it in isolation or as a substitute for analysis of our financial results as reported under GAAP. Some of these limitations are:

- although depreciation and amortization are non-cash charges, the assets being depreciated and amortized might have to be replaced in the future, and adjusted EBITDA does not reflect cash capital expenditure requirements for such replacements or for new capital expenditure requirements;
- adjusted EBITDA does not reflect changes in, or cash requirements for, our working capital needs;
- adjusted EBITDA does not reflect the potentially dilutive impact of stock-based compensation;
- adjusted EBITDA does not reflect interest or tax payments that would reduce the cash available to us; and
- other companies, including companies in our industry, might calculate adjusted EBITDA or a similarly titled measure differently, which reduces their usefulness as comparative measures.

Because of these and other limitations, you should consider adjusted EBITDA alongside other GAAP-based financial performance measures, including various cash flow metrics, gross profit, net loss and our other GAAP financial results. The following table presents for each of the periods indicated a reconciliation of adjusted EBITDA to the most directly comparable GAAP financial measure, net loss (in thousands):

	Three Months Ended	
	March 31,	
	2020	2019
<b>Reconciliation from Net Loss to Adjusted EBITDA:</b>		
Net loss	\$ (11,136)	\$ (14,209)
Depreciation	3,796	3,967
Amortization of software development costs	1,519	1,178
Amortization of acquired intangible assets	569	190
Interest income	(426)	(660)
Interest expense	5,891	5,814
Income tax expense	5	6
Stock-based compensation expense	3,677	6,367
Transaction and acquisition-related costs expensed	192	642
Costs not core to our business	-	320
Total net adjustments	15,223	17,824
Adjusted EBITDA	\$ 4,087	\$ 3,615

#### **Net Benefit Eligible Lives**

We are focused on driving revenue growth from adding lives to our platform and driving incremental transaction revenue. We believe the number of net benefit eligible lives is a key indicator of our market penetration, growth and future revenue. We believe net benefit eligible lives is highly correlated to our subscription revenue and is the foundation of our transaction revenue opportunity. We define a net benefit eligible life as a person with access to a benefits enrollment subscription under standard contracting or a freelancer with access to benefits enrollment, plus their estimated dependents, as of the measurement date. This definition excludes lives from other subscription-related contracts.

	As of March 31,	
	2020	2019
	(in millions)	
Net benefit eligible lives	17.5	15.5

#### **Software Services Revenue Retention Rate**

We believe that our ability to retain our customers and expand the revenue they generate for us over time is an important component of our growth strategy and reflects the long-term value of our customer relationships. We measure our performance on this basis using a metric we refer to as our software services revenue retention rate. We calculate this metric for a particular period by establishing the group of our customers that had active contracts for a given period. We then calculate our software services revenue retention rate by taking the amount of software services revenue we recognized for this group in the subsequent comparable period (for which we are reporting the rate) and dividing it by the software services revenue we recognized for the group in the prior period.

Our software services revenue retention rate was greater than 90% for the three months ended March 31, 2020 compared to being greater than 95% for the three months ended March 31, 2019. The reduction in the rate was primarily result of the impact on 2020 revenue from the renegotiation of a customer contract. Excluding this customer, our software revenue retention rate exceeds 95% for both periods. We expect our software revenue retention rate will continue to be negatively impacted for the remainder of 2020 by the effects of this customer contract negotiation along with the impacts of unemployment as a result of COVID-19 pandemic.

## Components of Operating Results

### Revenue

We derive the majority of our revenue from monthly subscription fees paid to us by our employer and carrier customers for access to, and usage of, our cloud-based benefits software solutions for a specified contract term. We derive platform revenue from both insurance broker commissions from the sale of voluntary and ancillary benefits policies to employees of our customers and from transaction revenue from life and ancillary insurance carriers and specialty providers. We also derive revenue from professional services fees, which primarily include fees related to the implementation of our customers onto our platform. Our professional services typically include discovery, configuration and deployment, integration, testing, and training.

The following table sets forth a breakdown of our revenue between software services and professional services for the periods indicated (in thousands):

	Three Months Ended	
	March 31,	
	2020	2019
Subscription	\$ 45,990	\$ 47,869
Platform	6,005	5,143
Total software services	\$ 51,995	\$ 53,012
Professional services	14,159	15,287
Total revenue	\$ 66,154	\$ 68,299

We recognize revenue when control of these services is transferred to customers, in an amount that reflects the consideration we expect to be entitled to in exchange for those services. Taxes collected from customers relating to services and remitted to governmental authorities are excluded from revenues.

We determine revenue recognition through the following steps:

- Identification of each contract with a customer;
- Identification of the performance obligations in the contract;
- Determination of the transaction price;
- Allocation of the transaction price to the performance obligations in the contract; and
- Recognition of revenue when, or as, performance obligations are satisfied.

#### Software Services Revenue

Software services revenue consists of subscription and platform revenue.

#### Subscription Revenue

Subscription revenue primarily consists of monthly subscription fees paid to us by our customers for access to, and usage of, cloud-based benefits software solutions for a specified contract term. Fees are generally charged based on the number of employees or subscribers with access to the solution.

Subscription revenue is generally recognized on a ratable basis over the contract term beginning on the date the subscription services are made available to the customer. Our subscription service contracts are generally three years.

Subscription revenue also includes fees paid for other services, such as event sponsorships and certain data services.

#### Platform Revenue

Platform revenue is generated from the value of the policies or products enrolled in through our marketplace. Platform revenue from carriers is generally recognized over the policy period of the enrolled products. In arrangements where we sell policies to employees of our customers as the broker, we earn insurance broker commissions. Revenue from insurance broker commissions and Benefit Catalog (formerly BenefitsPlace) supplier transactions is recognized at the point when the orders for the policies are received and transferred to the insurance carrier or supplier, and is reduced by estimates for risk from premium collection, policy cancellation and termination.

#### Professional Services Revenues

Professional services revenue primarily consists of fees related to the implementation of software products purchased by customers. Professional services typically include discovery, configuration and deployment, integration, testing, and training. Fees from consulting services, support services and training are also included in professional services revenue.

We determined that implementation services for certain of our insurance carrier customers significantly modify or customize the software solution and, as such, do not represent a distinct performance obligation. Accordingly, revenue from such implementation services with these insurance carrier customers are generally recognized over the contract term of the associated software services

contract, including any extension periods representing a material right. We utilize estimates of hours as a measure of progress to determine revenue for certain types of arrangements.

Revenue from implementation services with employer customers is generally recognized as those services are performed.

Revenue from support and training fees is recognized over the service contract period.

#### ***Contracts with Multiple Performance Obligations***

Certain of our contracts with customers contain multiple performance obligations. For these contracts, the individual performance obligations are accounted for separately if they are distinct. The transaction price is allocated to the separate performance obligations based on their relative standalone selling prices. We determine the standalone selling prices based on their overall pricing objectives, taking into consideration market conditions and other factors, including the value of their contracts, the software services sold, customer size and complexity, and the number and types of users within the contracts.

#### ***Overhead Allocation***

Expenses associated with our facilities, security, information technology, and depreciation and amortization, are allocated between cost of revenue and operating expenses based on employee headcount determined by the nature of work performed.

#### ***Cost of Revenue***

Cost of revenue primarily consists of salaries and other personnel-related costs, including benefits, bonuses, and stock-based compensation, for employees, whom we refer to as associates, providing services to our customers and supporting our SaaS platform infrastructure. Additional expenses in cost of revenue include co-location facility costs for our data centers, depreciation expense for computer equipment directly associated with generating revenue, infrastructure maintenance costs, professional fees, amortization expenses associated with acquired intangibles and capitalized software development costs, allocated overhead, and other direct costs.

We expense cost of revenue associated with fulfilling performance obligations as we incur the costs. Costs that relate directly to a customer contract that are not related to satisfying a performance obligation are capitalized and amortized to cost of revenue expense over the estimate period of benefit of the contract asset, which is generally five years.

Subscription and platform revenue are both generated from our platform and result from the same set of assets and activities. As such, we are not able to meaningfully separate and assign costs of revenue to subscription and platform revenue separately.

We plan to continue to expand our capacity to support our growth, which will result in higher cost of revenue in absolute dollars. However, we expect cost of revenue as a percentage of revenue to decline and gross margins to increase primarily from the realization of economies of scale driven by retention of our customer base and increased automation. However, this trend may vary on a quarterly basis.

#### ***Operating Expenses***

Operating expenses consist of sales and marketing, research and development, and general and administrative expenses. Salaries and personnel-related costs are the most significant component of each of these expense categories. We expect to decrease our operating expenses, as a percentage of revenue, if and as we achieve economies of scale and as a result of restructuring actions taken in April 2020.

***Sales and marketing expense.*** Sales and marketing expense consists primarily of salaries and other personnel-related costs, including benefits, bonuses, stock-based compensation, and commissions for our sales and marketing associates. Costs to obtain a contract that are incremental, such as sales commissions, are capitalized and amortized to expense over the estimated period of benefit of the asset, which is generally four to five years. Additional expenses include advertising, lead generation, promotional event programs, corporate communications, travel, and allocated overhead. For instance, our most significant promotional event is One Place, which we hold annually. We expect our sales and marketing expense to decrease, in absolute dollars, in the near term as we achieve the savings expected from the restructuring actions taken in April 2020.

***Research and development expense.*** Research and development expense consists primarily of salaries and other personnel-related costs, including benefits, bonuses, and stock-based compensation for our research and development associates. Additional expenses include costs related to the development, quality assurance, and testing of new technology, and enhancement of our existing platform technology, consulting, travel, and allocated overhead. We believe continuing to invest in research and development efforts is essential to maintaining our competitive position.

***General and administrative expense.*** General and administrative expense consists primarily of salaries and other personnel-related costs, including benefits, bonuses, and stock-based compensation for administrative, finance and accounting, information systems, legal, and human resource associates. Additional expenses include consulting and professional fees, insurance and other corporate expenses, and travel. We expect our general and administrative expenses to decrease in absolute terms as a result of the restructuring actions taken in April 2020 which included reducing headcount, renegotiating vendor service contracts, restricting travel, and reducing discretionary expenditures such as consultants.

### Other Income and Expense

Other income and expense consists primarily of interest income and expense and gain (loss) on disposal of property and equipment. Interest income represents interest received on our cash and cash equivalents. Interest expense consists primarily of the interest incurred on outstanding convertible debt and borrowings under our lease arrangements and credit facility.

### Income Tax Expense

Income tax expense consists of U.S. federal and state income taxes. We incurred minimal income tax expense for the three months ended March 31, 2020 and 2019.

On March 27, 2020, the "Coronavirus Aid, Relief and Economic Security (CARES) Act" was signed into law. The CARES Act, among other things, includes provisions relating to refundable payroll tax credits, deferment of employer side social security payments, net operating loss carryback periods, alternative minimum tax credit refunds, modifications to the net interest deduction limitations and technical corrections to tax depreciation methods for qualified improvement property. Except for utilizing the deferment of employer side social security payments, we do not expect the CARES Act to have a material impact on our financial results. We continue to examine the impacts the CARES Act may have on our business.

### Results of Operations

#### Consolidated Statements of Operations Data

The following table sets forth our consolidated statements of operations data for each of the periods indicated (in thousands):

	Three Months Ended	
	March 31,	
	2020	2019
Revenue	\$ 66,154	\$ 68,299
Cost of revenue <sup>(1)</sup>	33,912	32,852
Gross profit	32,242	35,447
Operating expenses:		
Sales and marketing <sup>(1)</sup>	15,630	19,619
Research and development <sup>(1)</sup>	11,768	13,090
General and administrative <sup>(1)</sup>	10,515	11,796
Total operating expenses	37,913	44,505
Loss from operations	(5,671)	(9,058)
Other income (expense):		
Interest income	426	660
Interest expense	(5,891)	(5,814)
Other income	5	9
Total other expense, net	(5,460)	(5,145)
Loss before income taxes	(11,131)	(14,203)
Income tax expense	5	6
Net loss	\$ (11,136)	\$ (14,209)

(1) Cost of revenue and operating expenses include stock-based compensation expense as follows (in thousands):

	Three Months Ended	
	March 31,	
	2020	2019
Cost of revenue	\$ 667	\$ 899
Sales and marketing	880	1,686
Research and development	342	1,192
General and administrative	1,788	2,590

The following table sets forth our consolidated statements of operations data as a percentage of revenue for each of the periods indicated (as a percentage of revenue):

	Three Months Ended March 31,	
	2020	2019
Revenue	100.0 %	100.0 %
Cost of revenue	51.3	48.1
Gross profit	48.7	51.9
Operating expenses:		
Sales and marketing	23.6	28.7
Research and development	17.8	19.2
General and administrative	15.9	17.3
Total operating expenses	57.3	65.2
Loss from operations	(8.6)	(13.3)
Other income (expense):		
Interest income	0.6	1.0
Interest expense	(8.9)	(8.5)
Other income	-	-
Total other expense, net	(8.3)	(7.5)
Loss before income taxes	(16.8)	(20.8)
Income tax expense	-	-
Net loss	(16.8) %	(20.8) %

#### Comparison of Three Months Ended March 31, 2020 and 2019

##### Revenue

	Three Months Ended March 31,					
	2020		2019		Period-to-Period Change	
	Amount	Percentage of Revenue	Amount	Percentage of Revenue	Amount	Percentage
	(in thousands)					
Subscription	\$ 45,990	69.5 %	\$ 47,869	70.1 %	\$ (1,879)	(3.9) %
Platform	6,005	9.1	5,143	7.5	862	16.8
Total software services	\$ 51,995	78.6 %	\$ 53,012	77.6 %	\$ (1,017)	(1.9) %
Professional services	14,159	21.4	15,287	22.4	(1,128)	(7.4)
Total revenue	\$ 66,154	100.0 %	\$ 68,299	100.0 %	\$ (2,145)	(3.1) %

Subscription revenue decreased as \$3.6 million of increases from the addition of new customers, contractual price increases and volume increases were offset by decreases of \$3.5 million from customers that terminated products and services and \$3.8 million from the renegotiation of a customer contract. The remaining increase is primarily attributable to the acquisition of Connecture, Inc. on February 23, 2019, because the 2020 quarter includes a full quarter of revenue related to Connecture products compared to a partial quarter in the comparable period in 2019.

Platform revenue increased from growth in premiums and new products from Benefit Catalog (formerly BenefitsPlace), partially offset by decreases in revenue from broker and supplier commissions primarily as a result of a change in commission rates. As discussed above in "Components of Operating Results – Revenue", we recognize platform revenue from carriers over the policy period and we recognize commissions revenue at a point in time.

The decrease in professional services revenue was primarily attributable to a decrease in implementation revenue and customer-specific development. Other increases from new and existing customers and a full quarter of Connecture-related revenue were offset by decreases from terminations in customer support revenue and other decreases.

##### Cost of Revenue

	Three Months Ended March 31,					
	2020		2019		Period-to-Period Change	
	Amount	Percentage of Revenue	Amount	Percentage of Revenue	Amount	Percentage
	(in thousands)					
Cost of revenue	\$ 33,912	51.3 %	\$ 32,852	48.1 %	\$ 1,060	3.2 %

The increase in cost of revenue in absolute terms was attributable to an increase in salaries and other personnel-related costs of \$1.1 million and increased depreciation expense of \$0.4 million. The increase in salaries and personnel-related costs is primarily attributable to an increase in headcount to support our customers. The increase in depreciation expense is attributable to higher depreciation expense related to an increase in capitalized software development costs. Cost of revenue increased as a percentage of



revenue due to revenue decreasing and increases in salaries and personnel-related costs. Cost of revenue included \$0.7 million and \$0.9 million of stock-based compensation expense for the three-month periods ended March 31, 2020 and 2019, respectively, and \$4.3 million and \$3.9 million of depreciation and amortization for the three-month periods ended March 31, 2020 and 2019, respectively.

#### Gross Profit

	Three Months Ended March 31,					
	2020		2019		Period-to-Period Change	
	Amount	Percentage of Revenue	Amount	Percentage of Revenue	Amount	Percentage
	(in thousands)					
Software services	\$ 33,006	63.5 %	\$ 36,364	68.6 %	\$ (3,358)	(9.2) %
Professional services	(764)	(5.4)	(917)	(6.0)	153	(16.7)
Gross profit	\$ 32,242	48.7 %	\$ 35,447	51.9 %	\$ (3,205)	(9.0) %

The decrease in software services gross profit was driven by a \$1.0 million, or 2%, decrease in software services revenue and an increase in software services cost of revenue of \$2.3 million from increases in salary and personnel-related costs and depreciation expense. Software services cost of revenue included \$0.4 million and \$0.5 million of stock-based compensation expense for the three months ended March 31, 2020 and 2019, respectively, and \$3.5 million and \$3.2 million of depreciation and amortization for the three months ended March 31, 2020 and 2019, respectively.

Professional services gross loss was flat as professional services revenue decreased by \$1.1 million and cost of revenue decreased by \$1.3 million. Professional services cost of revenue included \$0.3 million and \$0.4 million of stock-based compensation expense for the three months ended March 31, 2020 and 2019, respectively. In addition, professional services cost of revenue included \$0.8 million and \$0.7 million in depreciation and amortization for the three months ended March 31, 2020 and 2019, respectively.

#### Operating Expenses

	Three Months Ended March 31,					
	2020		2019		Period-to-Period Change	
	Amount	Percentage of Revenue	Amount	Percentage of Revenue	Amount	Percentage
	(in thousands)					
Sales and marketing	\$ 15,630	23.6 %	\$ 19,619	28.7 %	\$ (3,989)	(20.3) %
Research and development	11,768	17.8	13,090	19.2	(1,322)	(10.1)
General and administrative	10,515	15.9	11,796	17.3	(1,281)	(10.9)

The decrease in sales and marketing expense was primarily attributable to a \$2.7 million decrease in salaries and personnel-related costs and a \$1.0 million decrease in the cost of marketing events. The decrease in salaries and personnel-related costs was driven by decreased headcount, lower commissions and bonuses earned as well as a decrease in stock-based compensation of \$0.8 million as performance-based awards granted in 2019 were earned at a lower amount than prior year. The cost of marketing events decreased as a result of moving our user conference, OnePlace, to a digital platform in response to the COVID-19 pandemic.

The decrease in research and development expense is primarily attributable to a decrease personnel-related costs. In particular stock-based compensation decreased as performance-based awards granted in 2019 were not attained. Also, personnel-related cost capitalized for software development increased.

The decrease in general and administrative expense was primarily attributable to a \$1.0 million decrease in professional fees as well as a \$0.3 million decrease salaries and personnel-related costs. The decrease in professional fees is attributable to acquisition-related services, management consulting fees and fees associated with the adoption of the leases standard and internal control testing that were incurred in 2019 and did not recur in 2020. The decrease in salaries and personnel-related cost was primarily attributable to decrease in stock-based compensation as performance-based awards granted in 2019 were earned at a lower amount than prior year. This decrease was partially offset by increases in salaries and wages due to an increase in the number of associates over the prior year.

#### Critical Accounting Policies and Significant Judgments and Estimates

Our management's discussion and analysis of our financial condition and results of operations is based on our consolidated financial statements, which have been prepared in accordance with GAAP. The preparation of these consolidated financial statements requires us to make estimates and assumptions that affect the reported amounts of assets and liabilities, disclosure of contingent assets and liabilities at the date of the consolidated financial statements, and the reported amounts of revenue and expenses. In accordance with GAAP, we base our estimates on historical experience and on various other assumptions that we believe are reasonable under the circumstances. Actual results might differ from these estimates under different assumptions or conditions and, to the extent that there are differences between our estimates and actual results, our future financial statement presentation, financial condition, results of operations and cash flows will be affected. During the three months ended March 31, 2020 there were no material changes to our critical accounting policies and use of estimates, which are disclosed in our Annual Report on Form 10-K for the year ended December 31, 2019, except for current expected credit loss accounting, which changed in connection with the adoption of ASC 326 on January 1, 2020 and is described elsewhere in this Quarterly Report on Form 10-Q.

## Liquidity and Capital Resources

### Sources of Liquidity

As of March 31, 2020, our primary sources of liquidity were our cash and cash equivalents totaling \$114.7 million, \$33.5 million in accounts receivables, net of allowances, and the \$40 million unused portion of our revolving line of credit.

We entered into a new revolving line of credit agreement with Silicon Valley Bank on March 3, 2020. This agreement replaces our previous agreement with Silicon Valley Bank which expired on February 20, 2020. The new three-year agreement has a borrowing limit of \$50 million, with the ability for us to increase it up to \$100 million. We are bound by customary representations and warranties and restrictive covenants in connection with the revolving line of credit, including financial covenants related to quick ratio and EBITDA. In the event of a default, the lenders may declare all obligations immediately due and stop advancing money or extending credit under the line of credit. The line of credit is collateralized by substantially all of our personal property assets, including intellectual property and the equity of our subsidiaries. The terms of our revolving line of credit are described in Note 7 of the unaudited consolidated financial statements included elsewhere in this Quarterly Report on Form 10-Q.

In December 2018, we issued \$240 million aggregate principal amount of 1.25% convertible senior notes (the "Notes") due December 15, 2023, unless earlier purchased by us or converted by the holder pursuant to their terms. Interest is payable semiannually in arrears on June 15 and December 15 of each year. Upon conversion, we will pay or deliver, as the case may be, cash, shares of our common stock or a combination, at our election. The Notes have an initial conversion rate of 18.8076 shares of common stock per \$1,000 principal amount. This represents an initial effective conversion price of approximately \$53.17 per share of common stock, with an aggregate of 4,513,824 shares issuable upon conversion. In connection with the issuance of the Notes, we entered into capped call transactions with certain counterparties affiliated with the initial purchasers and others. The capped call transactions are expected to reduce potential dilution of earnings per share upon conversion of the Notes. Under the capped call transactions, we purchased capped call options that in the aggregate relate to the total number of shares of our common stock underlying the Notes, with an initial strike price of approximately \$53.17 per share, which corresponds to the initial conversion price of the Notes and is subject to anti-dilution adjustments substantially similar to those applicable to the conversion rate of the Notes, and have a cap price of approximately \$89.98. The terms of the Notes are described in Note 6 of our unaudited consolidated financial statements included elsewhere in this Quarterly Report on Form 10-Q.

Our cash flows from operations has improved in recent years and was positive for the year ended December 31, 2018. However, cash flows from operations may fluctuate between positive and negative due to the timing of payments and collections of cash on both a quarterly and annual basis.

On April 28, 2020, we announced a restructuring plan to contain costs and further strengthen our liquidity profile in response to the impact of the COVID-19 pandemic. This restructuring plan resulted in a reduction in our U.S. workforce of approximately 17% to be implemented in the second quarter of 2020. We estimate this restructuring will result in charges of \$5 to \$7 million and cash expenditure of \$5 million from one-time severance charges, acceleration of unvested equity grants, continuation of health benefits and outplacement services.

Based on our current level of operations and restructured costs, we believe our future cash flows from operating activities and existing cash balances will be sufficient to meet our cash requirements for at least the next 12 months.

Going forward, we may access capital markets to raise additional equity or debt financing for various business reasons, including required debt payments and acquisitions. The timing, term, size, and pricing of any such financing will depend on investor interest and market conditions, and there can be no assurance that we will be able to obtain any such financing on favorable terms or at all.

### Commitments

On March 13, 2020, we executed an amendment to our three leases for office space on our headquarters campus. Pursuant to this amendment, we paid the lessor, a related party, approximately \$4.0 million for future rent due in the first half of 2021, representing an approximately 17% discount on rent due for those periods. The respective right-of-use assets and financing lease liabilities were adjusted to reflect the effect of the payment.

In February 2020, we entered into a financing lease arrangement for servers and networking equipment used in operations. Total payments under the agreement are \$3.7 million, including the first annual payment of \$0.8 million and two annual payments of approximately \$1.5 million. In connection with this lease, we recorded financing ROU assets and financing lease liabilities of \$3.6 million.

### Off-Balance Sheet Arrangements

As of March 31, 2020, we did not have any off-balance sheet arrangements, as defined in Item 303(a)(4)(ii) of Regulation S-K of the Securities Act, such as the use of unconsolidated subsidiaries, structured finance, special purpose entities or variable interest entities.

### Recent Accounting Pronouncements

In December 2019, the FASB issued ASU No. 2019-12 "Income Taxes (Topic 740): Simplifying the Accounting for Income Taxes". This ASU is intended to simplify various aspects related to accounting for income taxes, eliminates certain exceptions to the

general principles in ASC Topic 740 related to intra-period tax allocation, simplifies when companies recognize deferred taxes in an interim period, and clarifies certain aspects of the current guidance to promote consistent application. This ASU is effective for interim and annual reporting periods starting January 1, 2021. Early adoption is permitted. We are currently evaluating the potential effects of this guidance on our consolidated financial statements.

We are evaluating other accounting standards and exposure drafts that have been issued or proposed by the FASB or other standards setting bodies that do not require adoption until a future date to determine whether adoption will have a material impact on our consolidated financial statements.

**ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK.**

Market risk is the risk of loss to future earnings, values or future cash flows that may result from changes in the price of a financial instrument. The value of a financial instrument might change as a result of changes in interest rates, exchange rates, commodity prices, equity prices and other market changes. We do not use derivative financial instruments for speculative, hedging or trading purposes, although in the future we might enter into exchange rate hedging arrangements to manage the risks described below.

***Interest Rate Risk***

We are exposed to market risk related to changes in interest rates. Borrowings under our revolving line of credit bear interest at rates that are variable. Increases in the Prime Rate would increase the revolving line of credit.

***Interest Rate Sensitivity***

We are subject to interest rate risk in connection with borrowings under the revolving line of credit, which are subject to a variable interest rate. At March 31, 2020, we had borrowings under the revolving line of credit of \$10.0 million. As a result, each change of one percentage point in interest rates would result in an approximate \$0.1 million change in our annual interest expense on our outstanding borrowings at March 31, 2020. Any debt we incur in the future may also bear interest at variable rates

#### ITEM 4. CONTROLS AND PROCEDURES.

##### **(a) Evaluation of Disclosure Controls and Procedures**

Under the supervision and with the participation of our management, including our President and Chief Executive Officer and our Chief Financial Officer, we conducted an evaluation of the effectiveness of the design and operation of our disclosure controls and procedures, as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act, as of the end of the period covered by this report.

In designing and evaluating our disclosure controls and procedures, management recognizes that any disclosure controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives. In addition, the design of disclosure controls and procedures must reflect the fact that there are resource constraints and that management is required to apply its judgment in evaluating the benefits of possible controls and procedures relative to their costs.

Based on their evaluation, our President and Chief Executive Officer and our Chief Financial Officer concluded that as of March 31, 2020 our disclosure controls and procedures were designed to, and were effective to, provide assurance at a reasonable level that the information we are required to disclose in reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in SEC rules and forms, and that such information is accumulated and communicated to our management, including our President and Chief Executive Officer and our Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosures as of March 31, 2020.

##### **(b) Changes in Internal Control Over Financial Reporting**

No changes in internal control over financial reporting occurred during the most recent fiscal quarter with respect to our operations, which has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

## PART II. OTHER INFORMATION.

### Item 1A. RISK FACTORS.

There have been no material changes to the risk factors associated with our business previously disclosed in "Item 1A. Risk Factors," in our Annual Report on Form 10-K for the period ended December 31, 2019, except as set forth below. The risk factor set forth below updates, and should be read together with, the risk factors disclosed in "Item 1A. Risk Factors," in our Annual Report on Form 10-K for the period ended December 31, 2019.

**The COVID-19 pandemic could have an adverse impact on our business and the duration and extent to which the pandemic will impact our future financial performance remains uncertain.**

In March 2020, the World Health Organization classified the COVID-19 outbreak as a pandemic, which has resulted in authorities implementing numerous measures to contain the virus, including travel bans and restrictions, quarantines, shelter-in-place orders, and business limitations and shutdowns. Since then, the COVID-19 pandemic has rapidly spread across the globe, and more importantly for our business across the United States, resulting in significant financial volatility, uncertainty, and economic disruption.

The COVID-19 pandemic could have adverse impact on our business and future financial performance. In response, we have taken several measures to contain costs and preserve our liquidity profile, including, among other things, implementing our previously reported restructuring plan and executive compensation and Board of Director compensation reductions. We have also taken precautionary measures to help ensure the safety and well-being of our employees and customers, including implementing a mandatory work-from-home policy, and establishing a COVID-19 Resource Center for our customers and funds to help support our own at-risk employees and their families.

The ultimate impact of the COVID-19 pandemic on our business and financial results remains uncertain and depends on future developments, including, among other things, the duration and spread of the outbreak, its severity, the actions taken by governments and authorities to contain the virus or treat its impact, how quickly and to what extent normal economic and operating conditions can resume, the impact of the pandemic on our employees, including key personnel, the impact of business disruptions on our customers and the resulting impact on their demand for our products and services, layoffs by our employer customers, our customers' ability to pay for our products and services, and our ability to provide services to individuals. Even after the COVID-19 pandemic has subsided, we may continue to experience materially adverse impacts to our business as a result of its global economic impact, including as a result of any recession that might occur. If we are unable to successfully respond to and manage the ultimate impact of the COVID-19 pandemic, and the resulting responses to it, our business, financial condition, and results of operation could continue to be adversely impacted.

### Item 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS.

#### Stock Repurchase Program

Set forth below is a summary of the shares repurchased by the Company during the three months ended March 31, 2020, and the number of shares remaining authorized for repurchase by the Company (in thousands, except share and per share data):

Period	(a) Total Number of Shares Purchased	(b) Average Price Paid Per Share	(c) Total Number of Shares Purchased as Part of Publicly Announced Plan or Program	(d) Maximum Dollar Value of Shares that May Yet Be Purchased Under the Plan or Program
January 1 - 31, 2020	—	\$ —	—	\$ —
February 1 - 29, 2020	—	—	—	—
March 1 - 31, 2020 <sup>(1)</sup>	1,070,665	8.76	1,070,665	10,617
Total	1,070,665	\$ 8.76	1,070,665	\$ 10,617

(1) Stock repurchase program announced March 3, 2020 for the potential repurchase of up to \$20,000 of the Company's outstanding common stock. The program has no time limit may be suspended for periods or discontinued at any time by the Board of Directors.

Item 6. EXHIBITS.

Exhibit Number	Exhibit Title	Incorporated by Reference (Unless Otherwise Indicated)			Filing Date
		Form	File	Exhibit	
10.16.4	<a href="#">Fourth Amendment Agreement, dated as of October 28, 2016, by and among Benefitfocus, Inc., Benefitfocus.com, Inc. and BenefitStore, Inc., several banks and other financial institutions or entities and Silicon Valley Bank, as administrative agent and collateral agent for lenders.*</a>	—	—	—	Filed herewith
10.16.6	<a href="#">Sixth Amendment Agreement, dated as of April 26, 2017, by and among Benefitfocus, Inc., Benefitfocus.com, Inc. and BenefitStore, Inc., several banks and other financial institutions or entities and Silicon Valley Bank, as administrative agent and collateral agent for lenders.*</a>	—	—	—	Filed herewith
10.16.7	<a href="#">Seventh Amendment Agreement, dated as of March 29, 2018, by and among Benefitfocus, Inc., Benefitfocus.com, Inc. and BenefitStore, Inc., several banks and other financial institutions or entities and Silicon Valley Bank, as administrative agent and collateral agent for lenders.*</a>	—	—	—	Filed herewith
10.16.8	<a href="#">Eighth Amendment Agreement, dated as of December 19, 2018, by and among Benefitfocus, Inc., Benefitfocus.com, Inc. and BenefitStore, Inc., several banks and other financial institutions or entities and Silicon Valley Bank, as administrative agent and collateral agent for lenders.*</a>	—	—	—	Filed herewith
10.26	<a href="#">Senior Secured Revolving Credit Facility, dated as of March 3, 2020, by and among Benefitfocus, Inc., Benefitfocus.com, Inc., BenefitStore, Inc., several lenders, Silicon Valley Bank, as administrative agent, issuing lender and swingline lender, and the lenders from time to time party thereto.</a>	—	—	—	Filed herewith
10.27	<a href="#">Guarantee and Collateral Agreement, dated as of March 3, 2020, made by Benefitfocus, Inc., Benefitfocus.com, Inc., BenefitStore, Inc., and other grantors, in favor of Silicon Valley Bank, as administrative agent.</a>	—	—	—	Filed herewith
10.28	<a href="#">Employment Agreement, dated January 1, 2020, by and between Benefitfocus.com, Inc. and Annmarie Fini. #</a>	—	—	—	Filed herewith

10.29	<a href="#">Amendment to Leases between Daniel Island Executive Center, LLC, DIEC II, LLC and Benefitfocus.com, Inc., dated as of March 13, 2020.</a>	8-K		10.26	March 19, 2020
31.1	<a href="#">Certification of the President and Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.</a>	—	—	—	Filed herewith
31.2	<a href="#">Certification of the Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.</a>	—	—	—	Filed herewith
32.1	<a href="#">Certification of the President and Chief Executive Officer and Chief Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.</a>	—	—	—	Filed herewith
101.INS	XBRL Instance Document.	—	—	—	Filed herewith
101.SCH	XBRL Taxonomy Extension Schema Document.	—	—	—	Filed herewith
101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document.	—	—	—	Filed herewith
101.DEF	XBRL Taxonomy Extension Definition Linkbase Document.	—	—	—	Filed herewith
101.LAB	XBRL Taxonomy Extension Label Linkbase Document.	—	—	—	Filed herewith
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document.	—	—	—	Filed herewith

\* Confidential treatment for this exhibit expired on March 16, 2020. Therefore, this exhibit is being re-filed in its entirety.

# Management contract or compensatory plan.



**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 thereunto duly authorized.

Date: May 7, 2020

Benefitfocus, Inc.

By: /s/ Stephen M. Swad  
Stephen M. Swad  
Chief Financial Officer  
(Principal financial and accounting officer)

**FOURTH AMENDMENT AGREEMENT**

This Fourth Amendment Agreement (this "**Amendment**") is entered into this 28th day of October, 2016, by and among **BENEFITFOCUS, INC.**, a Delaware corporation (the "**Parent**"), **BENEFITFOCUS.COM, INC.**, a South Carolina corporation ("**Benefitfocus.com**"), and **BENEFITSTORE, INC.**, a South Carolina corporation ("**BenefitStore**"), and together with the Parent and Benefitfocus.com, each individually, a "**Borrower**", and collectively, the "**Borrowers**", the several banks and other financial institutions or entities party hereto (each a "**Lender**" and, collectively, the "**Lenders**"), and **SILICON VALLEY BANK**, as administrative agent and collateral agent for the Lenders (in such capacity, the "**Administrative Agent**").

**RECITALS**

**A.** The Borrowers, the Lenders and the Administrative Agent have entered into that certain Credit Agreement dated as of February 20, 2015, as amended pursuant to that certain First Amendment Agreement dated June 16, 2015, pursuant to that certain Second Amendment Agreement dated December 18, 2015, and pursuant to that certain Third Amendment Agreement dated March 24, 2016 (as amended and as the same may from time to time be further amended, modified, supplemented or restated, the "**Credit Agreement**"), pursuant to which the Lenders have extended credit to the Borrowers for the purposes permitted in the Credit Agreement.

**B.** The Borrowers have requested an Increase (as defined in the Credit Agreement prior to giving effect to this Amendment) of \$35,000,000 pursuant to Section 2.12 of the Credit Agreement, and the Required Lenders and the Administrative Agent agree to modify and amend certain terms and conditions of the Credit Agreement in connection therewith.

**AGREEMENT**

**NOW, THEREFORE**, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and intending to be legally bound, the parties hereto agree as follows:

- 1. Definitions.** Capitalized terms used but not defined in this Amendment shall have the meanings given to them in the Credit Agreement.
- 2. Amendments to Credit Agreement.**

**2.1 Recitals.** The second paragraph of the Recitals to the Credit Agreement is hereby amended by deleting "\$60,000,000" and inserting "\$95,000,000" in lieu thereof.

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**2.2 Section 1.1 (Defined Terms).**

sentence thereof.

(a) The definition of “**ABR**” is amended by adding “In no event shall the ABR be less than 0.00%” after the first

(b) The definition of “**Applicable Margin**” is amended and restated in its entirety as follows:

““**Applicable Margin**”:

(a) from the Fourth Amendment Effective Date until November 5, 2016, the percentages set forth in Level I of the pricing grid below; and

(b) from and after November 5, 2016 and on the fifth day of each month thereafter, the Applicable Margin shall be determined from the following pricing grids based upon Liquidity as set forth in the most recent Liquidity Report delivered or required to be delivered pursuant to Section 6.2(g), hereof; provided however if any Transaction Report or other calculation of a component of Liquidity is at any time restated or otherwise revised (including as a result of an audit) or if the information set forth in any Transaction Report or other calculation of a component of Liquidity otherwise proves to be false or incorrect such that the Applicable Margin would have been higher than was otherwise in effect during any period, without constituting a waiver of any Default or Event of Default arising as a result thereof, interest and/or fees due under this Agreement shall be immediately recalculated at such other rate for any applicable periods and shall be due and payable promptly after demand from the Administrative Agent if such other rate would have been higher.

**REVOLVING LOANS AND SWINGLINE LOANS**

<u>Level</u>	<u>Liquidity</u>	<u>Revolving Loans</u>	<u>Swingline Loans</u>
I	≥ \$90,000,000	0.75%	0.75%
II	≥ \$60,000,000 but < \$90,000,000	1.00%	1.00%
III	< \$60,000,000	1.25%	1.25%

**LETTER OF CREDIT FEE**

<u>Level</u>	<u>Liquidity</u>	<u>Letter of Credit Fees</u>
I	≥ \$90,000,000	0.75%
II	≥ \$60,000,000 but < \$90,000,000	1.00%
III	< \$60,000,000	1.25%

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Notwithstanding the foregoing, (a) if the Borrowers fail to deliver a Transaction Report or other calculation of a component of Liquidity as required herein, the Applicable Margin shall be the rates corresponding to Level III in the foregoing tables until such Transaction Report and/or calculation is delivered, and (b) no reduction to the Applicable Margin shall become effective at any time when an Event of Default has occurred and is continuing.”

(c) The definition of “**Available Revolving Increase Amount**” is amended by adding “As of the Fourth Amendment Effective Date, the Available Revolving Increase Amount is \$5,000,000.00” after the first sentence thereof.

(d) The definition of “**Commitment Fee Rate**” is amended and restated in its entirety as follows:

““**Commitment Fee Rate**”:

(a) from and after the Fourth Amendment Effective Date until November 5, 2016, the percentages set forth in Level I of the pricing grid below; and

(b) from and after November 5, 2016 and on the fifth day of each month thereafter, the Commitment Fee Rate shall be determined from the following grid based upon Liquidity as set forth in the most recent Liquidity Report delivered or required to be delivered pursuant to Section 6.2(g) hereof; provided however if any Transaction Report or other calculation of a component of Liquidity is at any time restated or otherwise revised (including as a result of an audit) or if the information set forth in any Transaction Report or other calculation of a component of Liquidity otherwise proves to be false or incorrect such that the Commitment Fee Rate would have been higher than was otherwise in effect during any period, without constituting a waiver of any Default or Event of Default arising as a result thereof, the Commitment Fee due under this Agreement shall be immediately recalculated at such other rate for any applicable periods and shall be due and payable promptly after demand from the Administrative Agent if such other rate would have been higher.

<u>Level</u>	<u>Liquidity</u>	<u>Commitment Fee Rate</u>
I	≥ \$90,000,000	0.30000%
II	≥ \$60,000,000 but < \$90,000,000	0.35000%
III	< \$60,000,000	0.37500%

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Notwithstanding the foregoing, (a) if the Borrower fails to deliver a Transaction Report or other calculation of a component of Liquidity as required herein, the Commitment Fee Rate shall be the rate corresponding to Level III in the foregoing table until such Transaction Report and/or calculation is delivered, and (b) no reduction to the Commitment Fee Rate shall become effective at any time when an Event of Default has occurred and is continuing.”

(e) The definition of “**Consolidated EBITDA**” is amended and restated in its entirety as follows:

““**Consolidated EBITDA**”: with respect to the Parent and its consolidated Subsidiaries for any period, (a) the sum, without duplication, of the amounts for such period of (i) Consolidated Net Income, plus (ii) Consolidated Interest Expense, plus (iii) provisions for taxes based on income, plus (iv) total depreciation expense, plus (v) total amortization expense, plus (vi) non-cash compensation expense, plus (vii) the fees, costs and expenses incurred in connection with this Agreement and the other Loan Documents and the transactions hereunder and thereunder, plus (viii) reasonable one-time fees, costs and expenses incurred in connection with a Permitted Acquisition or a successful offering or issuance of Capital Stock, in each case to the extent approved in writing by the Administrative Agent as an ‘add-back’ to Consolidated EBITDA, plus (ix) other non-cash items reducing Consolidated Net Income (excluding any such non-cash item to the extent that it represents an accrual or reserve for potential cash items in any future period or amortization of a prepaid cash item that was paid in a prior period) approved by the Administrative Agent in writing as an ‘add back’ to Consolidated EBITDA, plus (x) any extraordinary or non-recurring losses, expenses or charges not to exceed \$1,000,000 in the aggregate in any fiscal year (or such higher amounts as may be approved by the Required Lenders as an ‘add-back’ to Consolidated EBITDA), minus (b) the sum, without duplication of the amounts for such period of (i) other non-cash items increasing Consolidated Net Income for such period (excluding any such non-cash item to the extent it represents the reversal of an accrual or reserve for potential cash item in any prior period), plus (ii) interest income.”

(f) The definition of “**Fee Letter**” is amended and restated in its entirety as follows:

““**Fee Letter**”: the amended and restated fee letter agreement dated October 11, 2016, by and among the Borrowers and the Administrative Agent, as may be amended, supplemented or otherwise modified from time to time.”

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(g) The definition of "**Liquidity**" is amended and restated in its entirety as follows:

“**Liquidity**”: at any time, the sum of (i) the aggregate amount of unrestricted cash and Cash Equivalents (including short term marketable securities) held by the Borrowers and the Guarantors in Deposit Accounts or Securities Accounts maintained with SVB or SVB’s Affiliates or another Lender or an Affiliate thereof, or with National Bank of South Carolina (“**NBSC**”, provided that the aggregate amounts held in deposit accounts with NBSC shall not exceed \$6,500,000 at any time), and in each case subject to a first priority lien in favor of the Administrative Agent, including, without limitation, pursuant to a Deposit Account Control Agreement with respect to each such Deposit Account or Securities Account Control Agreement with respect to each such Securities Account, plus (ii) the Available Revolving Commitment at such time; provided that, in connection with any calculation of Liquidity required hereunder, at least \$30,000,000 must consist of unrestricted cash and Cash Equivalents (including short term marketable securities) satisfying the requirements of clause (i) above.”

(h) The definition of "**Revolving Termination Date**" is amended and restated in its entirety as follows:

“**Revolving Termination Date**”: is February 20, 2020.”

(i) The definition of "**Total Revolving Commitments**" is amended and restated in its entirety as follows:

“**Total Revolving Commitments**”: at any time, the aggregate amount of the Revolving Commitments then in effect. The original amount of the Total Revolving Commitments is \$60,000,000. As of the Fourth Amendment Effective Date the amount of the Total Revolving Commitments is \$95,000,000. The L/C Commitment and the Swingline Commitment are each sublimits of the Total Revolving Commitments.”

(j) The following new definitions are hereby added to Section 1.1 of the Credit Agreement in their appropriate

alphabetical order:

“**Fourth Amendment**”: the Fourth Amendment to Credit Agreement, dated as of October 28, 2016.”

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“**Fourth Amendment Effective Date**”: as defined in the Fourth Amendment.”

**2.3 Section 4.28 (Patriot Act).** Section 4.28 of the Credit Agreement is amended by adding the following sentence immediately after the last sentence thereof:

“Each Loan Party and their respective directors, officers and, to the knowledge of the Borrower, employees, agents, advisors and Affiliates is in compliance, in all material respects, with the United States Foreign Corrupt Practices Act of 1977, as amended.”

**2.4 Section 4.29 (OFAC).** Section 4.29 of the Credit Agreement is amended by amending and restating the second sentence thereof as follows:

“No Loan Party nor any of its Subsidiaries nor their respective directors, officers nor, to the knowledge of such Loan Party, employees, agents, advisors and Affiliates (a) is a Sanctioned Person or a Sanctioned Entity, (b) has its assets located in Sanctioned Entities, or (c) derives revenues from investments in, or transactions with Sanctioned Persons or Sanctioned Entities.”

**2.5 Section 6.2 (Certificates; Reports; Other Information).** Section 6.2(f) of the Credit Agreement is amended and restated in its entirety as follows:

“(f) concurrently with each Notice of Borrowing and in any event within 35 days after the end of each month, account receivable and account payable agings (by invoice date), a deferred revenue schedule, and a Transaction Report summarizing and calculating (where applicable) the Borrowing Base, the Annualized Recurring Revenue Retention Rate, Recurring Revenue and Recurring Revenue Lost, together with all key performance metrics related to such calculations;”

**2.6 Section 6.3 (Accounts Receivable).** Section 6.3(b) of the Credit Agreement is amended by replacing “\$750,000” therein with “\$1,000,000”.

**2.7 Section 6.5 (Maintenance of Existence; Compliance).** Section 6.5(a)(i) of the Credit Agreement is amended and restated as follows:

“(i) preserve, renew and keep in full force and effect its organizational existence, in the case of the Borrowers, in any State of the United States or the District of Columbia,”

**2.8 Section 6.6 (Maintenance of Property; Insurance).** Section 6.6 of the

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Credit Agreement is amended by replacing “\$25,000” therein with “\$100,000”.

**2.9 Section 6.8 (Notices).** Section 6.8(c) of the Credit Agreement is amended by replacing “\$500,000” therein with “\$1,000,000”.

**2.10 Section 7.1 (Financial Covenants).**

(a) Section 7.1(b) of the Credit Agreement (Minimum Consolidated EBITDA) is amended by deleting the grid set forth therein and by substituting the following in its stead:

<b><u>Quarter Ending</u></b>	<b><u>Minimum Consolidated EBITDA</u></b>
March 31, 2015	(\$22,500,000)
June 30, 2015	(\$22,500,000)
September 30, 2015	(\$22,500,000)
December 31, 2015	(\$16,500,000)
March 31, 2016	(\$14,000,000)
June 30, 2016	(\$13,000,000)
September 30, 2016	(\$5,750,000)
December 31, 2016	\$0.0
March 31, 2017	\$4,750,000
June 30, 2017	\$4,000,000
September 30, 2017	\$5,000,000
December 31, 2017	\$11,250,000
March 31, 2018	\$15,250,000
June 30, 2018	\$15,250,000
September 30, 2018	\$13,500,000
December 31, 2018	\$12,000,000
March 31, 2019	\$18,000,000
June 30, 2019	\$20,000,000
September 30, 2019	\$20,000,000



**2.11 Section 7.2 (Indebtedness).** Section 7.2(e) of the Credit Agreement is amended by replacing “\$15,000,000” with “\$20,000,000”.

**2.12 Section 7.2 (Indebtedness).** Section 7.2(k) of the Credit Agreement is amended by adding the words “and any related financing obligations” after the words “building lease obligations” and replacing “5,000,000” with “\$7,500,000”.

**2.13 Section 7.2 (Indebtedness).** Section 7.2 of the Credit Agreement is amended by deleting the period at the end of Section 7.2(l), inserting “;and” in its place and then adding the following new Section 7.2(m) immediately thereafter:

“(m) obligations incurred in the ordinary course of business in respect of bids, tenders, trade contracts, governmental contracts, statutory obligations, surety bonds, performance and return of money bonds, performance and completion guarantees and other obligations of a like nature.”

**2.14 Section 7.5 (Disposition of Property).** Section 7.5(m) of the Credit Agreement is amended by replacing “\$500,000” therein with “\$1,000,000”.

**2.15 Section 7.6 (Restricted Payments).** Section 7.6(b) of the Credit Agreement is amended by replacing “\$250,000” therein with “\$750,000”.

**2.16 Section 7.7 (Consolidated Capital Expenditures).** Section 7.7 of the Credit Agreement is amended by deleting the grid set forth therein and by substituting the following in its stead:

<b>Fiscal Year</b>	<b>Consolidated Capital Expenditures</b>
2015 fiscal year	\$16,500,000
2016 fiscal year	\$21,000,000
2017 fiscal year	\$19,000,000
2018 fiscal year	\$22,000,000
2019 fiscal year	\$24,000,000

**2.17 Section 8.1 (Events of Default).** Section 8.1(h) of the Credit Agreement is amended by replacing “\$250,000” therein with “\$500,000”.

**2.18 Amendment to Schedules.** The schedules to the Credit Agreement and Guarantee and Collateral Agreement attached hereto hereby amend and restate the related schedules contained in the Credit Agreement and Guarantee Collateral Agreement, as applicable.

**2.19 Exhibit B (Form of Compliance Certificate).** Exhibit B to the Credit Agreement is hereby deleted in its entirety and the Exhibit A attached hereto is substituted in its stead.

**3. Waiver to Loan Documents.** The Administrative Agent and the Lenders hereby waive (x) the Default or Event of Default that may have occurred as a result of Borrowers' incurrence of Indebtedness pursuant to (i) that certain performance bond #SUR0024422 in the original amount of \$459,792.00 and (ii) that certain performance bond #SUR0036003 in the original amount of \$4,557,800.00, which waiver relates only to the incurrence of such Indebtedness, and shall not be deemed to constitute a continuing waiver of any provision of the Credit Agreement with respect to any other Default or Events of Default, (y) the Default or Event of Default that may have occurred as a result of Borrower's failure to disclose certain registered Intellectual Property issued to or acquired by certain Loan Parties since the Closing Date through the date hereof, and (z) the payment of the Default Rate on the Obligations to the extent payable prior to the date hereof on account of such Events of Default. Except as expressly provided herein, the Credit Agreement and the other Loan Documents shall remain unmodified and in full force and effect.

**4. Conditions Precedent to Effectiveness.** This Amendment shall not be effective until each of the following conditions precedent have been fulfilled to the satisfaction of (and in form and substance satisfactory to, as applicable) the Administrative Agent (such date, the "**Fourth Amendment Effective Date**"):

**4.1** This Amendment shall have been duly executed and delivered by the respective parties hereto. The Administrative Agent shall have received a fully executed copy hereof.

**4.2** The Administrative Agent shall have received all fees required to be paid on or prior to the Fourth Amendment Effective Date pursuant to the Fee Letter.

**4.3** To the extent there are any material updates thereto, the Administrative Agent shall have received an updated Collateral Information Certificate, executed by a Responsible Officer of the Loan Parties.

**4.4** If required by any Revolving Lender, the Administrative Agent shall have received a Revolving Loan Note (or amendment to any existing Revolving Loan Note) executed by the Borrower in favor of such Revolving Lender.

**4.5** All necessary consents and approvals to this Amendment shall have been obtained by the Loan Parties.

**4.6** The Administrative Agent shall have received a certificate of each Loan Party, dated the Fourth Amendment Effective Date and executed by the Secretary or Assistant Secretary of such Loan Party, substantially in the forms previously delivered, with appropriate

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insertions and attachments, including (i) the Operating Documents of such Loan Party (to the extent amended or modified since last delivered to the Administrative Agent), (ii) the relevant board resolutions or written consents of such Loan Party adopted by such Loan Party for the purposes of authorizing such Loan Party to enter into and perform the Loan Documents to which such Loan Party is party and (iii) the names, titles, incumbency and signature specimens of those representatives of such Loan Party who have been authorized by such resolutions and/or written consents to execute Loan Documents on behalf of such Loan Party, and (iv) a good standing certificate for each Loan Party certified as of a recent date by the appropriate Governmental Authority of its respective jurisdiction of organization.

**4.7** The Administrative Agent shall have received a solvency certificate from the chief financial officer or treasurer of the Borrowers (or the Parent on behalf of the Borrowers).

**4.8** After giving *pro forma* effect to such Increase and the use of proceeds thereof, (A) no Default or Event of Default shall have occurred and be continuing at the time of such Increase and (B) the Borrowers shall be in compliance with the then applicable financial covenants set forth in Section 7.1 hereof as of the end of the most recently ended month for which financial statements are required to be delivered prior to such Increase, and the Borrowers shall have delivered to the Administrative Agent a Compliance Certificate evidencing compliance with the requirements of this Section 4.8.

**4.9** The Administrative Agent shall have received the results of recent lien searches in each of the jurisdictions where any of the Loan Parties is formed or organized, and such searches shall reveal no liens on any of the assets of the Loan Parties except for Liens permitted by Section 7.3 of the Credit Agreement.

**4.10** The Administrative Agent shall have received the executed customary legal opinion of Wyrick Robbins Yates & Ponton LLP, counsel to the Loan Parties, in form and substance reasonably satisfactory to the Administrative Agent.

**4.11** After giving effect to this Amendment, each of the representations and warranties herein and in the Credit Agreement and the other Loan Documents, as updated by the Schedules to the Credit Agreement and the Schedules to the Guarantee and Collateral Agreement attached to this Amendment (i) that is qualified by materiality shall be true and correct, and (ii) that is not qualified by materiality, shall be true and correct in all material respects, in each case, on and as of the Fourth Amendment Effective Date as if made on and as of such date, except to the extent any such representation and warranty expressly relates to an earlier date, in which case such representation and warranty shall have been true and correct in all material respects as of such earlier date.

**4.12** To the extent that the Borrowers have within two (2) Business Days of the date hereof received invoices for the fees, costs and expenses required to be paid by the Borrower in connection with this Amendment, the Administrative Agent shall have received payment in respect of such fees, costs and expenses.

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**4.13** To the extent that the Borrowers are requesting any Revolving Loans on the Fourth Amendment Effective Date, the conditions set forth in Section 5.2 of the Credit Agreement shall have been satisfied.

For purposes of determining compliance with the conditions specified in this Section 4, each Lender that has executed this Amendment shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter either sent (or made available) by the Administrative Agent to such Lender for consent, approval, acceptance or satisfaction, or required thereunder to be consented to or approved by or acceptable or satisfactory to such Lender, unless an officer of the Administrative Agent responsible for the transactions contemplated by the Loan Documents shall have received notice from such Lender prior to the Fourth Amendment Effective Date specifying such Lender's objection thereto and such objection shall not have been withdrawn by notice to the Administrative Agent to that effect on or prior to the Fourth Amendment Effective Date.

## **5. New Lenders and Settlement.**

**5.1** As of the Fourth Amendment Effective Date, the parties hereto hereby agree and acknowledge that, by executing this Amendment, Goldman Sachs Lending Partners LLC ("**New Lender**") shall become a Lender under the Credit Agreement and the other Loan Documents with a Revolving Commitment as set forth on Schedule 1.1(A) of the Credit Agreement (as amended by this Amendment). The New Lender (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Amendment and to consummate the transactions contemplated hereby and to become a Lender under the Credit Agreement, (ii) it shall be bound by the provisions of the Credit Agreement as a Lender thereunder and shall have the obligations and rights of a Lender thereunder with a Revolving Commitment as set forth on Schedule 1.1(A) to the Credit Agreement (as amended hereby), (iii) it has received a copy of the Credit Agreement, and has received or has been accorded the opportunity to receive copies of the most recent financial statements delivered pursuant to Section 6.1 thereof, as applicable, and such other documents and information as it deems appropriate to make its own credit analysis and decision to enter into this Amendment and become a Lender under the Credit Agreement, and (iv) it has, independently and without reliance upon the Agent or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Amendment and become a Lender under the Credit Agreement; and (b) agrees that (i) it will, independently and without reliance on any of the Administrative Agent or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit 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.

**5.2** As of the date hereof, the aggregate outstanding principal amount of the Revolving Loans under the Credit Agreement is \$20,246,111.65 (the "**Existing Revolving Loans**"). The Existing Revolving Loans (together with all accrued and unpaid interest, fees,

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indemnities, costs and other payment obligations that are outstanding immediately prior to the date hereof) are owing as of the Fourth Amendment Effective Date, and are payable without set-off, counterclaim, deduction, offset or defense. On the Fourth Amendment Effective Date, each Existing Revolving Loan shall be made or converted (as applicable) into ABR Loans. All breakage fees in connection with the conversion of the Existing Revolving Loans to ABR Loans shall be waived. All accrued and unpaid interest and fees in respect thereof shall be repaid on the Fourth Amendment Effective Date. On the Fourth Amendment Effective Date, each New Lender agrees to pay to the Administrative Agent (which may take the form of such Lender overfunding any Revolving Loans requested on the Fourth Amendment Effective Date or such other procedure reasonably determined by the Administrative Agent), for the account of the Revolving Lenders, the amount necessary to ensure that the outstanding principal amount of the Revolving Loans and participations hereunder in Letters of Credit and participations hereunder in Swingline Loans of each Revolving Lender shall equal each Revolving Lender's respective Revolving Percentages and L/C Percentages.

**6. Limitation of Amendment.**

**6.1** The amendments set forth in **Section 2**, above, are effective for the purposes set forth herein and shall be limited precisely as written and shall not be deemed to (a) be a consent to any amendment, waiver or modification of any other term or condition of any Loan Document, or (b) otherwise prejudice any right or remedy which the Administrative Agent or the Lenders may now have or may have in the future under or in connection with any Loan Document.

**6.2** This Amendment shall be construed in connection with and as part of the Loan Documents and all terms, conditions, representations, warranties, covenants and agreements set forth in the Loan Documents, except as herein amended, are hereby ratified and confirmed and shall remain in full force and effect.

**7. Representations and Warranties.** To induce the Administrative Agent and the Required Lenders to enter into this Amendment, the Borrowers hereby represent and warrant as follows:

**7.1** Immediately after giving effect to this Amendment (a) the representations and warranties contained in the Loan Documents, as updated by the Schedules attached to this Amendment, are true, accurate and complete in all material respects as of the date hereof (except to the extent such representations and warranties relate to an earlier date, in which case they are true and correct as of such date), and (b) no Event of Default has occurred and is continuing;

**7.2** Each Borrower have the power and authority to execute and deliver this Amendment and to perform its obligations under the Credit Agreement, as amended by this Amendment;

**7.3** The execution and delivery by each Borrower of this Amendment and the performance by such Borrower of its obligations under the Credit Agreement, as amended by this

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Amendment, have been duly authorized;

**7.4** The execution and delivery by each Borrower of this Amendment and the performance by each Borrower of its obligations under the Credit Agreement, as amended by this Amendment, do not and will not contravene (a) any law or regulation binding on or affecting such Borrower, (b) any contractual restriction with a Person binding on such Borrower, (c) any order, judgment or decree of any court or other governmental or public body or authority, or subdivision thereof, binding on such Borrower, or (d) the organizational documents of such Borrower;

**7.5** The execution and delivery by each Borrower of this Amendment and the performance by such Borrower of its obligations under the Credit Agreement, as amended by this Amendment, do not require any order, consent, approval, license, authorization or validation of, or filing, recording or registration with, or exemption by any governmental or public body or authority, or subdivision thereof, binding on such Borrower, except as already has been obtained or made; and

**7.6** This Amendment has been duly executed and delivered by each Borrower and is the binding obligation of such Borrower, enforceable against such Borrower in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, liquidation, moratorium or other similar laws of general application and equitable principles relating to or affecting creditors' rights.

**8. No Defenses of Borrowers.** Each Borrower hereby acknowledges and agrees that such Borrower has no offsets, defenses, claims, or counterclaims against the Administrative Agent or any Lender with respect to the Obligations, or otherwise, and that if such Borrower now has, or ever did have, any offsets, defenses, claims, or counterclaims against the Administrative Agent or any Lender, whether known or unknown, at law or in equity, all of them are hereby expressly WAIVED and such Borrower hereby RELEASES the Administrative Agent and each Lender from any liability thereunder.

**9. Integration.** This Amendment and the Loan Documents represent the entire agreement about this subject matter and supersede prior negotiations or agreements. All prior agreements, understandings, representations, warranties, and negotiations between the parties about the subject matter of this Amendment and the Loan Documents merge into this Amendment and the Loan Documents.

**10. Counterparts.** This Amendment may be executed in any number of counterparts and all of such counterparts taken together shall be deemed to constitute one and the same instrument.

**11. Effect on Loan Documents.**

**11.1** The amendments set forth herein shall be limited precisely as written and shall not be deemed (a) to be a forbearance, waiver, or modification of any other term or condition

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of the Credit Agreement or of any Loan Documents or to prejudice any right or remedy which the Administrative Agent may now have or may have in the future under or in connection with the Loan Documents; (b) to be a consent to any future consent or modification, forbearance, or waiver to the Credit Agreement or any other Loan Document, or to any waiver of any of the provisions thereof; or (c) to limit or impair the Administrative Agent's right to demand strict performance of all terms and covenants as of any date. The Borrowers, on behalf of each Loan Party, hereby ratify and reaffirm the Borrowers' obligations under the Credit Agreement and each Loan Party's obligations under each other Loan Document to which it is a party and agrees that none of the amendments or modifications to the Credit Agreement set forth in this Amendment shall impair any Loan Party's obligations under the Loan Documents or the Administrative Agent's rights under the Loan Documents. The Borrowers, on behalf of each Loan Party, hereby further ratify and reaffirm the validity and enforceability of all of the Liens heretofore granted, pursuant to and in connection with the Guarantee and Collateral Agreement or any other Loan Document to the Administrative Agent on behalf and for the benefit of the Secured Parties, as collateral security for the obligations under the Loan Documents, in accordance with their respective terms, and acknowledges that all of such Liens, and all collateral heretofore pledged as security for such obligations, continues to be and remain collateral for such obligations (as amended and increased hereby) from and after the date hereof. The Borrowers, on behalf of each Loan Party, acknowledge and agree that the Credit Agreement and each other Loan Document is still in full force and effect and acknowledge as of the date hereof that no Loan Party has any defenses to enforcement of the Loan Documents. The Borrowers, on behalf of each Loan Party, waive any and all defenses to enforcement of the Credit Agreement as amended hereby and each other Loan Documents that might otherwise be available as a result of this Amendment of the Credit Agreement. To the extent any terms or provisions of this Amendment conflict with those of the Credit Agreement or other Loan Documents, the terms and provisions of this Amendment shall control.

**11.2** To the extent that any terms and conditions in any of the Loan Documents shall contradict or be in conflict with any terms or conditions of the Credit Agreement, after giving effect to this Amendment, such terms and conditions are hereby deemed modified or amended accordingly to reflect the terms and conditions of the Credit Agreement as modified or amended hereby.

**11.3** This Amendment is a Loan Document.

**12. Severability.** The provisions of this Amendment are severable, and if any clause or provision shall be held invalid or unenforceable in whole or in part in any jurisdiction, then such invalidity or unenforceability shall affect only such clause or provision, or part thereof, in such jurisdiction and shall not in any manner affect such clause or provision in any other jurisdiction, or any other clause or provision in this Amendment in any jurisdiction.

**13. Choice of Law.** Section 10.13 and Section 10.14 of the Credit Agreement are hereby incorporated by reference in their entirety *mutatis mutandis*.

[Signature page follows.]

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IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed and delivered as of the date first written above.

BORROWERS:

**BENEFITFOCUS.COM, INC.**

By: /s/ Jeffrey M. Laborde  
Name: Jeffrey M. Laborde  
Title: Chief Financial Officer

**BENEFITFOCUS, INC.**

By: /s/ Jeffrey M. Laborde  
Name: Jeffrey M. Laborde  
Title: Chief Financial Officer

**BENEFITSTORE, INC.**

By: /s/ Jeffrey M. Laborde  
Name: Jeffrey M. Laborde  
Title: Chief Financial Officer

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**SILICON VALLEY BANK**, as Administrative Agent and as a Lender

By: /s/ Michael Shuh

Name: Michael Shuh

Title: Director

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**COMERICA BANK**, as a Lender

By: /s/ J. Benetti

Name: J. Benetti

Title: SVP

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**PACIFIC WESTERN BANK**, as a Lender

By: /s/ Adam Glick  
Name: Adam Glick  
Title: SVP

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**GOLDMAN SACHS LENDING PARTNERS LLC, as a Lender**

By: /s/ Annie Carr

Name: Annie Carr

Title: Authorized Signatory

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**SCHEDULE 1.1A**

**REVOLVING COMMITMENTS  
AND REVOLVING PERCENTAGES**

**REVOLVING COMMITMENTS**

Lender	Revolving Commitment	Revolving Percentage
Silicon Valley Bank	\$40,000,000.00	42.1052632%
Comerica Bank	\$25,000,000.00	26.3157894%
Pacific Western Bank	\$20,000,000.00	21.0526316%
Goldman Sachs Lending Partners LLC	\$10,000,000.00	10.5263158%
Total	\$95,000,000.00	100.0000000%

**L/C COMMITMENTS**

(which is a sublimit of, and not in addition to, the Revolving Commitments)

Lender	L/C Commitments	L/C Percentage
Silicon Valley Bank	\$5,000,000.00	100.000000000%
Total	\$5,000,000.00	100.000000000%

**SWINGLINE COMMITMENT**

(which is a sublimit of, and not in addition to, the Revolving Commitments)

Lender	Swingline Commitment	Exposure Percentage
Silicon Valley Bank	\$5,000,000	100.000000000%
Total	\$5,000,000	100.000000000%

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**SCHEDULE 4.15**

**SUBSIDIARIES**

Parent:

Benefitfocus, Inc., a Delaware corporation

Subsidiaries of the Parent:

Benefitfocus.com, Inc., a South Carolina corporation

BenefitStore, Inc., a South Carolina corporation

Percentage of Capital Stock owned by Loan Parties:

<b>Loan Party</b>	<b>Subsidiary</b>	<b>Ownership Percentage</b>
Benefitfocus, Inc.	Benefitfocus.com, Inc.	100%
Benefitfocus.com, Inc.	BenefitStore, Inc.	100%

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SCHEDULE 4.19(a)

FINANCING STATEMENTS AND OTHER FILINGS

Financing Statements

<b>Loan Party</b>	<b>Filing</b>	<b>Filing Office</b>
Benefitfocus, Inc.	UCC-1 Financing Statement	Delaware Secretary of State
Benefitfocus.com, Inc.	UCC-1 Financing Statement	South Carolina Secretary of State
BenefitStore, Inc.	UCC-1 Financing Statement	South Carolina Secretary of State

Other Filings

Filing of the Intellectual Property Security Agreement with the U.S. Copyright Office and the U.S. Patent and Trademark Office.

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**SCHEDULE 6.10**

**NBSC BANK ACCOUNTS**

<b>Loan Party</b>	<b>Account No.</b>	<b>Type of Account</b>
Benefitfocus.com, Inc.		Checking
		New Merchant
		Operating
		Money Market Sweep
BenefitStore, Inc.		Checking

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**SCHEDULE 1**

**NOTICE ADDRESSES OF GUARANTORS**

<u>Guarantor</u>	<u>Notice Address</u>
Benefitfocus, Inc.	<p align="center">100 Benefitfocus Way                      Charleston, SC 29492                      Attention: Jeffrey M. Laborde, Chief Financial Officer and                      Paris Cavic, Vice President and General Counsel                      Facsimile No.: 843-849-6062                      E-Mail: jeffrey.laborde@benefitfocus.com                      E-Mail: paris.cavic@benefitfocus.com</p>
Benefitfocus.com, Inc.	<p align="center">100 Benefitfocus Way                      Charleston, SC 29492                      Attention: Jeffrey M. Laborde, Chief Financial Officer and                      Paris Cavic, Vice President and General Counsel                      Facsimile No.: 843-849-6062                      E-Mail: jeffrey.laborde@benefitfocus.com                      E-Mail: paris.cavic@benefitfocus.com</p>
BenefitStore, Inc.	<p align="center">100 Benefitfocus Way                      Charleston, SC 29492                      Attention: Jeffrey M. Laborde, Chief Financial Officer and                      Paris Cavic, Vice President and General Counsel                      Facsimile No.: 843-849-6062                      E-Mail: jeffrey.laborde@benefitfocus.com                      E-Mail: paris.cavic@benefitfocus.com</p>

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SCHEDULE 2

DESCRIPTION OF INVESTMENT PROPERTY

**Pledged Stock:**

<u>Grantor</u>	<u>Issuer</u>	<u>Class of Capital Stock</u>	<u>Certificate No.</u>	<u>No. of Shares / Units</u>
Benefitfocus, Inc.	Benefitfocus.com, Inc.	Common	No. 1	100
Benefitfocus.com, Inc.	BenefitStore, Inc.	Common	No. 1	200

**Pledged Notes:**

<u>Grantor</u>	<u>Issuer</u>	<u>Date of Issuance</u>	<u>Payee</u>	<u>Principal Amount</u>
N/A	N/A	N/A	N/A	N/A

**Securities Accounts:**

<u>Grantor</u>	<u>Securities Intermediary</u>	<u>Address</u>	<u>Account Number(s)</u>
Benefitfocus, Inc.	N/A	N/A	
Benefitfocus.com, Inc.	U.S. Bank, N.A.	CN-OH-W6TC Cincinnati, OH 45202	
	U.S. Bank, N.A.	CN-OH-W6TC Cincinnati, OH 45202	
BenefitStore, Inc.	N/A	N/A	

**Commodity Accounts:**

<u>Grantor</u>	<u>Commodities Intermediary</u>	<u>Address</u>	<u>Account Number(s)</u>
N/A	N/A	N/A	

**Deposit Accounts:**

<u>Grantor</u>	<u>Depository Bank</u>	<u>Address</u>	<u>Account Number(s)</u>
Benefitfocus, Inc.	Comerica	226 Airport Pkwy, Suite #100, M/C 4348 San Jose, CA 95110	
	Comerica	226 Airport Pkwy, Suite #100, M/C 4348 San Jose, CA 95110	

Benefitfocus.com, Inc.	NBSC	P.O. Box 8 Mount Pleasant, SC 29465	
	NBSC	P.O. Box 8 Mount Pleasant, SC 29465	
	NBSC	P.O. Box 8 Mount Pleasant, SC 29465	
	NBSC	P.O. Box 8 Mount Pleasant, SC 29465	
	SVB	3353 Peachtree Road NE Tower, Suite M-10 Atlanta, GA 30326	
	SVB	3353 Peachtree Road NE Tower, Suite M-10 Atlanta, GA 30326	
	SVB	3353 Peachtree Road NE Tower, Suite M-10 Atlanta, GA 30326	
	SVB	3353 Peachtree Road NE Tower, Suite M-10 Atlanta, GA 30326	
BenefitStore, Inc.	NBSC	P.O. Box 8 Mount Pleasant, SC 29465	

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**SCHEDULE 4**

**LOCATION OF JURISDICTION OF ORGANIZATION**

<u>Grantor</u>	<u>Jurisdiction of Organization</u>	<u>Organizational Identification Number</u>	<u>Location of Chief Executive Office</u>	<u>Location of Books</u>
Benefitfocus, Inc.	Delaware	5301893	100 Benefitfocus Way Charleston, SC 29492	100 Benefitfocus Way Charleston, SC 29492
Benefitfocus.com, Inc.	South Carolina	N/A	100 Benefitfocus Way Charleston, SC 29492	100 Benefitfocus Way Charleston, SC 29492
BenefitStore, Inc.	South Carolina	N/A	100 Benefitfocus Way Charleston, SC 29492	100 Benefitfocus Way Charleston, SC 29492

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**SCHEDULE 5**

**LOCATIONS OF EQUIPMENT AND INVENTORY**

<u>Grantor</u>	<u>Address Location</u>
Benefitfocus, Inc.	N/A
Benefitfocus.com, Inc.	100 Benefitfocus Way Charleston, SC 29492
	125 Fairchild Street Charleston, SC 29492
	215 Fairchild Street Charleston, SC 29492
	5935 Rivers Avenue North Charleston, SC 29406
	1016 Woods Crossing Road Suite B Greenville, SC 29607
	400 Riverwalk Terrace, Riverwalk Crossing Suites 160, 210, 240 & 250 Jenks, OK 74037
	TierPoint Hosted Solutions LLC f/k/a Windstream Hosted Solutions LLC 5301 Departure Drive, Suite 111 Raleigh, NC 27616
	TierPoint Hosted Solutions LLC f/k/a Windstream Hosted Solutions LLC 4021 Rose Lake Drive Charlotte, NC 28217
	Exhibit Concepts, Inc. 700 Crossroads Court Vandalia, OH 45377
	Stockade Storage 460 Seven Farms Drive Daniel Island, SC 29492
BenefitStore, Inc.	100 Benefitfocus Way Charleston, SC 29492

**SCHEDULE 6**

**RIGHTS OF THE GRANTORS RELATING TO PATENTS**

Issued Patents of Benefitfocus, Inc.

NONE

Pending Patent Applications of Benefitfocus, Inc.

NONE

Issued Patents and Pending Patent Applications Licensed to Benefitfocus, Inc.

NONE

Issued Patents of Benefitfocus.com, Inc.

<u>Jurisdiction</u>	<u>Patent No.</u>	<u>Issue Date</u>	<u>Inventor</u>	<u>Title</u>
United States	8,412,646	04/02/2013	Theodore C. Tanner, Jr.; Matthew Aldridge; Gregory Jorstad	Systems and methods for automatic creation of agent-based systems
United States	8,572,760	10/29/2013	Theodore C. Tanner, Jr.; Amit Jain	Systems and methods for secure agent information
United States	8,935,705	01/13/2015	Jeremy D. Martin	Execution of highly concurrent processing tasks based on updated dependency data structure at run-time
United States	9,430,504	08/30/2016	Michael Rosier	System and method for dynamically intercepting and adjusting persistence behaviors via runtime configuration
United States	9,454,412	09/27/2016	Michael Rosier	Systems and methods for classifying and analyzing runtime events
Australia	2009298151	10/29/2015	Theodore C. Tanner, Jr.; Matthew Aldridge; Gregory Jorstad	Systems and methods for automatic creation of agent-based systems
China	ZL200980126895.0	09/03/2014	Theodore C. Tanner, Jr.; Matthew Aldridge; Gregory Jorstad	Systems and methods for automatic creation of agent-based systems
China	ZL201180039769.9	07/22/2015	Theodore C. Tanner, Jr.; Amit Jain	Systems and methods for secure agent information
China	ZL201280021183.4	09/21/2016	Jeremy D. Martin	Registration and execution of highly concurrent processing tasks
Hong Kong	HK1179722	01/08/2016	Theodore C. Tanner, Jr.; Amit Jain	Systems and methods for secure agent information

Japan	5690935	02/06/2015	Theodore C. Tanner, Jr.; Amit Jain	Systems and methods for secure agent information
Japan	5989097	08/19/2016	Jeremy D. Martin	Registration and execution of highly concurrent processing tasks
Taiwan	1531973	05/01/2016	Jeremy D. Martin	Registration and execution of highly concurrent processing tasks

Pending Patent Applications of Benefitfocus.com, Inc.

<u>Jurisdiction</u>	<u>Serial No.</u>	<u>Filing Date</u>	<u>Inventor</u>	<u>Title</u>
United States	13/020,376	02/03/2011	John M. Lunsford	Systems and methods for polymorphic content generation in a multi-application, multi-tenant environment
United States	13/299,112	11/17/2011	William B. Gilbert	Systems and methods for dynamic service integration
United States	13/452,580	04/20/2012	Jason Shaun McDonald	System and method for enabling the styling and adornment of multiple, disparate web pages through remote method calls
United States	14/463,314	08/19/2014	Michael Rosier	Systems and methods for correlating derived metrics for system activity
United States	14/482,437	09/10/2014	Adam Wagner	Systems and methods for a metadata driven user interface framework
PCT	PCT/US2015/045477	08/17/2015	Michael Rosier	Systems and methods for correlating derived metrics for system activity
PCT	PCT/US2015/047882	09/01/2015	Adam Wagner	Systems and methods for a metadata driven user interface framework
PCT	PCT/US2015/048274	09/03/2015	Michael Rosier	System and method for dynamically intercepting and adjusting persistence behaviors via runtime configuration
PCT	PCT/US2015/048822	09/08/2015	Michael Rosier	Systems and methods for classifying and analyzing runtime events
Australia	2011289673	08/08/2011	Theodore C. Tanner, Jr.; Amit Jain	Systems and methods for secure agent information
Australia	2012256399	02/24/2012	Jeremy D. Martin	Registration and execution of highly concurrent processing tasks
Australia	2012337242	10/22/2012	William B. Gilbert	Systems and methods for dynamic service integration

Australia	2013249909	02/14/2013	Jason Shaun McDonald	System and method for enabling the styling and adornment of multiple, disparate web pages through remote method calls
Canada	2,726,729	10/05/2009	Theodore C. Tanner, Jr.; Matthew Aldridge; Gregory Jorstad	Systems and methods for automatic creation of agent-based systems
Canada	2,806,461	08/08/2011	Theodore C. Tanner, Jr.; Amit Jain	Systems and methods for secure agent information
Canada	2,868,317	02/14/2013	Jason Shaun McDonald	System and method for enabling the styling and adornment of multiple, disparate web pages through remote method calls
Canada	2,855,191	10/22/2012	William B. Gilbert	Systems and methods for dynamic service integration
Canada	2,829,194	02/24/2012	Jeremy D. Martin	Registration and execution of highly concurrent processing tasks
China	201280055871.2	10/22/2012	William B. Gilbert	Systems and methods for dynamic service integration
China	201380020635.1	02/14/2013	Jason Shaun McDonald	System and method for enabling the styling and adornment of multiple, disparate web pages through remote method calls
Europe	09818612.5	10/05/2009	Theodore C. Tanner, Jr.; Matthew Aldridge; Gregory Jorstad	Systems and methods for automatic creation of agent-based systems
Europe	11816869.0	08/08/2011	Theodore C. Tanner, Jr.; Amit Jain	Systems and methods for secure agent information
Europe	12785376.0	02/24/2012	Jeremy D. Martin	Registration and execution of highly concurrent processing tasks
Europe	12849965.4	10/22/2012	William B. Gilbert	Systems and methods for dynamic service integration
Europe	13777746.0	02/14/2013	Jason Shaun McDonald	System and method for enabling the styling and adornment of multiple, disparate web pages through remote method calls
Hong Kong	See Chinese Patent No. ZL200980126895.0 above	[ ]	Theodore C. Tanner, Jr.; Matthew Aldridge; Gregory Jorstad	Systems and methods for automatic creation of agent-based systems
Hong Kong	14103513.6	02/24/2012	Jeremy D. Martin	Registration and execution of highly concurrent processing tasks
Hong Kong	15101068.8	02/14/2013	Jason Shaun McDonald	System and method for enabling the styling and adornment of multiple, disparate web pages through remote method calls



India	984/DELNP/2013	08/08/2011	Theodore C. Tanner, Jr.; Amit Jain	Systems and methods for secure agent information
India	7410/CHENP/2013	02/24/2012	Jeremy D. Martin	Registration and execution of highly concurrent processing tasks
India	2117/CHENP/2014	10/22/2012	William B. Gilbert	Systems and methods for dynamic service integration
India	8112/DELNP/2014	02/14/2013	Jason Shaun McDonald	System and method for enabling the styling and adornment of multiple, disparate web pages through remote method calls
Japan	2014-542317	10/22/2012	William B. Gilbert	Systems and methods for dynamic service integration
Japan	2015-506985	02/14/2013	Jason Shaun McDonald	System and method for enabling the styling and adornment of multiple, disparate web pages through remote method calls
Taiwan	101142364	11/14/2012	William B. Gilbert	Systems and methods for dynamic service integration
Taiwan	102113431	04/16/2013	Jason Shaun McDonald	System and method for enabling the styling and adornment of multiple, disparate web pages through remote method calls
Taiwan	104122891	07/15/2015	Michael Rosier	Systems and methods for correlating derived metrics for system activity
Taiwan	104129322	09/04/2015	Adam Wagner	Systems and methods for a metadata driven user interface framework
Taiwan	104128936	09/02/2015	Michael Rosier	System and method for dynamically intercepting and adjusting persistence behaviors via runtime configuration
Taiwan	104128937	09/02/2015	Michael Rosier	Systems and methods for classifying and analyzing runtime events
South Korea	10/2013/7029824	02/24/2012	Jeremy D. Martin	Registration and execution of highly concurrent processing tasks
South Korea	10/2014/7012950	10/22/2012	William B. Gilbert	Systems and methods for dynamic service integration

Issued Patents and Pending Patent Applications Licensed to Benefitfocus.com, Inc.

NONE

Issued Patents of BenefitStore, Inc.

NONE

Pending Patent Applications of BenefitStore, Inc.

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NONE

Issued Patents and Pending Patent Applications Licensed to BenefitStore, Inc.

NONE

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**RIGHTS OF THE GRANTORS RELATING TO TRADEMARKS**

Registered Trademarks of Benefitfocus, Inc.

NONE

Pending Trademark Applications of Benefitfocus, Inc.

NONE

Registered Trademarks and Pending Trademark Applications Licensed to Benefitfocus, Inc.

NONE

Registered Trademarks of Benefitfocus.com, Inc.

<u>Jurisdiction</u>	<u>Registration No.</u>	<u>Registration Date</u>	<u>Filing Date</u>	<u>Registered Owner</u>	<u>Mark</u>
United States	4649999	12/02/2014	07/22/2013	Benefitfocus.com, Inc.	HR INTOUCH
United States	4565511	07/08/2014	07/22/2013	Benefitfocus.com, Inc.	BENEFITFOCUS
United States	4527136	05/06/2014	07/19/2013	Benefitfocus.com, Inc.	ALL YOUR BENEFITS. IN YOUR POCKET.
United States	4261142	12/18/2012	04/30/2012	Benefitfocus.com, Inc.	HR INTOUCH MARKETPLACE
United States	4261146	12/18/2012	04/30/2012	Benefitfocus.com, Inc.	HR INTOUCH
United States	4111384	03/13/2012	06/30/2011	Benefitfocus.com, Inc.	SHOP ENROLL MANAGE EXCHANGE
United States	4102028	02/21/2012	06/30/2011	Benefitfocus.com, Inc.	ALL YOUR BENEFITS. ONE PLACE.
[United States]	[3826875]	[08/03/2010]	[12/12/2008]	[Benefitfocus.com, Inc.]	[ICYOU]
United States	3578457	02/24/2009	05/16/2007	Benefitfocus.com, Inc.	
United States	2496059	10/09/2001	08/04/2000	Benefitfocus.com, Inc.	BENEFITFOCUS
United States	4758876	06/23/2015	07/21/2014	Benefitfocus.com, Inc.	ONE PLACE
Australia	International Reg. No. 1106495 Trademark No. 1476309	12/30/2011	12/30/2011	Benefitfocus.com, Inc.	BENEFITFOCUS
Australia	International Reg. No. 1142954 Trademark No. 1534903	10/22/2012	10/22/2012	Benefitfocus.com, Inc.	HR INTOUCH MARKETPLACE
Australia	International Reg. 1138700 Trademark No. 1531065	10/22/2012	10/22/2012	Benefitfocus.com, Inc.	HR INTOUCH

Australia	International Reg. 1181498 Trademark No. 1591173	10/01/2013	10/01/2013	Benefitfocus.com, Inc.	HR INTOUCH
Australia	International Reg. 1191605 Trademark No. 1605589	12/31/2013	12/31/2013	Benefitfocus.com, Inc.	ALL YOUR BENEFITS. IN YOUR POCKET.
Australia	International Reg. No. 1182012 Trademark No. 1591274	10/01/2013	10/01/2013	Benefitfocus.com, Inc.	BENEFITFOCUS
Canada	TMA855701	07/19/2013	01/31/2012	Benefitfocus.com, Inc.	BENEFITFOCUS
Canada	TMA867347	12/16/2013	10/30/2012	Benefitfocus.com, Inc.	HR INTOUCH
Canada	TMA867346	12/16/2013	10/29/2012	Benefitfocus.com, Inc.	HR INTOUCH MARKETPLACE
Canada	TMA911121	08/13/2015	12/19/2013	Benefitfocus.com, Inc.	BENEFITFOCUS
Canada	TMA911122	08/13/2015	12/19/2013	Benefitfocus.com, Inc.	HR INTOUCH
China	14158487	04/21/2015	03/12/2014	Benefitfocus.com, Inc.	BENEFITFOCUS
China	14158486	04/21/2015	03/12/2014	Benefitfocus.com, Inc.	BENEFITFOCUS
India	International Reg. No. 1191605	12/31/2013	12/31/2013	Benefitfocus.com, Inc.	ALL YOUR BENEFITS. IN YOUR POCKET.
India	International Reg. No. 1182012	10/01/2013	10/01/2013	Benefitfocus.com, Inc.	BENEFITFOCUS
India	International Reg. No. 1181498	10/01/2013	10/01/2013	Benefitfocus.com, Inc.	HR INTOUCH
Ireland	International Reg. No. 1106495	12/30/2011	12/30/2011	Benefitfocus.com, Inc.	BENEFITFOCUS
Ireland	International Reg. No. 1138700	10/22/2012	10/22/2012	Benefitfocus.com, Inc.	HR INTOUCH
Ireland	International Reg. No. 1181498	10/01/2013	10/01/2013	Benefitfocus.com, Inc.	HR INTOUCH
Ireland	International Reg. No. 1142954	10/22/2012	10/22/2012	Benefitfocus.com, Inc.	HR INTOUCH MARKETPLACE
Ireland	International Reg. No. 1182012	10/01/2013	10/1/2013	Benefitfocus.com, Inc.	BENEFITFOCUS
Israel	International Reg. No. 1106495	12/30/2011	12/30/2011	Benefitfocus.com, Inc.	BENEFITFOCUS
Israel	International Reg. No. 1182012	10/01/2013	10/01/2013	Benefitfocus.com, Inc.	BENEFITFOCUS

Israel	International Reg. No. 1191605	12/31/2013	12/31/2013	Benefitfocus.com, Inc.	ALL YOUR BENEFITS. IN YOUR POCKET.
New Zealand	International Reg. No. 1191605	12/31/2013	12/31/2013	Benefitfocus.com, Inc.	ALL YOUR BENEFITS. IN YOUR POCKET.
New Zealand	International Reg. No. 1182012	10/01/2013	10/01/2013	Benefitfocus.com, Inc.	BENEFITFOCUS
New Zealand	International Reg. No. 1181498	10/01/2013	10/01/2013	Benefitfocus.com, Inc.	HR INTOUCH
New Zealand	967599	04/24/2013	10/23/2012	Benefitfocus.com, Inc.	HR INTOUCH
New Zealand	967600	04/24/2013	10/23/2012	Benefitfocus.com, Inc.	HR INTOUCH MARKETPLACE
South Africa	2012/28642	03/13/2015	10/23/2012	Benefitfocus.com, Inc.	HR INTOUCH
South Africa	2013/27350	09/28/2015	10/02/2013	Benefitfocus.com, Inc.	BENEFITFOCUS
South Africa	2013/27351	09/28/2015	10/02/2013	Benefitfocus.com, Inc.	HR INTOUCH
South Africa	2014/00310	07/30/2015	01/07/2014	Benefitfocus.com, Inc.	ALL YOUR BENEFITS. IN YOUR POCKET.
United Kingdom	International Reg. No. 1142954	10/22/2012	10/22/2012	Benefitfocus.com, Inc.	HR INTOUCH MARKETPLACE
United Kingdom	International Reg. No. 1138700	10/22/2012	10/22/2012	Benefitfocus.com, Inc.	HR INTOUCH
United Kingdom	International Reg. No. 1106495	12/30/2011	12/30/2011	Benefitfocus.com, Inc.	BENEFITFOCUS
United Kingdom	International Reg. No. 1181498	10/01/2013	10/01/2013	Benefitfocus.com, Inc.	HR INTOUCH
United Kingdom	International Reg. No. 1191605	12/31/2013	12/31/2013	Benefitfocus.com, Inc.	ALL YOUR BENEFITS. IN YOUR POCKET.
United Kingdom	International Reg. No. 1182012	10/01/2013	10/01/2013	Benefitfocus.com, Inc.	BENEFITFOCUS
World Intellectual Property Organization	International Reg. No. 1142954	10/22/2012	10/22/2012	Benefitfocus.com, Inc.	HR INTOUCH MARKETPLACE
World Intellectual Property Organization	International Reg. No. 1138700	10/22/2012	10/22/2012	Benefitfocus.com, Inc.	HR INTOUCH
World Intellectual Property Organization	International Reg. No. 1106495	12/30/2011	12/30/2011	Benefitfocus.com, Inc.	BENEFITFOCUS
World Intellectual Property Organization	International Reg. No. 1191605	12/31/2013	12/31/2013	Benefitfocus.com, Inc.	ALL YOUR BENEFITS. IN YOUR POCKET.

World Intellectual Property Organization	International Reg. No. 1182012	10/01/2013	10/01/2013	Benefitfocus.com, Inc.	BENEFITFOCUS
World Intellectual Property Organization	International Reg. No. 1181498	10/01/2013	10/01/2013	Benefitfocus.com, Inc.	HR INTOUCH

Pending Trademark Applications of Benefitfocus.com, Inc.

<u>Jurisdiction</u>	<u>Application No.</u>	<u>Filing Date</u>	<u>Applicant</u>	<u>Mark</u>
United States	86/923,373	02/29/2016	Benefitfocus.com, Inc.	BENEFITFOCUS
Canada	1660145	01/17/2014	Benefitfocus.com, Inc.	ALL YOUR BENEFITS. IN YOUR POCKET.
Canada	1797920	08/29/2016	Benefitfocus.com, Inc.	BENEFITFOCUS
India	2419567	10/30/2012	Benefitfocus.com, Inc.	HR INTOUCH
India	2419568	10/30/2012	Benefitfocus.com, Inc.	HR INTOUCH MARKETPLACE
South Africa	2012/28643	10/23/2012	Benefitfocus.com, Inc.	HR INTOUCH MARKETPLACE
South Africa	2016/24461	08/29/2016	Benefitfocus.com, Inc.	BENEFITFOCUS
South Africa	2016/24462	08/29/2016	Benefitfocus.com, Inc.	BENEFITFOCUS
World Intellectual Property Organization	A0061183	08/29/2016	Benefitfocus.com, Inc.	BENEFITFOCUS

Registered Trademarks and Pending Trademark Applications Licensed to Benefitfocus.com, Inc.

NONE

Registered Trademarks of BenefitStore, Inc.

NONE

Pending Trademark Applications of BenefitStore, Inc.

NONE

Registered Trademarks and Pending Trademark Applications Licensed to BenefitStore, Inc.

NONE

**RIGHTS OF THE GRANTORS RELATING TO COPYRIGHTS**

Registered Copyrights of Benefitfocus, Inc.

NONE

Pending Copyright Applications of Benefitfocus, Inc.

NONE

Registered Copyrights and Pending Copyright Applications Licensed to Benefitfocus, Inc.

NONE

Registered Copyrights of Benefitfocus.com, Inc.

<u>Jurisdiction</u>	<u>Registration No.</u>	<u>Registration Date</u>	<u>Work of Authorship</u>
United States	TX0006032200	11/14/2001	Benefit focus online enrollment and data exchange service application.
United States	TX0006032199	11/14/2001	Benefit focus online enrollment and data exchange services application version 1.14.
United States	V9921D265	02/25/2015	Benefit focus online enrollment and data exchange service application & 1 other title.

Pending Copyright Applications of Benefitfocus.com, Inc.

NONE

Registered Copyrights and Pending Copyright Applications Licensed to Benefitfocus.com, Inc.

NONE

Registered Copyrights of BenefitStore, Inc.

NONE

Pending Copyright Applications of BenefitStore, Inc.

NONE

Registered Copyrights and Pending Copyright Applications Licensed to BenefitStore, Inc.

NONE

**OTHER LICENSE RIGHTS RELATING TO INTELLECTUAL PROPERTY**

1. Benefitfocus.com, Inc. grants licenses in the ordinary course for the use of its software to its customers pursuant to Terms of Use, Master Services Agreements and related Software License
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and Service Agreements.

2. Benefitfocus.com, Inc. licenses certain Intellectual Property rights from Oracle America, Inc. pursuant to that Ordering Document, effective November 22, 2013, by and between Arrow Enterprise Computing Solutions Inc., CDW Logistics, Inc., Oracle America, Inc. and Benefitfocus.com, Inc. (incorporating by reference the Oracle Master Agreement, US-OMA-68046).
  3. Benefitfocus.com, Inc. licenses certain Intellectual Property rights from John Hopkins University pursuant to that ACG Consultant Production License and Professional Services Agreement, dated May 2, 2011.
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## FORM OF COMPLIANCE CERTIFICATE

BENEFITFOCUS, INC.  
BENEFITFOCUS.COM, INC.  
BENEFITSTORE, INC.

Date: \_\_\_\_\_, 20\_\_\_\_

1. This Compliance Certificate is delivered pursuant to Section 6.2(b) of that certain Credit Agreement, dated as of February 20, 2015, by and among BENEFITFOCUS, INC., a Delaware corporation ("**Parent**"), BENEFITFOCUS.COM, INC., a South Carolina corporation ("**Benefitfocus.com**"), and BENEFITSTORE, INC., a South Carolina corporation ("**BenefitStore**"), and together with Parent and Benefitfocus.com, each individually, a "**Borrower**", and collectively, the "**Borrowers**", the several banks and other financial institutions or entities from time to time parties thereto (each a "**Lender**" and, collectively, the "**Lenders**"), SILICON VALLEY BANK, as the Issuing Lender and the Swingline Lender, SILICON VALLEY BANK ("**SVB**"), as administrative agent and collateral agent for the Lenders (in such capacity, the "**Administrative Agent**") and COMERICA BANK, as documentation agent (in such capacity, the "**Documentation Agent**") (as amended, restated, amended and restated, supplemented, restructured or otherwise modified from time to time, the "**Credit Agreement**"). Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

2. The undersigned, a duly authorized and acting Responsible Officer of Parent, hereby certifies, in his/her capacity as an officer of Parent, and not in any personal capacity, as follows:

3. I have reviewed and am familiar with the contents of this Compliance Certificate.

4. I have reviewed the terms of the Credit Agreement and the other Loan Documents and have made, or caused to be made under my supervision, a review in reasonable detail of the transactions and condition of Parent and its Subsidiaries during the accounting period covered by the financial statements attached hereto as Attachment 1 (the "**Financial Statements**"). Except as set forth on Attachment 2, such review did not disclose the existence during or at the end of the accounting period covered by the Financial Statements, and I have no knowledge of the existence as of the date of this Compliance Certificate, of any condition or event which constitutes a Default or an Event of Default.

5. Attached hereto as Attachment 3 are the computations showing compliance with the covenants set forth in Section 7.1 of the Credit Agreement.

6. [To the extent not previously disclosed to the Administrative Agent, a description of any change in the jurisdiction of organization of any Loan Party.]

7. [To the extent not previously disclosed to the Administrative Agent, a list of any material patents, registered trademarks or registered copyrights issued to or acquired by any Loan Party since [the Closing Date][the date of the most recent report delivered].]

*[Remainder of page intentionally left blank; signature page follows]*

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IN WITNESS WHEREOF, I have executed this Compliance Certificate as of the date first written above.

**PARENT**, for itself and on behalf of each other Borrower:

**BENEFITFOCUS, INC.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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[Attach Financial Statements]

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Except as set forth below, no Default or Event of Default has occurred. [If a Default or Event of Default has occurred, the following describes the nature of the Default or Event of Default in reasonable detail and the steps, if any, being taken or contemplated by the Borrowers to be taken on account thereof.]

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Preliminary Note to Compliance Certificate Calculations

The information described herein is as of [\_\_\_\_], [\_\_\_\_] (the "Statement Date"), and pertains to the subject period described below.

(a) Minimum Liquidity.

Required: Not permit Liquidity at any time, as tested on the last day of each month, to be less than \$45,000,000.

Actual:

A. The Available Revolving Commitment as of the Statement Date \$\_\_\_\_\_

B. The aggregate amount of unrestricted cash and Cash Equivalents (including short term marketable securities) held by the Borrowers and the Guarantors in Deposit Accounts or Securities Accounts maintained with SVB or SVB's Affiliates or another Lender or an Affiliate thereof, or with National Bank of South Carolina ("NBSC", provided that the aggregate amounts held in deposit accounts with NBSC shall not exceed \$6,500,000 at any time), and in each case subject to a first priority lien in favor of the Administrative Agent, including, without limitation, pursuant to a Deposit Account Control Agreement with respect to each such Deposit Account or Securities Account Control Agreement with respect to each such Securities Account; provided that, in connection with any calculation of Liquidity required hereunder, at least \$30,000,000 must consist of unrestricted cash and Cash Equivalents (including short term marketable securities) satisfying the requirements of clause (i) above. \$\_\_\_\_\_

C. MINIMUM LIQUIDITY (the sum of line A plus line B) \$\_\_\_\_\_

Does line C consist of not less than \$30,000,000 of unrestricted cash?

\_\_\_\_\_ No, not in Compliance                      \_\_\_\_\_ Yes, in Compliance

Is line C equal to or greater than \$45,000,000?

\_\_\_\_\_ No, not in Compliance                      \_\_\_\_\_ Yes, in Compliance

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(b) Minimum Consolidated EBITDA.

Required: Permit Consolidated EBITDA for any quarter specified below, as calculated on a trailing six (6) months basis, to be less than the correlative amount specified below:

<b>Quarter Ending</b>	<b>Minimum Consolidated EBITDA</b>
March 31, 2015	(\$22,500,000)
June 30, 2015	(\$22,500,000)
September 30, 2015	(\$22,500,000)
December 31, 2015	(\$16,500,000)
March 31, 2016	(\$14,000,000)
June 30, 2016	(\$13,000,000)
September 30, 2016	(\$5,750,000)
December 31, 2016	\$0.0
March 31, 2017	\$4,750,000
June 30, 2017	\$4,000,000
September 30, 2017	\$5,000,000
December 31, 2017	\$11,250,000
March 31, 2018	\$15,250,000
June 30, 2018	\$15,250,000
September 30, 2018	\$13,500,000
December 31, 2018	\$12,000,000
March 31, 2019	\$18,000,000
June 30, 2019	\$20,000,000
September 30, 2019	\$20,000,000
December 31, 2019	\$17,500,000

Actual: All amounts measured on a trailing six month basis:

- A. Consolidated Net Income \$ \_\_\_\_\_
- B. Consolidated Interest Expense \$ \_\_\_\_\_
- C. Provisions for taxes based on income \$ \_\_\_\_\_
-

D.	Total depreciation and amortization expense	\$ _____
E.	Non-cash compensation expense	\$ _____
F.	The fees, costs and expenses incurred in connection with the Credit Agreement and the other Loan Documents and the transactions thereunder	\$ _____
G.	Reasonable one-time fees, costs and expenses incurred in connection with a Permitted Acquisition or a successful offering or issuance of Capital Stock, in each case to the extent approved in writing by the Administrative Agent as an 'add-back' to Consolidated EBITDA	\$ _____
H.	Other non-cash items reducing Consolidated Net Income (excluding any such non-cash item to the extent that it represents an accrual or reserve for potential cash items in any future period or amortization of a prepaid cash item that was paid in a prior period) approved by the Administrative Agent in writing as an 'add back' to Consolidated EBITDA	\$ _____
I.	any extraordinary or non-recurring losses, expenses or charges not to exceed \$1,000,000 in the aggregate in any fiscal year (or such higher amounts as may be approved by the Required Lenders as an 'add-back' to Consolidated EBITDA)	\$ _____
J.	The Sum of lines A through I	\$ _____
K.	Other non-cash items increasing Consolidated Net Income for such period (excluding any such non-cash item to the extent it represents the reversal of an accrual or reserve for potential cash item in any prior period)	\$ _____
L.	Interest Income	\$ _____
M.	The Sum of lines K and L	\$ _____
N.	CONSOLIDATED EBITDA (line J minus line M)	\$ _____

Is Line N equal to or greater than \$[\_\_\_\_\_]?

\_\_\_\_\_ No, not in Compliance

\_\_\_\_\_ Yes, in Compliance

**SIXTH AMENDMENT AGREEMENT**

This Sixth Amendment Agreement (this "**Amendment**") is entered into this 26th day of April 2017, by and among **BENEFITFOCUS, INC.**, a Delaware corporation (the "**Parent**"), **BENEFITFOCUS.COM, INC.**, a South Carolina corporation ("**Benefitfocus.com**"), and **BENEFITSTORE, INC.**, a South Carolina corporation ("**BenefitStore**"), and together with the Parent and Benefitfocus.com, each individually, a "**Borrower**", and collectively, the "**Borrowers**", the several banks and other financial institutions or entities party hereto (each a "**Lender**" and, collectively, the "**Lenders**"), and **SILICON VALLEY BANK**, as administrative agent and collateral agent for the Lenders (in such capacity, the "**Administrative Agent**").

**RECITALS**

**A.** The Borrowers, the Lenders and the Administrative Agent have entered into that certain Credit Agreement dated as of February 20, 2015, as amended pursuant to that certain First Amendment Agreement dated June 16, 2015, pursuant to that certain Second Amendment Agreement dated December 18, 2015, pursuant to that certain Third Amendment Agreement dated March 24, 2016, pursuant to that certain Fourth Amendment Agreement dated October 28, 2016, and pursuant to that certain Fifth Amendment Agreement dated December 12, 2016 (as amended and as the same may from time to time be further amended, modified, supplemented or restated, the "**Credit Agreement**"), pursuant to which the Lenders have extended credit to the Borrowers for the purposes permitted in the Credit Agreement.

**B.** In connection with the Credit Agreement, the Borrowers have entered into that certain Guarantee and Collateral Agreement dated as of February 20, 2015, in favor of the Administrative Agent for the benefit of the Lenders (as the same may from time to time be amended, modified, supplemented or restated, the "**Guarantee and Collateral Agreement**").

**C.** The Borrowers have requested and the Required Lenders and the Administrative Agent agree to modify and amend certain terms and conditions of the Credit Agreement and the Guarantee and Collateral Agreement and to consent to certain transactions to be entered into by the Borrowers that would otherwise be prohibited by the covenants in the Credit Agreement and the Guarantee and Collateral Agreement.

**AGREEMENT**

**NOW, THEREFORE**, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and intending to be legally bound, the parties hereto agree as follows:

- 1. Definitions.** Capitalized terms used but not defined in this Amendment shall have the meanings given to them in the Credit Agreement.
  - 2. Amendments to Loan Documents.**
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## 2.1 Amendments to Credit Agreement.

### 2.1.1. Section 1.1 (Defined Terms).

(a) The definition of “*Consolidated EBITDA*” is amended and restated in its entirety as follows:

““*Consolidated EBITDA*”: with respect to the Parent and its consolidated Subsidiaries for any trailing sixth month period for which a calculation is to be made under this Agreement, (a) the sum, without duplication, of the amounts for such period of (i) Consolidated Net Income, plus (ii) Consolidated Interest Expense, plus (iii) provisions for taxes based on income, plus (iv) total depreciation expense, plus (v) total amortization expense, plus (vi) non-cash compensation expense, plus (vii) the fees, costs and expenses incurred in connection with this Agreement and the other Loan Documents and the transactions hereunder and thereunder, plus (viii) reasonable one-time fees, costs and expenses incurred in connection with a Permitted Acquisition or a successful offering or issuance of Capital Stock, in each case to the extent approved in writing by the Administrative Agent as an ‘add-back’ to Consolidated EBITDA, plus (ix) other non-cash items reducing Consolidated Net Income (excluding any such non-cash item to the extent that it represents an accrual or reserve for potential cash items in any future period or amortization of a prepaid cash item that was paid in a prior period) approved by the Administrative Agent in writing as an ‘add back’ to Consolidated EBITDA, plus (x) any extraordinary or non-recurring losses, expenses or charges not to exceed \$1,000,000 in the aggregate for such trailing six month period (or such higher amounts as may be approved by the Required Lenders as an ‘add-back’ to Consolidated EBITDA), minus (b) the sum, without duplication of the amounts for such period of (i) other non-cash items increasing Consolidated Net Income for such period (excluding any such non-cash item to the extent it represents the reversal of an accrual or reserve for potential cash item in any prior period), plus (ii) interest income.”

(b) The definition of “*Liquidity*” is amended and restated in its entirety as follows:

“*Liquidity*”: at any time, the sum of (i) the aggregate amount of unrestricted cash and Cash Equivalents (including short term marketable securities) held by the Borrowers and the Guarantors in Deposit Accounts or Securities Accounts maintained with SVB or SVB’s Affiliates or another Lender or an Affiliate thereof, or with National Bank of South Carolina (“*NBSC*”, provided that the aggregate amounts held in deposit accounts with NBSC shall not exceed \$6,500,000 at any time), and in each case subject to a first priority lien in favor of the Administrative Agent, including, without limitation, pursuant to a Deposit Account Control Agreement with respect to each such Deposit Account or Securities Account Control Agreement with respect to each such Securities Account, plus (ii) the Available Revolving Commitment at such time; provided that, in connection with any calculation of Liquidity required hereunder, at least \$25,000,000 must consist

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of unrestricted cash and Cash Equivalents (including short term marketable securities) satisfying the requirements of clause (i) above.

**2.1.2. Section 7.1 (Financial Covenants).**

(a) Section 7.1(a) of the Credit Agreement (Minimum Liquidity) is hereby amended and restated as follows:

“Minimum Liquidity. Permit Liquidity at any time, as tested on the last day of each month, to be less than \$40,000,000; provided that, in connection with any calculation of Liquidity required under this Section 7.1(a), at least \$25,000,000 must consist of unrestricted cash and Cash Equivalents (including short term marketable securities) satisfying the requirements of clause (i) of the definition of Liquidity.

(b) Section 7.1(b) of the Credit Agreement (Minimum Consolidated EBITDA) is hereby amended by deleting the grid set forth therein and by substituting the following in its stead:

<b><u>Quarter Ending</u></b>	<b><u>Minimum Consolidated EBITDA for Applicable Trailing Sixth Month Period</u></b>
March 31, 2017	\$4,750,000
June 30, 2017	\$3,000,000
September 30, 2017	\$3,500,000
December 31, 2017	\$9,000,000
March 31, 2018	\$10,500,000
June 30, 2018	\$10,250,000
September 30, 2018	\$11,000,000
December 31, 2018	\$13,000,000
March 31, 2019	\$16,600,000
June 30, 2019	\$15,000,000
September 30, 2019	\$17,250,000
December 31, 2019	\$18,250,000

**2.1.3. Exhibit B (Form of Compliance Certificate).** Exhibit B to the Credit Agreement is hereby deleted in its entirety and the Exhibit A attached hereto is substituted in its stead.

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**2.2 Amendment to Guarantee and Collateral Agreement.** The definition of “*Excluded Assets*” is amended and restated in its entirety as follows:

“*Excluded Assets*”: collectively,

- (a) margin stock (within the meaning of Regulation U issued by the Board) to the extent the creation of a security interest therein in favor of the Administrative Agent (for the ratable benefit of the Secured Parties) will result in a violation of Regulation U issued by the Board;
- (b) motor vehicles and other equipment covered by certificates of title;
- (c) capital stock of any Excluded Foreign Subsidiary (other than Capital Stock representing up to 66% of the total outstanding voting Capital Stock of any Excluded Foreign Subsidiary); provided, however, that any Proceeds, substitutions or replacements of any Excluded Assets shall not be Excluded Assets (unless such Proceeds, substitutions or replacements are otherwise, in and of themselves, Excluded Assets); and
- (d) Deposit Accounts opened by any Grantor that are notional and custodial accounts used exclusively for the maintenance of third-party and employee funds in connection with account administration and billing services offered by Grantors.

**2.3 Amendment to Schedules.** Schedules 1, 5 and 6 to the Guarantee and Collateral Agreement attached hereto hereby amend and restate the related schedules contained in the Guarantee and Collateral Agreement.

### **3. Consents and Acknowledgments.**

**3.1** Borrowers have advised that Benefitfocus.com has previously granted a license for its “Imax” product to Acord Corporation (“*Acord*”) pursuant to that certain Exclusive License Agreement dated as of November 11, 2016. Benefitfocus.com intends to transfer legal title to the “Imax” product and will retain a perpetual, irrevocable, worldwide, right and license to continue to use the “Imax” product. The Required Lenders hereby consent to the legal transfer of the “Imax” product notwithstanding the terms of (a) Section 7.5 or any other provision of the Credit Agreement, and (b) Section 5.16 or any other provision of the Guarantee and Collateral Agreement.

**3.2** Borrowers have advised that Benefitfocus.com has determined it is desirable in the conduct of its business to cease prosecution of all non-U.S. patent applications. The Required Lenders hereby (a) acknowledge that such abandonment, cancellation, non-renewal or discontinuance of use or maintenance of all non-U.S. patent applications is permitted pursuant to Section 7.5(l) of the Credit Agreement, (b) consent to such abandonment, cancellation, non-renewal or discontinuance of use or maintenance of all non-US patent applications notwithstanding the terms of Section 5.8(g) of the Guarantee and Collateral Agreement and (c) waive any requirement for the Borrowers to provide notice to the Administrative Agent with respect thereto under Section 5.8(e) of the Guarantee and Collateral Agreement.

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**3.3** Borrowers have advised that one or more of them intend to offer "Account Administration and Billing Services". In connection with providing such services, Borrowers will be required to maintain notional and custodial accounts at a third party bank. The Required Lenders hereby consent to the formation and maintenance of such notional and custodial accounts and agree that such accounts will not constitute Collateral to the extent such accounts are used exclusively for the maintenance of third-party and employee funds.

**4. Conditions Precedent to Effectiveness.** This Amendment shall not be effective until each of the following conditions precedent have been fulfilled to the satisfaction of (and in form and substance satisfactory to, as applicable) the Administrative Agent (such date, the "**Sixth Amendment Effective Date**"):

**4.1** This Amendment shall have been duly executed and delivered by the respective parties hereto. The Administrative Agent shall have received a fully executed copy hereof.

**4.2** All necessary consents and approvals to this Amendment shall have been obtained by the Loan Parties.

**4.3** After giving effect to this Amendment, each of the representations and warranties herein and in the Credit Agreement and the other Loan Documents (i) that is qualified by materiality shall be true and correct, and (ii) that is not qualified by materiality, shall be true and correct in all material respects, in each case, on and as of the Sixth Amendment Effective Date as if made on and as of such date, except to the extent any such representation and warranty expressly relates to an earlier date, in which case such representation and warranty shall have been true and correct in all material respects as of such earlier date.

**4.4** The payment by the Borrower to the Administrative Agent, for the ratable benefit of each Lender party to this amendment based on such Lender's Revolving Percentage, an amendment fee equal to .10% of the Revolving Commitment of each Lender party hereto.

For purposes of determining compliance with the conditions specified in this Section 4, each Lender that has executed this Amendment shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter either sent (or made available) by the Administrative Agent to such Lender for consent, approval, acceptance or satisfaction, or required thereunder to be consented to or approved by or acceptable or satisfactory to such Lender, unless an officer of the Administrative Agent responsible for the transactions contemplated by the Loan Documents shall have received notice from such Lender prior to the Sixth Amendment Effective Date specifying such Lender's objection thereto and such objection shall not have been withdrawn by notice to the Administrative Agent to that effect on or prior to the Sixth Amendment Effective Date.

**5. Limitation of Amendment.**

**5.1** The amendments set forth in **Section 2**, above, are effective for the purposes set forth herein and shall be limited precisely as written and shall not be deemed to (a) be a consent to any amendment, waiver or modification of any other term or condition of any Loan Document,

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or (b) otherwise prejudice any right or remedy which the Administrative Agent or the Lenders may now have or may have in the future under or in connection with any Loan Document.

**5.2** This Amendment shall be construed in connection with and as part of the Loan Documents and all terms, conditions, representations, warranties, covenants and agreements set forth in the Loan Documents, except as herein amended, are hereby ratified and confirmed and shall remain in full force and effect.

**6. Representations and Warranties.** To induce the Administrative Agent and the Required Lenders to enter into this Amendment, the Borrowers hereby represent and warrant as follows:

**6.1** Immediately after giving effect to this Amendment (a) the representations and warranties contained in the Loan Documents are true, accurate and complete in all material respects as of the date hereof (except to the extent such representations and warranties relate to an earlier date, in which case they are true and correct as of such date), and (b) no Event of Default has occurred and is continuing;

**6.2** Each Borrower has the power and authority to execute and deliver this Amendment and to perform its obligations under the Credit Agreement, as amended by this Amendment;

**6.3** The execution and delivery by each Borrower of this Amendment and the performance by such Borrower of its obligations under the Credit Agreement, as amended by this Amendment, have been duly authorized;

**6.4** The execution and delivery by each Borrower of this Amendment and the performance by each Borrower of its obligations under the Credit Agreement, as amended by this Amendment, do not and will not contravene (a) any law or regulation binding on or affecting such Borrower, (b) any contractual restriction with a Person binding on such Borrower, (c) any order, judgment or decree of any court or other governmental or public body or authority, or subdivision thereof, binding on such Borrower, or (d) the organizational documents of such Borrower;

**6.5** The execution and delivery by each Borrower of this Amendment and the performance by such Borrower of its obligations under the Credit Agreement, as amended by this Amendment, do not require any order, consent, approval, license, authorization or validation of, or filing, recording or registration with, or exemption by any governmental or public body or authority, or subdivision thereof, binding on such Borrower, except as already has been obtained or made; and

**6.6** This Amendment has been duly executed and delivered by each Borrower and is the binding obligation of such Borrower, enforceable against such Borrower in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, liquidation, moratorium or other similar laws of general application and equitable principles relating to or affecting creditors' rights.

**7. No Defenses of Borrowers.** Each Borrower hereby acknowledges and agrees that such Borrower has no offsets, defenses, claims, or counterclaims against the

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Administrative Agent or any Lender with respect to the Obligations, or otherwise, and that if such Borrower now has, or ever did have, any offsets, defenses, claims, or counterclaims against the Administrative Agent or any Lender, whether known or unknown, at law or in equity, all of them are hereby expressly WAIVED and such Borrower hereby RELEASES the Administrative Agent and each Lender from any liability thereunder.

**8. Integration.** This Amendment and the Loan Documents represent the entire agreement about this subject matter and supersede prior negotiations or agreements. All prior agreements, understandings, representations, warranties, and negotiations between the parties about the subject matter of this Amendment and the Loan Documents merge into this Amendment and the Loan Documents.

**9. Counterparts.** This Amendment may be executed in any number of counterparts and all of such counterparts taken together shall be deemed to constitute one and the same instrument.

**10. Effect on Loan Documents.**

**10.1** The amendments set forth herein shall be limited precisely as written and shall not be deemed (a) to be a forbearance, waiver, or modification of any other term or condition of the Credit Agreement or of any Loan Documents or to prejudice any right or remedy which the Administrative Agent may now have or may have in the future under or in connection with the Loan Documents; (b) to be a consent to any future consent or modification, forbearance, or waiver to the Credit Agreement or any other Loan Document, or to any waiver of any of the provisions thereof; or (c) to limit or impair the Administrative Agent's right to demand strict performance of all terms and covenants as of any date. The Borrowers, on behalf of each Loan Party, hereby ratify and reaffirm the Borrowers' obligations under the Credit Agreement and each Loan Party's obligations under each other Loan Document to which it is a party and agrees that none of the amendments or modifications to the Credit Agreement set forth in this Amendment shall impair any Loan Party's obligations under the Loan Documents or the Administrative Agent's rights under the Loan Documents. The Borrowers, on behalf of each Loan Party, hereby further ratify and reaffirm the validity and enforceability of all of the Liens heretofore granted, pursuant to and in connection with the Guarantee and Collateral Agreement or any other Loan Document to the Administrative Agent on behalf and for the benefit of the Secured Parties, as collateral security for the obligations under the Loan Documents, in accordance with their respective terms, and acknowledge that all of such Liens, and all collateral heretofore pledged as security for such obligations, continues to be and remain collateral for such obligations (as amended hereby) from and after the date hereof. The Borrowers, on behalf of each Loan Party, acknowledge and agree that the Credit Agreement and each other Loan Document is still in full force and effect and acknowledge as of the date hereof that no Loan Party has any defenses to enforcement of the Loan Documents. The Borrowers, on behalf of each Loan Party, waive any and all defenses to enforcement of the Credit Agreement as amended hereby and each other Loan Document that might otherwise be available as a result of this Amendment. To the extent any terms or provisions of this Amendment conflict with those of the Credit Agreement or other Loan Documents, the terms and provisions of this Amendment shall control.

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**10.2** To the extent that any terms and conditions in any of the Loan Documents shall contradict or be in conflict with any terms or conditions of the Credit Agreement, after giving effect to this Amendment, such terms and conditions are hereby deemed modified or amended accordingly to reflect the terms and conditions of the Credit Agreement as modified or amended hereby.

**10.3** This Amendment is a Loan Document.

**11. Severability.** The provisions of this Amendment are severable, and if any clause or provision shall be held invalid or unenforceable in whole or in part in any jurisdiction, then such invalidity or unenforceability shall affect only such clause or provision, or part thereof, in such jurisdiction and shall not in any manner affect such clause or provision in any other jurisdiction, or any other clause or provision in this Amendment in any jurisdiction.

**12. Choice of Law.** Section 10.13 and Section 10.14 of the Credit Agreement are hereby incorporated by reference in their entirety *mutatis mutandis*.

[Signature page follows.]

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IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed and delivered as of the date first written above.

BORROWERS:

**BENEFITFOCUS.COM, INC.**

By: /s/ Jeffrey M. Laborde  
Name: Jeffrey M. Laborde  
Title: CFO

**BENEFITFOCUS, INC.**

By: /s/ Jeffrey M. Laborde  
Name: Jeffrey M. Laborde  
Title: CFO

**BENEFITSTORE, INC.**

By: /s/ Jeffrey M. Laborde  
Name: Jeffrey M. Laborde  
Title: CFO

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**SILICON VALLEY BANK**, as Administrative Agent and as a Lender

By: /s/ Will Deevy  
Name: Will Deevy  
Title: Vice President

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**COMERICA BANK**, as a Lender

By: /s/ John Benetti

Name: John Benetti

Title: SVP

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**PACIFIC WESTERN BANK**, as a Lender

By: /s/ Adam Glick  
Name: Adam Glick  
Title: SVP

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**GOLDMAN SACHS LENDING PARTNERS LLC, as a Lender**

By: /s/ Ushma Dedhiya  
Name: Ushma Dedhiya  
Title: Authorized Signatory

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## FORM OF COMPLIANCE CERTIFICATE

BENEFITFOCUS, INC.  
BENEFITFOCUS.COM, INC.  
BENEFITSTORE, INC.

Date: \_\_\_\_\_, 20\_\_\_\_

1. This Compliance Certificate is delivered pursuant to Section 6.2(b) of that certain Credit Agreement, dated as of February 20, 2015, by and among **BENEFITFOCUS, INC.**, a Delaware corporation ("**Parent**"), **BENEFITFOCUS.COM, INC.**, a South Carolina corporation ("**Benefitfocus.com**"), and **BENEFITSTORE, INC.**, a South Carolina corporation ("**BenefitStore**", and together with Parent and Benefitfocus.com, each individually, a "**Borrower**", and collectively, the "**Borrowers**"), the several banks and other financial institutions or entities from time to time parties thereto (each a "**Lender**" and, collectively, the "**Lenders**"), **SILICON VALLEY BANK**, as the Issuing Lender and the Swingline Lender, **SILICON VALLEY BANK ("SVB")**, as administrative agent and collateral agent for the Lenders (in such capacity, the "**Administrative Agent**") and **COMERICA BANK**, as documentation agent (in such capacity, the "**Documentation Agent**") (as amended, restated, amended and restated, supplemented, restructured or otherwise modified from time to time, the "**Credit Agreement**"). Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

2. The undersigned, a duly authorized and acting Responsible Officer of Parent, hereby certifies, in his/her capacity as an officer of Parent, and not in any personal capacity, as follows:

3. I have reviewed and am familiar with the contents of this Compliance Certificate.

4. I have reviewed the terms of the Credit Agreement and the other Loan Documents and have made, or caused to be made under my supervision, a review in reasonable detail of the transactions and condition of Parent and its Subsidiaries during the accounting period covered by the financial statements attached hereto as Attachment 1 (the "**Financial Statements**"). Except as set forth on Attachment 2, such review did not disclose the existence during or at the end of the accounting period covered by the Financial Statements, and I have no knowledge of the existence as of the date of this Compliance Certificate, of any condition or event which constitutes a Default or an Event of Default.

5. Attached hereto as Attachment 3 are the computations showing compliance with the covenants set forth in Section 7.1 of the Credit Agreement.

6. [To the extent not previously disclosed to the Administrative Agent, a description of any change in the jurisdiction of organization of any Loan Party.]

7. [To the extent not previously disclosed to the Administrative Agent, a list of any material patents, registered trademarks or registered copyrights issued to or acquired by any Loan Party since [the Closing Date][the date of the most recent report delivered].]

[Remainder of page intentionally left blank; signature page follows]

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IN WITNESS WHEREOF, I have executed this Compliance Certificate as of the date first written above.

**PARENT**, for itself and on behalf of each other Borrower:

**BENEFITFOCUS, INC.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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[Attach Financial Statements]

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Except as set forth below, no Default or Event of Default has occurred. [If a Default or Event of Default has occurred, the following describes the nature of the Default or Event of Default in reasonable detail and the steps, if any, being taken or contemplated by the Borrowers to be taken on account thereof.]

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Preliminary Note to Compliance Certificate Calculations

The information described herein is as of [\_\_\_\_\_, \_\_\_\_] (the "Statement Date"), and pertains to the subject period described below.

(a) Minimum Liquidity.

Required: Not permit Liquidity at any time, as tested on the last day of each month, to be less than \$40,000,000; provided that at least \$25,000,000 must consist of unrestricted cash and Cash Equivalents (including short term marketable securities) satisfying the requirements of clause (i) of the definition of Liquidity.

Actual:

A. The Available Revolving Commitment as of the Statement Date \$\_\_\_\_\_

B. The aggregate amount of unrestricted cash and Cash Equivalents (including short term marketable securities) held by the Borrowers and the Guarantors in Deposit Accounts or Securities Accounts maintained with SVB or SVB's Affiliates or another Lender or an Affiliate thereof, or with National Bank of South Carolina ("NBSC", provided that the aggregate amounts held in deposit accounts with NBSC shall not exceed \$6,500,000 at any time), and in each case subject to a first priority lien in favor of the Administrative Agent, including, without limitation, pursuant to a Deposit Account Control Agreement with respect to each such Deposit Account or Securities Account Control Agreement with respect to each such Securities Account; provided that, in connection with any calculation of Liquidity required hereunder, at least \$25,000,000 must consist of unrestricted cash and Cash Equivalents (including short term marketable securities) satisfying the requirements of clause (i) of the definition of Liquidity.

C. MINIMUM LIQUIDITY (the sum of line A plus line B) \$\_\_\_\_\_

Does line C consist of not less than \$25,000,000 of unrestricted cash and Cash Equivalents (including short term marketable securities) satisfying the requirements of clause (i) of the definition of Liquidity?

\_\_\_\_\_ No, not in Compliance                      \_\_\_\_\_ Yes, in Compliance

Is line C equal to or greater than \$40,000,000?

\_\_\_\_\_ No, not in Compliance                      \_\_\_\_\_ Yes, in Compliance

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(b) Minimum Consolidated EBITDA.

Required: Permit Consolidated EBITDA for any quarter specified below, as calculated on a trailing six (6) months basis, to be less than the correlative amount specified below:

<b>Quarter Ending</b>	<b>Minimum Consolidated EBITDA for Applicable Trailing Six Month Period</b>
March 31, 2017	\$4,750,000
June 30, 2017	\$3,000,000
September 30, 2017	\$3,500,000
December 31, 2017	\$9,000,000
March 31, 2018	\$10,500,000
June 30, 2018	\$10,250,000
September 30, 2018	\$11,000,000
December 31, 2018	\$13,000,000
March 31, 2019	\$16,600,000
June 30, 2019	\$15,000,000
September 30, 2019	\$17,250,000
December 31, 2019	\$18,250,000

Actual: All amounts measured on a trailing six month basis:

- A. Consolidated Net Income \$ \_\_\_\_\_
  - B. Consolidated Interest Expense \$ \_\_\_\_\_
  - C. Provisions for taxes based on income \$ \_\_\_\_\_
  - D. Total depreciation and amortization expense \$ \_\_\_\_\_
  - E. Non-cash compensation expense \$ \_\_\_\_\_
  - F. The fees, costs and expenses incurred in connection with the Credit Agreement and the other Loan Documents and the transactions thereunder \$ \_\_\_\_\_
-

- G. Reasonable one-time fees, costs and expenses incurred in connection with a Permitted Acquisition or a successful offering or issuance of Capital Stock, in each case to the extent approved in writing by the Administrative Agent as an 'add-back' to Consolidated EBITDA \$\_\_\_\_\_
- H. Other non-cash items reducing Consolidated Net Income (excluding any such non-cash item to the extent that it represents an accrual or reserve for potential cash items in any future period or amortization of a prepaid cash item that was paid in a prior period) approved by the Administrative Agent in writing as an 'add back' to Consolidated EBITDA \$\_\_\_\_\_
- I. any extraordinary or non-recurring losses, expenses or charges not to exceed \$1,000,000 in the aggregate in any trailing sixth month period (or such higher amounts as may be approved by the Required Lenders as an 'add-back' to Consolidated EBITDA) \$\_\_\_\_\_
- J. The Sum of lines A through I \$\_\_\_\_\_
- K. Other non-cash items increasing Consolidated Net Income for such period (excluding any such non-cash item to the extent it represents the reversal of an accrual or reserve for potential cash item in any prior period) \$\_\_\_\_\_
- L. Interest Income \$\_\_\_\_\_
- M. The Sum of lines K and L \$\_\_\_\_\_
- N. CONSOLIDATED EBITDA (line J minus line M) \$\_\_\_\_\_

Is Line N equal to or greater than \$[\_\_\_\_\_]?

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SCHEDULE 1

NOTICE ADDRESSES OF GUARANTORS

<u>Guarantor</u>	<u>Notice Address</u>
Benefitfocus, Inc.	100 Benefitfocus Way Charleston, SC 29492 Attention: Chief Financial Officer and General Counsel E-Mail: Legal1@benefitfocus.com
Benefitfocus.com, Inc.	100 Benefitfocus Way Charleston, SC 29492 Attention: Chief Financial Officer and General Counsel E-Mail: Legal1@benefitfocus.com
BenefitStore, Inc.	100 Benefitfocus Way Charleston, SC 29492 Attention: Chief Financial Officer and General Counsel E-Mail: Legal1@benefitfocus.com

SCHEDULE 5

LOCATIONS OF EQUIPMENT AND INVENTORY

<u>Grantor</u>	<u>Address Location</u>
Benefitfocus, Inc.	N/A
Benefitfocus.com, Inc.	100 Benefitfocus Way Charleston, SC 29492
	125 Fairchild Street Charleston, SC 29492
	215 Fairchild Street Charleston, SC 29492
	5935 Rivers Avenue North Charleston, SC 29406
	1016 Woods Crossing Road Suite B Greenville, SC 29607
	400 Riverwalk Terrace, Riverwalk Crossing Suites 160, 210, 240 & 250 Jenks, OK 74037 Effective May 1, 2017: 400 Riverwalk Terrace, Riverwalk Crossing Suite 160 Jenks, OK 74037
	TierPoint Hosted Solutions LLC f/k/a Windstream Hosted Solutions LLC 5301 Departure Drive, Suite 111 Raleigh, NC 27616
	TierPoint Hosted Solutions LLC f/k/a Windstream Hosted Solutions LLC 4021 Rose Lake Drive Charlotte, NC 28217
	Exhibit Concepts, Inc. 700 Crossroads Court Vandalia, OH 45377
	Stockade Storage 460 Seven Farms Drive Daniel Island, SC 29492
BenefitStore, Inc.	100 Benefitfocus Way Charleston, SC 29492

**SCHEDULE 6**

**RIGHTS OF THE GRANTORS RELATING TO PATENTS**

Issued Patents of Benefitfocus, Inc.

NONE

Pending Patent Applications of Benefitfocus, Inc.

NONE

Issued Patents and Pending Patent Applications Licensed to Benefitfocus, Inc.

NONE

Issued Patents of Benefitfocus.com, Inc.

<u>Jurisdiction</u>	<u>Patent No.</u>	<u>Issue Date</u>	<u>Inventor</u>	<u>Title</u>
United States	8,412,646	04/02/2013	Theodore C. Tanner, Jr.; Matthew Aldridge; Gregory Jorstad	Systems and methods for automatic creation of agent-based systems
United States	8,572,760	10/29/2013	Theodore C. Tanner, Jr.; Amit Jain	Systems and methods for secure agent information
United States	8,935,705	01/13/2015	Jeremy D. Martin	Execution of highly concurrent processing tasks based on updated dependency data structure at run-time
United States	9,430,504	08/30/2016	Michael Rosier	System and method for dynamically intercepting and adjusting persistence behaviors via runtime configuration
United States	9,454,412	09/27/2016	Michael Rosier	Systems and methods for classifying and analyzing runtime events
Australia	2009298151	10/29/2015	Theodore C. Tanner, Jr.; Matthew Aldridge; Gregory Jorstad	Systems and methods for automatic creation of agent-based systems
China	ZL200980126895.0	09/03/2014	Theodore C. Tanner, Jr.; Matthew Aldridge; Gregory Jorstad	Systems and methods for automatic creation of agent-based systems
China	ZL201180039769.9	07/22/2015	Theodore C. Tanner, Jr.; Amit Jain	Systems and methods for secure agent information

China	ZL201280021183.4	09/21/2016	Jeremy D. Martin	Registration and execution of highly concurrent processing tasks
Hong Kong	HK1179722	01/08/2016	Theodore C. Tanner, Jr.; Amit Jain	Systems and methods for secure agent information
Japan	5690935	02/06/2015	Theodore C. Tanner, Jr.; Amit Jain	Systems and methods for secure agent information
Japan	5989097	08/19/2016	Jeremy D. Martin	Registration and execution of highly concurrent processing tasks
Taiwan	I531973	05/01/2016	Jeremy D. Martin	Registration and execution of highly concurrent processing tasks
Australia	2012256399	03/16/2017	Jeremy D. Martin	Registration and execution of highly concurrent processing tasks

Pending Patent Applications of Benefitfocus.com, Inc.

<u>Jurisdiction</u>	<u>Serial No.</u>	<u>Filing Date</u>	<u>Inventor</u>	<u>Title</u>
United States	13/020,376	02/03/2011	John M. Lunsford	Systems and methods for polymorphic content generation in a multi-application, multi-tenant environment
United States	13/299,112	11/17/2011	William B. Gilbert	Systems and methods for dynamic service integration
United States	13/452,580	04/20/2012	Jason Shaun McDonald	System and method for enabling the styling and adornment of multiple, disparate web pages through remote method calls
United States	14/463,314	08/19/2014	Michael Rosier	Systems and methods for correlating derived metrics for system activity
United States	14/482,437	09/10/2014	Adam Wagner	Systems and methods for a metadata driven user interface framework
PCT	PCT/US2015/045477	08/17/2015	Michael Rosier	Systems and methods for correlating derived metrics for system activity
PCT	PCT/US2015/047882	09/01/2015	Adam Wagner	Systems and methods for a metadata driven user interface framework
PCT	PCT/US2015/048274	09/03/2015	Michael Rosier	System and method for dynamically intercepting and adjusting persistence behaviors via runtime configuration
PCT	PCT/US2015/048822	09/08/2015	Michael Rosier	Systems and methods for classifying and analyzing runtime events

Australia	2011289673	08/08/2011	Theodore C. Tanner, Jr.; Amit Jain	Systems and methods for secure agent information
Australia	2012256399	02/24/2012	Jeremy D. Martin	Registration and execution of highly concurrent processing tasks
Australia	2012337242	10/22/2012	William B. Gilbert	Systems and methods for dynamic service integration
Australia	2013249909	02/14/2013	Jason Shaun McDonald	System and method for enabling the styling and adornment of multiple, disparate web pages through remote method calls
Australia	2015324406	09/08/2015	Michael Rosier	Systems and methods for classifying and analyzing runtime events
Canada	2,726,729	10/05/2009	Theodore C. Tanner, Jr.; Matthew Aldridge; Gregory Jorstad	Systems and methods for automatic creation of agent-based systems
Canada	2,806,461	08/08/2011	Theodore C. Tanner, Jr.; Amit Jain	Systems and methods for secure agent information
Canada	2,868,317	02/14/2013	Jason Shaun McDonald	System and method for enabling the styling and adornment of multiple, disparate web pages through remote method calls
Canada	2,855,191	10/22/2012	William B. Gilbert	Systems and methods for dynamic service integration
Canada	2,829,194	02/24/2012	Jeremy D. Martin	Registration and execution of highly concurrent processing tasks
Canada	N/A	02/01/2017	Michael Rosier	Systems and methods for classifying and analyzing runtime events
China	201280055871.2	10/22/2012	William B. Gilbert	Systems and methods for dynamic service integration
China	201380020635.1	02/14/2013	Jason Shaun McDonald	System and method for enabling the styling and adornment of multiple, disparate web pages through remote method calls
China	201580041662.6	09/08/2015	Michael Rosier	Systems and methods for classifying and analyzing runtime events
Europe	09818612.5	10/05/2009	Theodore C. Tanner, Jr.; Matthew Aldridge; Gregory Jorstad	Systems and methods for automatic creation of agent-based systems
Europe	11816869.0	08/08/2011	Theodore C. Tanner, Jr.; Amit Jain	Systems and methods for secure agent information
Europe	12785376.0	02/24/2012	Jeremy D. Martin	Registration and execution of highly concurrent processing tasks



Europe	12849965.4	10/22/2012	William B. Gilbert	Systems and methods for dynamic service integration
Europe	13777746.0	02/14/2013	Jason Shaun McDonald	System and method for enabling the styling and adornment of multiple, disparate web pages through remote method calls
Europe	15847866.9	09/08/2015	Michael Rosier	Systems and methods for classifying and analyzing runtime events
Hong Kong	See Chinese Patent No. ZL200980126895.0 above	[ ]	Theodore C. Tanner, Jr.; Matthew Aldridge; Gregory Jorstad	Systems and methods for automatic creation of agent-based systems
Hong Kong	14103513.6	02/24/2012	Jeremy D. Martin	Registration and execution of highly concurrent processing tasks
Hong Kong	15101068.8	02/14/2013	Jason Shaun McDonald	System and method for enabling the styling and adornment of multiple, disparate web pages through remote method calls
India	984/DELNP/2013	08/08/2011	Theodore C. Tanner, Jr.; Amit Jain	Systems and methods for secure agent information
India	7410/CHENP/2013	02/24/2012	Jeremy D. Martin	Registration and execution of highly concurrent processing tasks
India	2117/CHENP/2014	10/22/2012	William B. Gilbert	Systems and methods for dynamic service integration
India	8112/DELNP/2014	02/14/2013	Jason Shaun McDonald	System and method for enabling the styling and adornment of multiple, disparate web pages through remote method calls
India	201647044611	09/08/2015	Michael Rosier	Michael Rosier
Japan	2014-542317	10/22/2012	William B. Gilbert	Systems and methods for dynamic service integration
Japan	2015-506985	02/14/2013	Jason Shaun McDonald	System and method for enabling the styling and adornment of multiple, disparate web pages through remote method calls
Japan	2016-574917	09/08/2015	Michael Rosier	Systems and methods for classifying and analyzing runtime events
Taiwan	101142364	11/14/2012	William B. Gilbert	Systems and methods for dynamic service integration
Taiwan	102113431	04/16/2013	Jason Shaun McDonald	System and method for enabling the styling and adornment of multiple, disparate web pages through remote method calls

Taiwan	104122891	07/15/2015	Michael Rosier	Systems and methods for correlating derived metrics for system activity
Taiwan	104129322	09/04/2015	Adam Wagner	Systems and methods for a metadata driven user interface framework
Taiwan	104128936	09/02/2015	Michael Rosier	System and method for dynamically intercepting and adjusting persistence behaviors via runtime configuration
Taiwan	104128937	09/02/2015	Michael Rosier	Systems and methods for classifying and analyzing runtime events
South Korea	10/2013/7029824	02/24/2012	Jeremy D. Martin	Registration and execution of highly concurrent processing tasks
South Korea	10/2014/7012950	10/22/2012	William B. Gilbert	Systems and methods for dynamic service integration

Issued Patents and Pending Patent Applications Licensed to Benefitfocus.com, Inc.

NONE

Issued Patents of BenefitStore, Inc.

NONE

Pending Patent Applications of BenefitStore, Inc.

NONE

Issued Patents and Pending Patent Applications Licensed to BenefitStore, Inc.

NONE

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**RIGHTS OF THE GRANTORS RELATING TO TRADEMARKS**

Registered Trademarks of Benefitfocus, Inc.

NONE

Pending Trademark Applications of Benefitfocus, Inc.

NONE

Registered Trademarks and Pending Trademark Applications Licensed to Benefitfocus, Inc.

NONE

Registered Trademarks of Benefitfocus.com, Inc.

<u>Jurisdiction</u>	<u>Registration No.</u>	<u>Registration Date</u>	<u>Filing Date</u>	<u>Registered Owner</u>	<u>Mark</u>
United States	4649999	12/02/2014	07/22/2013	Benefitfocus.com, Inc.	HR INTOUCH
United States	4565511	07/08/2014	07/22/2013	Benefitfocus.com, Inc.	BENEFITFOCUS
United States	4527136	05/06/2014	07/19/2013	Benefitfocus.com, Inc.	ALL YOUR BENEFITS. IN YOUR POCKET.
United States	4261142	12/18/2012	04/30/2012	Benefitfocus.com, Inc.	HR INTOUCH MARKETPLACE
United States	4261146	12/18/2012	04/30/2012	Benefitfocus.com, Inc.	HR INTOUCH
United States	4111384	03/13/2012	06/30/2011	Benefitfocus.com, Inc.	SHOP ENROLL MANAGE EXCHANGE
United States	4102028	02/21/2012	06/30/2011	Benefitfocus.com, Inc.	ALL YOUR BENEFITS. ONE PLACE.
United States	3826875	08/03/2010	12/12/2008	Benefitfocus.com, Inc.	ICYOU
United States	3578457	02/24/2009	05/16/2007	Benefitfocus.com, Inc.	
United States	2496059	10/09/2001	08/04/2000	Benefitfocus.com, Inc.	BENEFITFOCUS
United States	4758876	06/23/2015	07/21/2014	Benefitfocus.com, Inc.	ONE PLACE
Australia	International Reg. No. 1106495 Trademark No. 1476309	12/30/2011	12/30/2011	Benefitfocus.com, Inc.	BENEFITFOCUS

Australia	International Reg. No. 1142954 Trademark No. 1534903	10/22/2012	10/22/2012	Benefitfocus.com, Inc.	HR INTOUCH MARKETPLACE
Australia	International Reg. 1138700 Trademark No. 1531065	10/22/2012	10/22/2012	Benefitfocus.com, Inc.	HR INTOUCH
Australia	International Reg. 1181498 Trademark No. 1591173	10/01/2013	10/01/2013	Benefitfocus.com, Inc.	HR INTOUCH
Australia	International Reg. 1191605 Trademark No. 1605589	12/31/2013	12/31/2013	Benefitfocus.com, Inc.	ALL YOUR BENEFITS. IN YOUR POCKET.
Australia	International Reg. No. 1182012 Trademark No. 1591274	10/01/2013	10/01/2013	Benefitfocus.com, Inc.	BENEFITFOCUS
Canada	TMA855701	07/19/2013	01/31/2012	Benefitfocus.com, Inc.	BENEFITFOCUS
Canada	TMA867347	12/16/2013	10/30/2012	Benefitfocus.com, Inc.	HR INTOUCH
Canada	TMA867346	12/16/2013	10/29/2012	Benefitfocus.com, Inc.	HR INTOUCH MARKETPLACE
Canada	TMA911121	08/13/2015	12/19/2013	Benefitfocus.com, Inc.	BENEFITFOCUS
Canada	TMA911122	08/13/2015	12/19/2013	Benefitfocus.com, Inc.	HR INTOUCH
Canada	TMA962882	2/15/2017	1/17/2014	Benefitfocus.com, Inc.	ALL YOUR BENEFITS. IN YOUR POCKET.
China	14158487	04/21/2015	03/12/2014	Benefitfocus.com, Inc.	BENEFITFOCUS
China	14158486	04/21/2015	03/12/2014	Benefitfocus.com, Inc.	BENEFITFOCUS
India	International Reg. No. 1191605	12/31/2013	12/31/2013	Benefitfocus.com, Inc.	ALL YOUR BENEFITS. IN YOUR POCKET.
India	International Reg. No. 1182012	10/01/2013	10/01/2013	Benefitfocus.com, Inc.	BENEFITFOCUS
India	International Reg. No. 1181498	10/01/2013	10/01/2013	Benefitfocus.com, Inc.	HR INTOUCH

Ireland	International Reg. No. 1106495	12/30/2011	12/30/2011	Benefitfocus.com, Inc.	BENEFITFOCUS
Ireland	International Reg. No. 1138700	10/22/2012	10/22/2012	Benefitfocus.com, Inc.	HR INTOUCH
Ireland	International Reg. No. 1181498	10/01/2013	10/01/2013	Benefitfocus.com, Inc.	HR INTOUCH
Ireland	International Reg. No. 1142954	10/22/2012	10/22/2012	Benefitfocus.com, Inc.	HR INTOUCH MARKETPLACE
Ireland	International Reg. No. 1182012	10/01/2013	10/1/2013	Benefitfocus.com, Inc.	BENEFITFOCUS
Israel	International Reg. No. 1106495	12/30/2011	12/30/2011	Benefitfocus.com, Inc.	BENEFITFOCUS
Israel	International Reg. No. 1182012	10/01/2013	10/01/2013	Benefitfocus.com, Inc.	BENEFITFOCUS
Israel	International Reg. No. 1191605	12/31/2013	12/31/2013	Benefitfocus.com, Inc.	ALL YOUR BENEFITS. IN YOUR POCKET.
New Zealand	International Reg. No. 1191605	12/31/2013	12/31/2013	Benefitfocus.com, Inc.	ALL YOUR BENEFITS. IN YOUR POCKET.
New Zealand	International Reg. No. 1182012	10/01/2013	10/01/2013	Benefitfocus.com, Inc.	BENEFITFOCUS
New Zealand	International Reg. No. 1181498	10/01/2013	10/01/2013	Benefitfocus.com, Inc.	HR INTOUCH
New Zealand	967599	04/24/2013	10/23/2012	Benefitfocus.com, Inc.	HR INTOUCH
New Zealand	967600	04/24/2013	10/23/2012	Benefitfocus.com, Inc.	HR INTOUCH MARKETPLACE
South Africa	2012/28642	03/13/2015	10/23/2012	Benefitfocus.com, Inc.	HR INTOUCH
South Africa	2013/27350	09/28/2015	10/02/2013	Benefitfocus.com, Inc.	BENEFITFOCUS
South Africa	2013/27351	09/28/2015	10/02/2013	Benefitfocus.com, Inc.	HR INTOUCH
South Africa	2014/00310	07/30/2015	01/07/2014	Benefitfocus.com, Inc.	ALL YOUR BENEFITS. IN YOUR POCKET.
United Kingdom	International Reg. No. 1142954	10/22/2012	10/22/2012	Benefitfocus.com, Inc.	HR INTOUCH MARKETPLACE
United Kingdom	International Reg. No. 1138700	10/22/2012	10/22/2012	Benefitfocus.com, Inc.	HR INTOUCH
United Kingdom	International Reg. No. 1106495	12/30/2011	12/30/2011	Benefitfocus.com, Inc.	BENEFITFOCUS

United Kingdom	International Reg. No. 1181498	10/01/2013	10/01/2013	Benefitfocus.com, Inc.	HR INTOUCH
United Kingdom	International Reg. No. 1191605	12/31/2013	12/31/2013	Benefitfocus.com, Inc.	ALL YOUR BENEFITS. IN YOUR POCKET.
United Kingdom	International Reg. No. 1182012	10/01/2013	10/01/2013	Benefitfocus.com, Inc.	BENEFITFOCUS
World Intellectual Property Organization	International Reg. No. 1142954	10/22/2012	10/22/2012	Benefitfocus.com, Inc.	HR INTOUCH MARKETPLACE
World Intellectual Property Organization	International Reg. No. 1138700	10/22/2012	10/22/2012	Benefitfocus.com, Inc.	HR INTOUCH
World Intellectual Property Organization	International Reg. No. 1106495	12/30/2011	12/30/2011	Benefitfocus.com, Inc.	BENEFITFOCUS
World Intellectual Property Organization	International Reg. No. 1191605	12/31/2013	12/31/2013	Benefitfocus.com, Inc.	ALL YOUR BENEFITS. IN YOUR POCKET.
World Intellectual Property Organization	International Reg. No. 1182012	10/01/2013	10/01/2013	Benefitfocus.com, Inc.	BENEFITFOCUS
World Intellectual Property Organization	International Reg. No. 1181498	10/01/2013	10/01/2013	Benefitfocus.com, Inc.	HR INTOUCH

Pending Trademark Applications of Benefitfocus.com, Inc.

<u>Jurisdiction</u>	<u>Application No.</u>	<u>Filing Date</u>	<u>Applicant</u>	<u>Mark</u>
United States	86/923,373	02/29/2016	Benefitfocus.com, Inc.	BENEFITFOCUS
Canada	1660145	01/17/2014	Benefitfocus.com, Inc.	ALL YOUR BENEFITS. IN YOUR POCKET.
Canada	1797920	08/29/2016	Benefitfocus.com, Inc.	BENEFITFOCUS
India	2419567	10/30/2012	Benefitfocus.com, Inc.	HR INTOUCH
India	2419568	10/30/2012	Benefitfocus.com, Inc.	HR INTOUCH MARKETPLACE
South Africa	2012/28643	10/23/2012	Benefitfocus.com, Inc.	HR INTOUCH MARKETPLACE
South Africa	2016/24461	08/29/2016	Benefitfocus.com, Inc.	BENEFITFOCUS
South Africa	2016/24462	08/29/2016	Benefitfocus.com, Inc.	BENEFITFOCUS
World Intellectual Property Organization	A0061183	08/29/2016	Benefitfocus.com, Inc.	BENEFITFOCUS

Registered Trademarks and Pending Trademark Applications Licensed to Benefitfocus.com, Inc.

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NONE

Registered Trademarks of BenefitStore, Inc.

NONE

Pending Trademark Applications of BenefitStore, Inc.

NONE

Registered Trademarks and Pending Trademark Applications Licensed to BenefitStore, Inc.

NONE

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**RIGHTS OF THE GRANTORS RELATING TO COPYRIGHTS**

Registered Copyrights of Benefitfocus, Inc.

NONE

Pending Copyright Applications of Benefitfocus, Inc.

NONE

Registered Copyrights and Pending Copyright Applications Licensed to Benefitfocus, Inc.

NONE

Registered Copyrights of Benefitfocus.com, Inc.

<u>Jurisdiction</u>	<u>Registration No.</u>	<u>Registration Date</u>	<u>Work of Authorship</u>
United States	TX0006032200	11/14/2001	Benefit focus online enrollment and data exchange service application.
United States	TX0006032199	11/14/2001	Benefit focus online enrollment and data exchange services application version 1.14.
United States	V9921D265	02/25/2015	Benefit focus online enrollment and data exchange service application & 1 other title.

Pending Copyright Applications of Benefitfocus.com, Inc.

NONE

Registered Copyrights and Pending Copyright Applications Licensed to Benefitfocus.com, Inc.

NONE

Registered Copyrights of BenefitStore, Inc.

NONE

Pending Copyright Applications of BenefitStore, Inc.

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NONE

Registered Copyrights and Pending Copyright Applications Licensed to BenefitStore, Inc.

NONE

**OTHER LICENSE RIGHTS RELATING TO INTELLECTUAL PROPERTY**

1. Benefitfocus.com, Inc. grants licenses in the ordinary course for the use of its software to its customers pursuant to Terms of Use, Master Services Agreements and related Software License and Service Agreements.
2. Benefitfocus.com, Inc. licenses certain Intellectual Property rights from Oracle America, Inc. pursuant to that Ordering Document, effective November 22, 2013, by and between Arrow Enterprise Computing Solutions Inc., CDW Logistics, Inc., Oracle America, Inc. and Benefitfocus.com, Inc. (incorporating by reference the Oracle Master Agreement, US-OMA-68046).
3. Benefitfocus.com, Inc. licenses certain Intellectual Property rights from John Hopkins University pursuant to that ACG Consultant Production License and Professional Services Agreement, dated May 2, 2011.

2122784.5

## SEVENTH AMENDMENT AGREEMENT

This Seventh Amendment Agreement (this "**Amendment**") is entered into this 29<sup>th</sup> day of March 2018, by and among **BENEFITFOCUS, INC.**, a Delaware corporation (the "**Parent**"), **BENEFITFOCUS.COM, INC.**, a South Carolina corporation ("**Benefitfocus.com**"), and **BENEFITSTORE, INC.**, a South Carolina corporation ("**BenefitStore**", and together with the Parent and Benefitfocus.com, each individually, a "**Borrower**", and collectively, the "**Borrowers**"), the several banks and other financial institutions or entities party hereto (each a "**Lender**" and, collectively, the "**Lenders**"), and **SILICON VALLEY BANK**, as administrative agent and collateral agent for the Lenders (in such capacity, the "**Administrative Agent**").

## RECITALS

**A.** The Borrowers, the Lenders and the Administrative Agent have entered into that certain Credit Agreement dated as of February 20, 2015, as amended pursuant to that certain First Amendment Agreement dated June 16, 2015, pursuant to that certain Second Amendment Agreement dated December 18, 2015, pursuant to that certain Third Amendment Agreement dated March 24, 2016, pursuant to that certain Fourth Amendment Agreement dated October 28, 2016, pursuant to that certain Fifth Amendment Agreement dated December 12, 2016 and pursuant to that certain Sixth Amendment Agreement dated April 26, 2017 (as amended and as the same may from time to time be further amended, modified, supplemented or restated, the "**Credit Agreement**"), pursuant to which the Lenders have extended credit to the Borrowers for the purposes permitted in the Credit Agreement.

**B.** The Borrowers have requested and the Required Lenders and the Administrative Agent agree to modify and amend certain terms and conditions of the Credit Agreement to account for Borrowers' adoption of ASC 606.

## AGREEMENT

**NOW, THEREFORE**, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and intending to be legally bound, the parties hereto agree as follows:

**1. Definitions.** Capitalized terms used but not defined in this Amendment shall have the meanings given to them in the Credit Agreement.

**2. Amendments to Loan Documents.**

**2.1 Amendments to Credit Agreement.**

**2.1.1. Section 1.1 (Defined Terms).**

(a) The definition of "**Consolidated EBITDA**" is amended and restated in its entirety as follows:

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“**Consolidated EBITDA**”: with respect to the Parent and its consolidated Subsidiaries for any trailing twelve month period for which a calculation is to be made under this Agreement, (a) the sum, without duplication, of the amounts for such period of (i) Consolidated Net Income, plus (ii) Consolidated Interest Expense, plus (iii) provisions for taxes based on income, plus (iv) total depreciation expense, plus (v) total amortization expense, plus (vi) non-cash compensation expense, plus (vii) the fees, costs and expenses incurred in connection with this Agreement and the other Loan Documents and the transactions hereunder and thereunder, plus (viii) reasonable one-time fees, costs and expenses incurred in connection with a Permitted Acquisition or a successful offering or issuance of Capital Stock, in each case to the extent approved in writing by the Administrative Agent as an ‘add-back’ to Consolidated EBITDA, plus (ix) other non-cash items reducing Consolidated Net Income (excluding any such non-cash item to the extent that it represents an accrual or reserve for potential cash items in any future period or amortization of a prepaid cash item that was paid in a prior period) approved by the Administrative Agent in writing as an ‘add back’ to Consolidated EBITDA, plus (x) any extraordinary or non-recurring losses, expenses or charges in connection with the transition to ASC 606 or otherwise not to exceed \$2,000,000 in the aggregate for such trailing twelve month period (or such higher amounts as may be approved by the Required Lenders as an ‘add-back’ to Consolidated EBITDA), minus (b) the sum, without duplication of the amounts for such period of (i) other non-cash items increasing Consolidated Net Income for such period (excluding any such non-cash item to the extent it represents the reversal of an accrual or reserve for potential cash item in any prior period), plus (ii) interest income.”

(b) The definition of “**Recurring Revenue**” is amended and restated in its entirety as follows:

“**Recurring Revenue**”: the Borrowers’ software services revenue and professional services revenue related to the Benefit Service Center business line as currently classified and presented in the Parent’s consolidated GAAP financial statements (e.g. monthly managed services, testing services, maintenance, license fees, video, voluntary benefits) that in each case meets all of the Borrowers’ representations and warranties set forth in the Loan Documents. Monthly revenue from the Benefitstore business line shall be calculated based on the average trailing twelve months period.

(c) The following definitions are added in their appropriate alphabetical position:

“**ASC 606**”: Accounting Standards Codification (ASC) Topic 606: Revenue from Contracts with Customers issued by the Financial Accounting Standards Board.

“**Seventh Amendment**”: the Seventh Amendment Agreement by and among the Borrowers, the Lenders and the Administrative Agent, dated as of March 29, 2018.

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“**Seventh Amendment Effective Date**”: as defined in the Seventh Amendment.

(d) Section 7.1(b) of the Credit Agreement (Minimum Consolidated EBITDA) is hereby amended and restated as follows:

“Minimum Consolidated EBITDA. Permit Consolidated EBITDA for any quarter specified below, as calculated on a trailing twelve (12) months basis, to be less than the correlative amount specified below:

<u>Quarter Ending</u>	<u>Minimum Consolidated EBITDA for Applicable Trailing Twelve Month Period</u>
March 31, 2018	\$(15,100,000)
June 30, 2018	\$(14,700,000)
September 30, 2018	\$(10,300,000)
December 31, 2018	\$(2,200,000)
March 31, 2019	\$1,800,000
June 30, 2019	\$5,200,000
September 30, 2019	\$9,000,000
December 31, 2019	\$13,100,000”

**2.1.3. Exhibit B (Form of Compliance Certificate).** Exhibit B to the Credit Agreement is hereby deleted in its entirety and the Exhibit A attached hereto is substituted in its stead.

**3. [Reserved].**

**4. Conditions Precedent to Effectiveness.** This Amendment shall not be effective until each of the following conditions precedent have been fulfilled to the satisfaction of (and in form and substance satisfactory to, as applicable) the Administrative Agent (such date, the “**Seventh Amendment Effective Date**”):

**4.1** This Amendment shall have been duly executed and delivered by the respective parties hereto. The Administrative Agent shall have received a fully executed copy hereof.

**4.2** All necessary consents and approvals to this Amendment shall have been obtained by the Loan Parties.

**4.3** After giving effect to this Amendment and subject to the qualifications set forth in Section 6.1, each of the representations and warranties herein and in the Credit Agreement and the other Loan Documents (i) that is qualified by materiality shall be true and correct, and (ii)

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that is not qualified by materiality, shall be true and correct in all material respects, in each case, on and as of the Seventh Amendment Effective Date as if made on and as of such date, except to the extent any such representation and warranty expressly relates to an earlier date, in which case such representation and warranty shall have been true and correct in all material respects as of such earlier date.

**4.4** The payment by the Borrower to the Administrative Agent, for the ratable benefit of each Lender party to this amendment based on such Lender's Revolving Percentage, an amendment fee equal to .10% of the Revolving Commitment of each Lender party hereto.

For purposes of determining compliance with the conditions specified in this Section 4, each Lender that has executed this Amendment shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter either sent (or made available) by the Administrative Agent to such Lender for consent, approval, acceptance or satisfaction, or required thereunder to be consented to or approved by or acceptable or satisfactory to such Lender, unless an officer of the Administrative Agent responsible for the transactions contemplated by the Loan Documents shall have received notice from such Lender prior to the Seventh Amendment Effective Date specifying such Lender's objection thereto and such objection shall not have been withdrawn by notice to the Administrative Agent to that effect on or prior to the Seventh Amendment Effective Date.

#### **5. Limitation of Amendment.**

**5.1** The amendments set forth in **Section 2**, above, are effective for the purposes set forth herein and shall be limited precisely as written and shall not be deemed to (a) be a consent to any amendment, waiver or modification of any other term or condition of any Loan Document, or (b) otherwise prejudice any right or remedy which the Administrative Agent or the Lenders may now have or may have in the future under or in connection with any Loan Document.

**5.2** This Amendment shall be construed in connection with and as part of the Loan Documents and all terms, conditions, representations, warranties, covenants and agreements set forth in the Loan Documents, except as herein amended, are hereby ratified and confirmed and shall remain in full force and effect.

**6. Representations and Warranties.** To induce the Administrative Agent and the Required Lenders to enter into this Amendment, the Borrowers hereby represent and warrant as follows:

**6.1** Immediately after giving effect to this Amendment (a) the representations and warranties contained in the Loan Documents are true, accurate and complete in all material respects as of the date hereof (except to the extent such representations and warranties relate to an earlier date, in which case they are true and correct as of such date), it being understood and agreed that: (i) the Borrowers are not required to update Schedules to the Loan Documents except to reflect material changes in the information contained therein since the date on which such Schedules were most recently updated, and (ii) the financial information provided by the Borrowers to the Administrative Agent and the Lenders in connection with this Amendment and reflecting changes in financial results due to the Borrowers' adoption of ASC 606 constitutes the Borrowers' good faith estimate thereof, it being recognized by the Administrative Agent and the

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Lenders that such estimated financial results, once audited, may differ materially from the financial results provided to the Administrative Agent and the Lenders in connection with this Amendment; and (b) no Event of Default has occurred and is continuing;

**6.2** Each Borrower has the power and authority to execute and deliver this Amendment and to perform its obligations under the Credit Agreement, as amended by this Amendment;

**6.3** The execution and delivery by each Borrower of this Amendment and the performance by such Borrower of its obligations under the Credit Agreement, as amended by this Amendment, have been duly authorized;

**6.4** The execution and delivery by each Borrower of this Amendment and the performance by each Borrower of its obligations under the Credit Agreement, as amended by this Amendment, do not and will not contravene (a) any law or regulation binding on or affecting such Borrower, (b) any contractual restriction with a Person binding on such Borrower, (c) any order, judgment or decree of any court or other governmental or public body or authority, or subdivision thereof, binding on such Borrower, or (d) the organizational documents of such Borrower;

**6.5** The execution and delivery by each Borrower of this Amendment and the performance by such Borrower of its obligations under the Credit Agreement, as amended by this Amendment, do not require any order, consent, approval, license, authorization or validation of, or filing, recording or registration with, or exemption by any governmental or public body or authority, or subdivision thereof, binding on such Borrower, except as already has been obtained or made; and

**6.6** This Amendment has been duly executed and delivered by each Borrower and is the binding obligation of such Borrower, enforceable against such Borrower in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, liquidation, moratorium or other similar laws of general application and equitable principles relating to or affecting creditors' rights.

**7. No Defenses of Borrowers.** Each Borrower hereby acknowledges and agrees that such Borrower has no offsets, defenses, claims, or counterclaims against the Administrative Agent or any Lender with respect to the Obligations, or otherwise, and that if such Borrower now has, or ever did have, any offsets, defenses, claims, or counterclaims against the Administrative Agent or any Lender, whether known or unknown, at law or in equity, all of them are hereby expressly WAIVED and such Borrower hereby RELEASES the Administrative Agent and each Lender from any liability thereunder.

**8. Integration.** This Amendment and the Loan Documents represent the entire agreement about this subject matter and supersede prior negotiations or agreements. All prior agreements, understandings, representations, warranties, and negotiations between the parties about the subject matter of this Amendment and the Loan Documents merge into this Amendment and the Loan Documents.

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**9. Counterparts.** This Amendment may be executed in any number of counterparts and all of such counterparts taken together shall be deemed to constitute one and the same instrument.

**10. Effect on Loan Documents.**

**10.1** The amendments set forth herein shall be limited precisely as written and shall not be deemed (a) to be a forbearance, waiver, or modification of any other term or condition of the Credit Agreement or of any Loan Documents or to prejudice any right or remedy which the Administrative Agent may now have or may have in the future under or in connection with the Loan Documents; (b) to be a consent to any future consent or modification, forbearance, or waiver to the Credit Agreement or any other Loan Document, or to any waiver of any of the provisions thereof; or (c) to limit or impair the Administrative Agent's right to demand strict performance of all terms and covenants as of any date. The Borrowers, on behalf of each Loan Party, hereby ratify and reaffirm the Borrowers' obligations under the Credit Agreement and each Loan Party's obligations under each other Loan Document to which it is a party and agrees that none of the amendments or modifications to the Credit Agreement set forth in this Amendment shall impair any Loan Party's obligations under the Loan Documents or the Administrative Agent's rights under the Loan Documents. The Borrowers, on behalf of each Loan Party, hereby further ratify and reaffirm the validity and enforceability of all of the Liens heretofore granted, pursuant to and in connection with the Guarantee and Collateral Agreement or any other Loan Document to the Administrative Agent on behalf and for the benefit of the Secured Parties, as collateral security for the obligations under the Loan Documents, in accordance with their respective terms, and acknowledge that all of such Liens, and all collateral heretofore pledged as security for such obligations, continues to be and remain collateral for such obligations (as amended hereby) from and after the date hereof. The Borrowers, on behalf of each Loan Party, acknowledge and agree that the Credit Agreement and each other Loan Document is still in full force and effect and acknowledge as of the date hereof that no Loan Party has any defenses to enforcement of the Loan Documents. The Borrowers, on behalf of each Loan Party, waive any and all defenses to enforcement of the Credit Agreement as amended hereby and each other Loan Document that might otherwise be available as a result of this Amendment. To the extent any terms or provisions of this Amendment conflict with those of the Credit Agreement or other Loan Documents, the terms and provisions of this Amendment shall control.

**10.2** To the extent that any terms and conditions in any of the Loan Documents shall contradict or be in conflict with any terms or conditions of the Credit Agreement, after giving effect to this Amendment, such terms and conditions are hereby deemed modified or amended accordingly to reflect the terms and conditions of the Credit Agreement as modified or amended hereby.

**10.3** This Amendment is a Loan Document.

**11. Severability.** The provisions of this Amendment are severable, and if any clause or provision shall be held invalid or unenforceable in whole or in part in any jurisdiction, then such invalidity or unenforceability shall affect only such clause or provision, or part thereof, in such jurisdiction and shall not in any manner affect such clause or provision in any other jurisdiction, or any other clause or provision in this Amendment in any jurisdiction.

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**12. Choice of Law.** Section 10.13 and Section 10.14 of the Credit Agreement are hereby incorporated by reference in their entirety *mutatis mutandis*.

[Signature page follows.]

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IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed and delivered as of the date first written above.

BORROWERS:

**BENEFITFOCUS.COM, INC.**

By: /s/ Jonathon E. Dussault  
Name: Jonathon E. Dussault  
Title: Chief Financial Officer

**BENEFITFOCUS, INC.**

By: /s/ Jonathon E. Dussault  
Name: Jonathon E. Dussault  
Title: Chief Financial Officer

**BENEFITSTORE, INC.**

By: /s/ Jonathon E. Dussault  
Name: Jonathon E. Dussault  
Title: Chief Financial Officer

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**SILICON VALLEY BANK**, as Administrative Agent and as a Lender

By: /s/ Dipika Solanki

Name: Dipika Solanki

Title: Vice President

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COMERICA BANK, as a Lender

By /s/ John Benetti  
Name: John Benetti  
Title: SVP

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**PACIFIC WESTERN BANK**, as a Lender

By /s/ Stephen J. Pievers

Name: Stephen J. Pievers

Title: SVP

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**GOLDMAN SACHS LENDING PARTNERS LLC, as a Lender**

By /s/ Chris Lam

Name: Chris Lam

Title: Authorized Signatory

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## FORM OF COMPLIANCE CERTIFICATE

BENEFITFOCUS, INC.  
 BENEFITFOCUS.COM, INC.  
 BENEFITSTORE, INC.

Date: \_\_\_\_\_, 20\_\_\_\_

1. This Compliance Certificate is delivered pursuant to Section 6.2(b) of that certain Credit Agreement, dated as of February 20, 2015, by and among **BENEFITFOCUS, INC.**, a Delaware corporation ("**Parent**"), **BENEFITFOCUS.COM, INC.**, a South Carolina corporation ("**Benefitfocus.com**"), and **BENEFITSTORE, INC.**, a South Carolina corporation ("**BenefitStore**", and together with Parent and Benefitfocus.com, each individually, a "**Borrower**", and collectively, the "**Borrowers**"), the several banks and other financial institutions or entities from time to time parties thereto (each a "**Lender**" and, collectively, the "**Lenders**"), **SILICON VALLEY BANK**, as the Issuing Lender and the Swingline Lender, **SILICON VALLEY BANK ("SVB")**, as administrative agent and collateral agent for the Lenders (in such capacity, the "**Administrative Agent**") and **COMERICA BANK**, as documentation agent (in such capacity, the "**Documentation Agent**") (as amended, restated, amended and restated, supplemented, restructured or otherwise modified from time to time, the "**Credit Agreement**"). Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

2. The undersigned, a duly authorized and acting Responsible Officer of Parent, hereby certifies, in his/her capacity as an officer of Parent, and not in any personal capacity, as follows:

3. I have reviewed and am familiar with the contents of this Compliance Certificate.

4. I have reviewed the terms of the Credit Agreement and the other Loan Documents and have made, or caused to be made under my supervision, a review in reasonable detail of the transactions and condition of Parent and its Subsidiaries during the accounting period covered by the financial statements attached hereto as Attachment 1 (the "**Financial Statements**"). Except as set forth on Attachment 2, such review did not disclose the existence during or at the end of the accounting period covered by the Financial Statements, and I have no knowledge of the existence as of the date of this Compliance Certificate, of any condition or event which constitutes a Default or an Event of Default.

5. Attached hereto as Attachment 3 are the computations showing compliance with the covenants set forth in Section 7.1 of the Credit Agreement.

6. [To the extent not previously disclosed to the Administrative Agent, a description of any change in the jurisdiction of organization of any Loan Party.]

7. [To the extent not previously disclosed to the Administrative Agent, a list of any material patents, registered trademarks or registered copyrights issued to or acquired by any Loan Party since [the Closing Date][the date of the most recent report delivered].]

*[Remainder of page intentionally left blank; signature page follows]*

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IN WITNESS WHEREOF, I have executed this Compliance Certificate as of the date first written above.

**PARENT**, for itself and on behalf of each other Borrower:

**BENEFITFOCUS, INC.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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[Attach Financial Statements]

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Except as set forth below, no Default or Event of Default has occurred. [If a Default or Event of Default has occurred, the following describes the nature of the Default or Event of Default in reasonable detail and the steps, if any, being taken or contemplated by the Borrowers to be taken on account thereof.]

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Preliminary Note to Compliance Certificate Calculations

The information described herein is as of [\_\_\_\_\_, \_\_\_\_] (the "**Statement Date**"), and pertains to the subject period described below.

(a) **Minimum Liquidity.**

Required: Not permit Liquidity at any time, as tested on the last day of each month, to be less than \$40,000,000; provided that at least \$25,000,000 must consist of unrestricted cash and Cash Equivalents (including short term marketable securities) satisfying the requirements of clause (i) of the definition of Liquidity.

Actual:

A. The Available Revolving Commitment as of the Statement Date \$\_\_\_\_\_

B. The aggregate amount of unrestricted cash and Cash Equivalents (including short term marketable securities) held by the Borrowers and the Guarantors in Deposit Accounts or Securities Accounts maintained with SVB or SVB's Affiliates or another Lender or an Affiliate thereof, or with National Bank of South Carolina ("**NBSC**", provided that the aggregate amounts held in deposit accounts with NBSC shall not exceed \$6,500,000 at any time), and in each case subject to a first priority lien in favor of the Administrative Agent, including, without limitation, pursuant to a Deposit Account Control Agreement with respect to each such Deposit Account or Securities Account Control Agreement with respect to each such Securities Account; provided that, in connection with any calculation of Liquidity required hereunder, at least \$25,000,000 must consist of unrestricted cash and Cash Equivalents (including short term marketable securities) satisfying the requirements of clause (i) of the definition of Liquidity. \$\_\_\_\_\_

C. MINIMUM LIQUIDITY (the sum of line A plus line B) \$\_\_\_\_\_

Does line C consist of not less than \$25,000,000 of unrestricted cash and Cash Equivalents (including short term marketable securities) satisfying the requirements of clause (i) of the definition of Liquidity?

\_\_\_\_\_ No, not in Compliance                      \_\_\_\_\_ Yes, in Compliance

Is line C equal to or greater than \$40,000,000?

\_\_\_\_\_ No, not in Compliance                      \_\_\_\_\_ Yes, in Compliance

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(b) Minimum Consolidated EBITDA.

Required: Permit Consolidated EBITDA for any quarter specified below, as calculated on a trailing twelve (12) months basis, to be less than the correlative amount specified below:

<b>Quarter Ending</b>	<b>Minimum Consolidated EBITDA for Applicable Trailing Twelve Month Period</b>
March 31, 2018	\$(15,100,000)
June 30, 2018	\$(14,700,000)
September 30, 2018	\$(10,300,000)
December 31, 2018	\$(2,200,000)
March 31, 2019	\$1,800,000
June 30, 2019	\$5,200,000
September 30, 2019	\$9,000,000
December 31, 2019	\$13,100,000

Actual: All amounts measured on a trailing twelve month basis:

- A. Consolidated Net Income \$ \_\_\_\_\_
  - B. Consolidated Interest Expense \$ \_\_\_\_\_
  - C. Provisions for taxes based on income \$ \_\_\_\_\_
  - D. Total depreciation and amortization expense \$ \_\_\_\_\_
  - E. Non-cash compensation expense \$ \_\_\_\_\_
  - F. The fees, costs and expenses incurred in connection with the Credit Agreement and the other Loan Documents and the transactions thereunder \$ \_\_\_\_\_
  - G. Reasonable one-time fees, costs and expenses incurred in connection with a Permitted Acquisition or a successful offering or issuance of Capital Stock, in each case to the extent approved in writing by the Administrative Agent as an 'add-back' to Consolidated EBITDA \$\$ \_\_\_\_\_
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- H. Other non-cash items reducing Consolidated Net Income (excluding any such non-cash item to the extent that it represents an accrual or reserve for potential cash items in any future period or amortization of a prepaid cash item that was paid in a prior period) approved by the Administrative Agent in writing as an 'add back' to Consolidated EBITDA \$\_\_\_\_\_
  
- I. any extraordinary or non-recurring losses, expenses or charges in connection with the transition to ASC 606 or otherwise not to exceed \$2,000,000 in the aggregate for such trailing twelve month period (or such higher amounts as may be approved by the Required Lenders as an 'add-back' to Consolidated EBITDA) \$\_\_\_\_\_
  
- J. The Sum of lines A through I \$\_\_\_\_\_
  
- K. Other non-cash items increasing Consolidated Net Income for such period (excluding any such non-cash item to the extent it represents the reversal of an accrual or reserve for potential cash item in any prior period) \$\_\_\_\_\_
  
- L. Interest Income \$\_\_\_\_\_
  
- M. The Sum of lines K and L \$\_\_\_\_\_
  
- N. CONSOLIDATED EBITDA (line J minus line M) \$\_\_\_\_\_

Is Line N equal to or greater than \$[\_\_\_\_\_]?

\_\_\_\_\_ No, not in Compliance

\_\_\_\_\_ Yes, in Compliance

## EIGHTH AMENDMENT AGREEMENT

This Eighth Amendment Agreement (this "**Amendment**") is entered into this 19th day of December 2018, by and among **BENEFITFOCUS, INC.**, a Delaware corporation (the "**Parent**"), **BENEFITFOCUS.COM, INC.**, a South Carolina corporation ("**Benefitfocus.com**"), and **BENEFITSTORE, INC.**, a South Carolina corporation ("**BenefitStore**"), and together with the Parent and Benefitfocus.com, each individually, a "**Borrower**", and collectively, the "**Borrowers**", the several banks and other financial institutions or entities party hereto (each a "**Lender**" and, collectively, the "**Lenders**"), and **SILICON VALLEY BANK**, as administrative agent and collateral agent for the Lenders (in such capacity, the "**Administrative Agent**").

## RECITALS

**A.** The Borrowers, the Lenders and the Administrative Agent have entered into that certain Credit Agreement dated as of February 20, 2015, as amended pursuant to that certain First Amendment Agreement dated June 16, 2015, pursuant to that certain Second Amendment Agreement dated December 18, 2015, pursuant to that certain Third Amendment Agreement dated March 24, 2016, pursuant to that certain Fourth Amendment Agreement dated October 28, 2016, pursuant to that certain Fifth Amendment Agreement dated December 12, 2016, pursuant to that certain Sixth Amendment Agreement dated April 26, 2017 and pursuant to that Seventh Amendment Agreement dated March 29, 2018 (as amended and as the same may from time to time be further amended, modified, supplemented or restated, the "**Credit Agreement**"), pursuant to which the Lenders have extended credit to the Borrowers for the purposes permitted in the Credit Agreement.

**B.** The Borrowers have requested and the Required Lenders and the Administrative Agent agree to modify and amend certain terms and conditions of the Credit Agreement.

## AGREEMENT

**NOW, THEREFORE**, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and intending to be legally bound, the parties hereto agree as follows:

- 1. Definitions.** Capitalized terms used but not defined in this Amendment shall have the meanings given to them in the Credit Agreement.
  - 2. Amendments to Credit Agreement.** The Credit Agreement is hereby amended by deleting the stricken text (indicated textually in the same manner as the following example: ~~stricken text~~) and adding the double-underlined text (indicated textually in the same manner as the following example: double-underlined text) as set forth in the amended Credit Agreement attached as Exhibit A hereto.
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**3. Conditions Precedent to Effectiveness.** This Amendment shall not be effective until each of the following conditions precedent have been fulfilled to the satisfaction of (and in form and substance satisfactory to, as applicable) the Administrative Agent (such date, the “*Eighth Amendment Effective Date*”):

**3.1** This Amendment shall have been duly executed and delivered by the respective parties hereto. The Administrative Agent shall have received a fully executed copy hereof.

**3.2** All necessary consents and approvals to this Amendment shall have been obtained by the Loan Parties.

**3.3** No Default or Event of Default shall have occurred and be continuing immediately after giving effect to this Amendment.

**3.4** After giving effect to this Amendment and subject to the qualifications set forth in Section 5.1, each of the representations and warranties herein and in the Credit Agreement and the other Loan Documents (i) that is qualified by materiality shall be true and correct, and (ii) that is not qualified by materiality, shall be true and correct in all material respects, in each case, on and as of the Eighth Amendment Effective Date as if made on and as of such date, except to the extent any such representation and warranty expressly relates to an earlier date, in which case such representation and warranty shall have been true and correct in all material respects as of such earlier date.

For purposes of determining compliance with the conditions specified in this Section 3, each Lender that has executed this Amendment shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter either sent (or made available) by the Administrative Agent to such Lender for consent, approval, acceptance or satisfaction, or required thereunder to be consented to or approved by or acceptable or satisfactory to such Lender, unless an officer of the Administrative Agent responsible for the transactions contemplated by the Loan Documents shall have received notice from such Lender prior to the Eighth Amendment Effective Date specifying such Lender’s objection thereto and such objection shall not have been withdrawn by notice to the Administrative Agent to that effect on or prior to the Eighth Amendment Effective Date.

#### **4. Limitation of Amendment.**

**4.1** The amendments set forth in **Section 2**, above, are effective for the purposes set forth herein and shall be limited precisely as written and shall not be deemed to (a) be a consent to any amendment, waiver or modification of any other term or condition of any Loan Document, or (b) otherwise prejudice any right or remedy which the Administrative Agent or the Lenders may now have or may have in the future under or in connection with any Loan Document.

**4.2** This Amendment shall be construed in connection with and as part of the Loan Documents and all terms, conditions, representations, warranties, covenants and agreements set forth in the Loan Documents, except as herein amended, are hereby ratified and confirmed and shall remain in full force and effect.

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**5. Representations and Warranties.** To induce the Administrative Agent and the Required Lenders to enter into this Amendment, the Borrowers hereby represent and warrant as follows:

**5.1** Immediately after giving effect to this Amendment (a) the representations and warranties contained in the Loan Documents are true, accurate and complete in all material respects as of the date hereof (except to the extent such representations and warranties relate to an earlier date, in which case they are true and correct as of such date), it being understood and agreed that the Borrowers are not required to update Schedules to the Loan Documents except to reflect material changes in the information contained therein since the date on which such Schedules were most recently updated, and (b) no Event of Default has occurred and is continuing;

**5.2** Each Borrower has the power and authority to execute and deliver this Amendment and to perform its obligations under the Credit Agreement, as amended by this Amendment;

**5.3** The execution and delivery by each Borrower of this Amendment and the performance by such Borrower of its obligations under the Credit Agreement, as amended by this Amendment, have been duly authorized;

**5.4** The execution and delivery by each Borrower of this Amendment and the performance by each Borrower of its obligations under the Credit Agreement, as amended by this Amendment, do not and will not contravene (a) any law or regulation binding on or affecting such Borrower, (b) any contractual restriction with a Person binding on such Borrower, (c) any order, judgment or decree of any court or other governmental or public body or authority, or subdivision thereof, binding on such Borrower, or (d) the organizational documents of such Borrower;

**5.5** The execution and delivery by each Borrower of this Amendment and the performance by such Borrower of its obligations under the Credit Agreement, as amended by this Amendment, do not require any order, consent, approval, license, authorization or validation of, or filing, recording or registration with, or exemption by any governmental or public body or authority, or subdivision thereof, binding on such Borrower, except as already has been obtained or made; and

**5.6** This Amendment has been duly executed and delivered by each Borrower and is the binding obligation of such Borrower, enforceable against such Borrower in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, liquidation, moratorium or other similar laws of general application and equitable principles relating to or affecting creditors' rights.

**6. Payment of Costs and Fees.** The Borrower shall pay to the Administrative Agent all costs and all reasonable out-of-pocket expenses in connection with the preparation, negotiation, execution and delivery of this Amendment and any documents and instruments relating hereto (which costs include, without limitation, the reasonable fees

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and expenses of outside counsel retained by Administrative Agent), in each case, as set forth in Section 10.5 of the Credit Agreement.

**7. No Defenses of Borrowers.** Each Borrower hereby acknowledges and agrees that such Borrower has no offsets, defenses, claims, or counterclaims against the

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Administrative Agent or any Lender with respect to the Obligations, or otherwise, and that if such Borrower now has, or ever did have, any offsets, defenses, claims, or counterclaims against the Administrative Agent or any Lender, whether known or unknown, at law or in equity, all of them are hereby expressly WAIVED and such Borrower hereby RELEASES the Administrative Agent and each Lender from any liability thereunder.

**8. Integration.** This Amendment and the Loan Documents represent the entire agreement about this subject matter and supersede prior negotiations or agreements. All prior agreements, understandings, representations, warranties, and negotiations between the parties about the subject matter of this Amendment and the Loan Documents merge into this Amendment and the Loan Documents.

**9. Counterparts.** This Amendment may be executed in any number of counterparts and all of such counterparts taken together shall be deemed to constitute one and the same instrument.

**10. Effect on Loan Documents.**

**10.1** The amendments set forth herein shall be limited precisely as written and shall not be deemed (a) to be a forbearance, waiver, or modification of any other term or condition of the Credit Agreement or of any Loan Documents or to prejudice any right or remedy which the Administrative Agent may now have or may have in the future under or in connection with the Loan Documents; (b) to be a consent to any future consent or modification, forbearance, or waiver to the Credit Agreement or any other Loan Document, or to any waiver of any of the provisions thereof; or (c) to limit or impair the Administrative Agent's right to demand strict performance of all terms and covenants as of any date. The Borrowers, on behalf of each Loan Party, hereby ratify and reaffirm the Borrowers' obligations under the Credit Agreement and each Loan Party's obligations under each other Loan Document to which it is a party and agrees that none of the amendments or modifications to the Credit Agreement set forth in this Amendment shall impair any Loan Party's obligations under the Loan Documents or the Administrative Agent's rights under the Loan Documents. The Borrowers, on behalf of each Loan Party, hereby further ratify and reaffirm the validity and enforceability of all of the Liens heretofore granted, pursuant to and in connection with the Guarantee and Collateral Agreement or any other Loan Document to the Administrative Agent on behalf and for the benefit of the Secured Parties, as collateral security for the obligations under the Loan Documents, in accordance with their respective terms, and acknowledge that all of such Liens, and all collateral heretofore pledged as security for such obligations, continues to be and remain collateral for such obligations (as amended hereby) from and after the date hereof. The Borrowers, on behalf of each Loan Party, acknowledge and agree that the Credit Agreement and each other Loan Document is still in full force and effect and acknowledge as of the date hereof that no Loan Party has any defenses to enforcement of the Loan Documents. The Borrowers, on behalf of each Loan Party, waive any and all defenses to enforcement of the Credit Agreement as amended hereby and each other Loan Document that might otherwise be available as a result of this Amendment. To the extent any terms or provisions of this Amendment conflict with those of the Credit Agreement or other Loan Documents, the terms and provisions of this Amendment shall control.

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**10.2** To the extent that any terms and conditions in any of the Loan Documents shall contradict or be in conflict with any terms or conditions of the Credit Agreement, after giving effect to this Amendment, such terms and conditions are hereby deemed modified or amended accordingly to reflect the terms and conditions of the Credit Agreement as modified or amended hereby.

**10.3** This Amendment is a Loan Document.

**11. Acknowledgement of Obligations.** The Loan Parties acknowledge that on and as of the Eighth Amendment Effective Date, all Obligations are payable without defense, offset, counterclaim or recoupment. Each of the Loan Parties, the Administrative Agent, the Issuing Lender and Swingline Lender and each other Lender party hereto does hereby adopt, ratify, and confirm the Credit Agreement, as amended hereby, and acknowledges and agrees that the Credit Agreement, as amended hereby, is and remains in full force and effect, and the Borrower acknowledges and agrees that their Obligations under the Credit Agreement, as amended hereby, are not impaired in any respect by this Amendment.

**12. Reaffirmation.** Each Loan Party hereby reaffirms its obligations under each Loan Document to which it is a party. Each Loan Party hereby further ratifies and reaffirms the validity and enforceability (except as enforceability may be limited by bankruptcy, insolvency, or similar laws affecting creditors' rights generally and general principles of equity) of all of the Liens heretofore granted, pursuant to and in connection with the Guaranty and Collateral Agreement or any other Loan Document to the Administrative Agent on behalf and for the benefit of Secured Parties, as collateral security for the obligations under the Loan Documents (including such obligations as amended hereby) in accordance with their respective terms, and acknowledges that all of such Liens, and all collateral heretofore pledged as security for such obligations, continues to be and remain collateral for such obligations from and after the date hereof.

**13. Severability.** The provisions of this Amendment are severable, and if any clause or provision shall be held invalid or unenforceable in whole or in part in any jurisdiction, then such invalidity or unenforceability shall affect only such clause or provision, or part thereof, in such jurisdiction and shall not in any manner affect such clause or provision in any other jurisdiction, or any other clause or provision in this Amendment in any jurisdiction.

**14. Choice of Law.** Section 10.13 and Section 10.14 of the Credit Agreement are hereby incorporated by reference in their entirety *mutatis mutandis*.

[Signature page follows.]

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**IN WITNESS WHEREOF**, the parties hereto have caused this Amendment to be duly executed and delivered as of the date first written above.

**BORROWERS:**

BENEFITFOCUS.COM, INC. By: /s/ Jonathon E. DussaultName: Jonathon E. DussaultTitle: Chief Financial Officer BENEFITFOCUS, INC. By: /s/ Jonathon J  
DussaultName: Jonathon E. DussaultTitle: Chief Financial Officer BENEFITSTORE, INC. By: /s/ Jonathon E. DussaultName: Jonathon E. DussaultTitle: Chief  
Officer

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**SILICON VALLEY BANK**, as Administrative Agent and as a Lender

By /s/ Will Deevy

Name: Will Deevy

Title: Director

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**COMERICA BANK**, as a Lender

By /s/ John Benetti  
Name: John Benetti  
Title: SVP

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**PACIFIC WESTERN BANK**, as a Lender

By: /s/ Stephen J. Berens

Name: Stephen J. Berens

Title: SVP

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By /s/ Jamie Minieri  
Name: Jamie Minieri  
Title: Authorized Signatory

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**SENIOR SECURED REVOLVING CREDIT FACILITY**

**CREDIT AGREEMENT**

dated as of February 20, 2015,

among

**BENEFITFOCUS, INC.**  
**BENEFITFOCUS.COM, INC.**  
~~**BENEFITINFORMATICS, INC.**~~  
**BENEFITSTORE, INC.**

as the Borrowers,

**THE SEVERAL LENDERS FROM TIME TO TIME PARTIES HERETO,**

**SILICON VALLEY BANK,**

as Administrative Agent, Issuing Lender and Swingline Lender

and

**COMERICA BANK,**

as Documentation Agent

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## **EXHIBITS**

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Exhibit E:	Form of Assignment and Assumption
Exhibits F-1 – F-4:	Forms of U.S. Tax Compliance Certificate
Exhibit G-1:	Form of Revolving Loan Note
Exhibit G-2:	Form of Swingline Loan Note
Exhibit H:	Form of Collateral Information Certificate
Exhibit I:	Form of Notice of Borrowing

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## CREDIT AGREEMENT

THIS CREDIT AGREEMENT (this "*Agreement*"), dated as of February 20, 2015, is entered into by and among **BENEFITFOCUS, INC.**, a Delaware corporation (the "*Parent*"), **BENEFITFOCUS.COM, INC.**, a South Carolina corporation ("*Benefitfocus.com*"), ~~**BENEFIT-INFORMATICS, INC.**, a Delaware corporation ("*Benefit-Informatics*")~~ and **BENEFITSTORE, INC.**, a South Carolina corporation ("*BenefitStore*", and together with the Parent, Benefitfocus.com and Benefit Informatics, each individually, a "*Borrower*", and collectively, the "*Borrowers*"), the several banks and other financial institutions or entities from time to time parties to this Agreement (each a "*Lender*" and, collectively, the "*Lenders*"), **SILICON VALLEY BANK**, as the Issuing Lender and the Swingline Lender, **SILICON VALLEY BANK ("SVB")**, as administrative agent and collateral agent for the Lenders (in such capacity, the "*Administrative Agent*") and **COMERICA BANK**, as documentation agent (in such capacity, the "*Documentation Agent*").

### RECITALS:

**WHEREAS**, the Borrowers desire to obtain financing to refinance the Existing Credit Facility (as defined herein), as well as for working capital financing and letter of credit facilities;

**WHEREAS**, the Lenders have agreed to extend a revolving loan facility to the Borrowers, upon the terms and conditions specified in this Agreement, in an aggregate amount not to exceed \$95,000,000, with a letter of credit sub-facility in the aggregate availability amount of \$5,000,000 (as a sublimit of the revolving loan facility) and a swingline sub-facility in the aggregate availability amount of \$5,000,000 (as a sublimit of the revolving loan facility);

**WHEREAS**, each Loan Party has agreed to secure all of its respective Obligations by granting to the Administrative Agent, for the ratable benefit of the Secured Parties, a first priority lien (subject to Liens permitted by the Loan Documents) in substantially all of its respective personal property assets pursuant to the terms of the Guarantee and Collateral Agreement and the other Security Documents; and

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

**NOW, THEREFORE**, the parties hereto hereby agree as follows:

### SECTION 1 DEFINITIONS

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

**"ABR"**: for any day, a rate per annum equal to the higher of (a) the Prime Rate in effect on such day and (b) the Federal Funds Effective Rate in effect for such day plus 0.50%. Any change in the ABR due to a change in the Prime Rate or the Federal Funds Effective Rate shall be effective as of the opening of business on the effective day of such change in the Prime Rate or the Federal Funds Effective Rate. In no event shall the ABR be less than 0.00%.

**"Account Debtor"**: any Person who may become obligated to any Person under, with respect to, or on account of, an Account, chattel paper or general intangible (including a payment intangible). Unless

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otherwise stated, the term "Account Debtor," when used herein, shall mean an Account Debtor in respect of an Account of a Borrower.

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

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

**"Affected Lender"**: as defined in Section 2.23.

**"Affiliate"**: with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified; provided, that, neither the Administrative Agent nor the Lenders shall be deemed Affiliates of the Loan Parties as a result of the exercise of their rights and remedies under the Loan Documents.

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

**"Agreement"**: as defined in the preamble hereto.

**"Agreement Currency"**: as defined in Section 10.19.

**"Annualized Recurring Revenue Retention Rate"**: a percentage equal to one (1) minus the ratio of the annualized amount of Recurring Revenue Lost during the Measurement Period, divided by Recurring Revenue of the last month of the Measurement Period multiplied by twelve (12). Annualized Recurring Revenue Retention Rate will be adjusted quarterly based on Recurring Revenue Lost during the preceding calendar quarter.

**"Applicable Margin"**:

(a) from the Fourth Amendment Effective Date until November 5, 2016, the percentages set forth in Level I of the pricing grid below; and

(b) from and after November 5, 2016 and on the fifth day of each month thereafter, the Applicable Margin shall be determined from the following pricing grids based upon Liquidity as set forth in the most recent Liquidity Report delivered or required to be delivered pursuant to Section 6.2(g) hereof; provided however if any Transaction Report or other calculation of a component of Liquidity is at any time restated or otherwise revised (including as a result of an audit) or if the information set forth in any Transaction Report or other calculation of a component of Liquidity otherwise proves to be false or incorrect such that the Applicable Margin would have been higher than was otherwise in effect during any period, without constituting a waiver of any Default or Event of Default arising as a result thereof, interest and/or fees due under this Agreement shall be immediately recalculated at such other rate for any applicable periods and shall be due and payable promptly after demand from the Administrative Agent if such other rate would have been higher.

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## REVOLVING LOANS AND SWINGLINE LOANS

<u>Level</u>	<u>Liquidity</u>	<u>Revolving Loans</u>	<u>Swingline Loans</u>
I	≥ \$90,000,000	0.75%	0.75%
II	≥ \$60,000,000 but < \$90,000,000	1.00%	1.00%
III	< \$60,000,000	1.25%	1.25%

### LETTER OF CREDIT FEE

<u>Level</u>	<u>Liquidity</u>	<u>Letter of Credit Fees</u>
I	≥ \$90,000,000	0.75%
II	≥ \$60,000,000 but < \$90,000,000	1.00%
III	< \$60,000,000	1.25%

Notwithstanding the foregoing, (a) if the Borrowers fail to deliver a Transaction Report or other calculation of a component of Liquidity as required herein, the Applicable Margin shall be the rates corresponding to Level III in the foregoing tables until such Transaction Report and/or calculation is delivered, and (b) no reduction to the Applicable Margin shall become effective at any time when an Event of Default has occurred and is continuing.

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

**“Approved Fund”**: any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

**“ASC 606”**: Accounting Standards Codification (ASC) Topic 606: Revenue from Contracts with Customers issued by the Financial Accounting Standards Board.

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

**“Available Revolving Commitment”**: at any time, an amount equal to (a) (x) the lesser of (i) the Total Revolving Commitments in effect at such time and (ii) the Borrowing Base in effect at such time, less (y) Reserves imposed by the Administrative Agent in its Permitted Discretion from time to time, minus (b) the Total Revolving Extensions of Credit.

**“Available Revolving Increase Amount”**: as of any date of determination, an amount equal to the result of (a) \$40,000,000 minus (b) the aggregate principal amount of Increases to the Revolving Commitments previously made pursuant to [Section 2.12](#). As of the Fourth Amendment Effective Date, the Available Revolving Increase Amount is \$5,000,000.00.

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**“Bankruptcy Code”**: Title 11 of the United States Code entitled “Bankruptcy,” as now or hereafter in effect, or any successor thereto.

**“Bank Services”**: any products, credit services and/or financial accommodations previously, now, or hereafter provided to any Group Member by any Bank Services Provider, including any letters of credit (other than any Letters of Credit provided for the account of the Borrowers hereunder), cash management services, credit cards and foreign exchange services, in each case, other than to the extent constituting Specified Swap Agreements, as any such products or services may be identified in such Bank Services Provider’s various agreements related thereto (each, a **“Bank Services Agreement”**).

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

**“Bank Services Provider”**: the Administrative Agent, any Lender, or any Affiliate of the foregoing who provides Bank Services to any Group Member.

**“Benefitted Lender”**: as defined in [Section 10.7\(a\)](#).

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

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

**“Borrowing Base”**: the product of (i) four hundred percent (400%), multiplied by (ii) the Borrowers’ monthly Recurring Revenue (as stated within the last month of the applicable Measurement Period) multiplied by (iii) the Borrowers’ Annualized Recurring Revenue Retention Rate.

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

**“Business”**: as defined in [Section 4.17\(b\)](#).

**“Business Day”**: a day other than a Saturday, Sunday or other day on which commercial banks in the State of California or the State of New York are authorized or required by law to close.

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

**“Capital Stock”**: any and all shares, interests, participations or other equivalents (however designated) of capital stock of a corporation, any and all equivalent ownership interests in a Person (other than a corporation) and any and all warrants, rights or options to purchase any of the foregoing; [provided that Permitted Convertible Indebtedness, or other debt securities that are or by their terms may be convertible or exchangeable into or for Capital Stock that is not Disqualified Stock, shall not constitute Capital Stock prior to settlement, conversion or exchange thereof.](#)

**“Cash Collateral Account”**: as defined in [Section 6.3\(c\)](#).

**“Cash Collateralize”**: to pledge and deposit with or deliver to (a) with respect to Obligations in

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respect of Letters of Credit, the Administrative Agent, for the benefit of the Issuing Lender and one or more of the Lenders, as applicable, as collateral for L/C Exposure or obligations of the Lenders to fund participations in respect thereof, cash or Deposit Account balances having an aggregate value of at least 105% (110% in the case of any L/C Exposure in respect of a Letter of Credit denominated in a Foreign Currency) of the L/C Exposure or, if the Administrative Agent and the Issuing Lender shall agree in their sole discretion, other credit support, in each case pursuant to documentation in form and substance satisfactory to the Administrative Agent and the Issuing Lender; (b) with respect to Obligations arising under any Bank Services Agreement in connection with Bank Services, the applicable Bank Services Provider, for its own benefit or any of its applicable Affiliates' benefit, as provider of such Bank Services, cash or Deposit Account balances having an aggregate value of at least 105% of the aggregate amount of the Obligations of the Group Members arising under all such Bank Services Agreements evidencing such Bank Services, or, if such Bank Services Provider shall agree in its sole discretion, other credit support pursuant to documentation in form and substance reasonably satisfactory to the Bank Services Provider; or (c) with respect to Obligations in respect of any Specified Swap Agreements, the applicable Qualified Counterparty, as Collateral for such Obligations, cash or Deposit Account balances or, if such Qualified Counterparty shall agree in its sole discretion, other credit support, in each case pursuant to documentation in form and substance satisfactory to such Qualified Counterparty. "**Cash Collateral**" shall have a meaning correlative to the foregoing and shall include the proceeds of such cash collateral and other credit support.

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

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

"**Certificated Securities**": as defined in [Section 4.19\(a\)](#).

"**Change of Control**": (a) at any time, any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act but excluding any employee benefit plan of such person or

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its Subsidiaries and any person acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan) other than a Permitted Holder shall become, or obtain rights (whether by means of warrants, options or otherwise) to become, the “beneficial owner” (as defined in Rules 13(d)-3 and 13(d)-5 under the Exchange Act), directly or indirectly, of 35% or more of the ordinary voting power for the election of directors of the Parent (determined on a fully diluted basis); (b) during any period of 12 consecutive months, a majority of the members of the board of directors or other equivalent governing body of the Parent cease to be composed of individuals (i) who were members of that board or equivalent governing body on the first day of such period, (ii) whose election or nomination to that board or equivalent governing body was approved by individuals referred to in clause (i) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body or (iii) whose election or nomination to that board or other equivalent governing body was approved by individuals referred to in clauses (i) and (ii) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body; ~~or~~ (c) except as permitted under Article VII of this Agreement, the Parent shall cease to own and control, of record and beneficially, directly or indirectly, 100% of each class of outstanding Capital Stock of each other Loan Party free and clear of all Liens (except Liens created by the Security Documents and non-consensual Liens permitted by [Section 7.3](#) arising by operation of law; [or \(d\) the occurrence of any “fundamental change” or similar event under any agreement governing Permitted Convertible Indebtedness.](#)

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

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

“**Collateral**”: all property of the Loan Parties, now owned or hereafter acquired, upon which a Lien is purported to be created by any Security Document.

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

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

“**Commitment Fee**”: as defined in [Section 2.9\(b\)](#).

“**Commitment Fee Rate**”:

(a) from and after the Fourth Amendment Effective Date until November 5, 2016, the percentages set forth in Level I of the pricing grid below; and

(b) from and after November 5, 2016 and on the fifth day of each month thereafter, the Commitment Fee Rate shall be determined from the following grid based upon Liquidity as set forth in the most recent Liquidity Report delivered or required to be delivered pursuant to [Section 6.2\(g\)](#) hereof; provided however if any Transaction Report or other calculation of a component of Liquidity is at any time restated or otherwise revised (including as a result of an audit) or if the information set forth in any

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Transaction Report or other calculation of a component of Liquidity otherwise proves to be false or incorrect such that the Commitment Fee Rate would have been higher than was otherwise in effect during any period, without constituting a waiver of any Default or Event of Default arising as a result thereof, the Commitment Fee due under this Agreement shall be immediately recalculated at such other rate for any applicable periods and shall be due and payable promptly after demand from the Administrative Agent if such other rate would have been higher.

<u>Level</u>	<u>Liquidity</u>	<u>Commitment Fee Rate</u>
I	≥ \$90,000,000	0.30000%
II	≥ \$60,000,000 but < \$90,000,000	0.35000%
III	< \$60,000,000	0.37500%

Notwithstanding the foregoing, (a) if the Borrower fails to deliver a Transaction Report or other calculation of a component of Liquidity as required herein, the Commitment Fee Rate shall be the rate corresponding to Level III in the foregoing table until such Transaction Report and/or calculation is delivered, and (b) no reduction to the Commitment Fee Rate shall become effective at any time when an Event of Default has occurred and is continuing.

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

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

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

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

“**Consolidated EBITDA**”: with respect to the Parent and its consolidated Subsidiaries for any trailing twelve month period for which a calculation is to be made under this Agreement, (a) the sum, without duplication, of the amounts for such period of (i) Consolidated Net Income, plus (ii) Consolidated Interest Expense, plus (iii) provisions for taxes based on income, plus (iv) total depreciation expense, plus (v) total amortization expense, plus (vi) non-cash compensation expense, plus (vii) the fees, costs and expenses incurred in connection with this Agreement and the other Loan Documents and the transactions hereunder and thereunder, plus (viii) reasonable one-time fees, costs and expenses incurred in connection

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with a Permitted Acquisition or a successful offering or issuance of Capital Stock, in each case to the extent approved in writing by the Administrative Agent as an 'add-back' to Consolidated EBITDA, plus (ix) other non-cash items reducing Consolidated Net Income (excluding any such non-cash item to the extent that it represents an accrual or reserve for potential cash items in any future period or amortization of a prepaid cash item that was paid in a prior period) approved by the Administrative Agent in writing as an 'add back' to Consolidated EBITDA, plus (x) any extraordinary or non-recurring losses, expenses or charges in connection with the transition to ASC 606 or otherwise not to exceed \$2,000,000 in the aggregate for such trailing twelve month period (or such higher amounts as may be approved by the Required Lenders as an 'add-back' to Consolidated EBITDA), minus (b) the sum, without duplication of the amounts for such period of (i) other non-cash items increasing Consolidated Net Income for such period (excluding any such non-cash item to the extent it represents the reversal of an accrual or reserve for potential cash item in any prior period), plus (ii) interest income.

**"Consolidated Interest Expense"**: for any period, total interest expense (including that portion of any Capital Lease Obligations that is treated as interest in accordance with GAAP) of the Parent and its consolidated Subsidiaries for such period with respect to all outstanding Indebtedness of such Persons (including all commissions, discounts and other fees and charges owed with respect to letters of credit and bankers' acceptance financing and net costs under Swap Agreements in respect of interest rates to the extent such net costs are allocable to such period in accordance with GAAP).

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

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

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

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

**"Controlled Account"**: each Deposit Account and Securities Account that is subject to a Control Agreement in form and substance reasonably satisfactory to the Administrative Agent.

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

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

**“Default Rate”**: as defined in [Section 2.15\(b\)](#).

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

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

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

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**“Discharge of Obligations”**: subject to Section 10.8, the satisfaction of the Obligations (including all such Obligations relating to Bank Services) by the payment in full, in cash (or, as applicable, Cash Collateralization in accordance with the terms hereof or as otherwise may be reasonably satisfactory to the applicable Bank Services Provider) of the principal of and interest on or other liabilities relating to each Loan and any previously provided Bank Services, all fees and all other expenses or amounts payable under any Loan Document (other than contingent indemnification obligations and any other obligations which pursuant to the terms of any Loan Document specifically survive repayment of the Loans for which no claim has been made), and other Obligations under or in respect of Specified Swap Agreements and Bank Services, to the extent (a) no default or termination event shall have occurred and be continuing thereunder, (b) any such Obligations in respect of Specified Swap Agreements have, if required by any applicable Qualified Counterparties, been Cash Collateralized, (c) no Letter of Credit shall be outstanding (or, as applicable, each outstanding and undrawn Letter of Credit has been Cash Collateralized in accordance with the terms hereof or as otherwise may be reasonably satisfactory to the Issuing Lender), (d) no Obligations in respect of any Bank Services are outstanding (or, as applicable, all such outstanding Obligations in respect of Bank Services have been Cash Collateralized in accordance with the terms hereof or as otherwise may be reasonably satisfactory to the applicable Bank Services Provider), and (e) the aggregate Revolving Commitments of the Lenders are terminated.

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

**“Disqualified Institutions”**: each of (x) those Persons identified by the Borrowers in writing to SVB prior to the date of the Engagement Letter, (y) the Borrowers’ or any of their controlled Affiliates’ competitors identified by the Borrowers in writing to SVB prior to the date of the Engagement Letter and (z), in each case of clauses (x) and (y) above, any such Person’s known Affiliates that are readily identifiable by name (such Persons in clauses (x) and (y), collectively, the **“Primary Disqualified Institutions”**) excluding, in the case of clause (y) above, any affiliate of a competitor that is primarily engaged in, or that advises funds or other investment vehicles that are engaged in, making, purchasing, holding or otherwise investing in commercial loans, bonds and similar extensions of credit or securities in the ordinary course and with respect to which no Primary Disqualified Institution, directly or indirectly, possesses the power to direct or cause the direction of the investment policies of such entity.

**“Disqualified Stock”**: any Capital Stock that, by its terms (or by the terms of any security into which it is convertible, or for which it is exchangeable, in each case at the option of the holder thereof), or upon the happening of any event, matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or redeemable at the option of the holder thereof, in whole or in part, on or prior to the date that is ninety-one (91) days after the date on which the Loans mature. The amount of Disqualified Stock deemed to be outstanding at any time for purposes of this Agreement will be the maximum amount that the Borrowers and their Subsidiaries may become obligated to pay upon maturity of, or pursuant to any mandatory redemption provisions of, such Disqualified Stock or portion thereof, plus accrued dividends.

**“Documentation Agent”**: Comerica Bank, together with any of its successors in such capacity.

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

**“Domestic Subsidiary”**: any Subsidiary that is incorporated, organized or otherwise formed under the laws of the United States, any state thereof or the District of Columbia.

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

**"Engagement Letter"**: that certain Engagement Letter dated January 16, 2015 by and among the Administrative Agent and the Borrowers.

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

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

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

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

**"ERISA Event"**: any of (a) a reportable event as defined in Section 4043 of ERISA with respect to a Pension Plan, excluding, however, such events as to which the PBGC by regulation has waived the requirement of Section 4043(a) of ERISA that it be notified within 30 days of the occurrence of such event; (b) the applicability of the requirements of Section 4043(b) of ERISA with respect to a contributing sponsor, as defined in Section 4001(a)(13) of ERISA, to any Pension Plan where an event described in paragraph (9), (10), (11), (12) or (13) of Section 4043(c) of ERISA is reasonably expected to occur with respect to such plan within the following 30 days; (c) a withdrawal by any Loan Party or any ERISA Affiliate thereof from a Pension Plan or the termination of any Pension Plan resulting in liability under Sections 4063 or 4064 of ERISA; (d) the withdrawal of any Loan Party or, to the knowledge of any Loan Party, any ERISA Affiliate thereof in a complete or partial withdrawal (within the meaning of Section 4203 and 4205 of ERISA) from any Multiemployer Plan if there is any potential liability therefore, or the receipt by any Loan Party or, to the knowledge of an Loan Party, any ERISA Affiliate thereof of notice from any Multiemployer Plan that it is in reorganization or insolvency pursuant to Section 4241 or 4245 of ERISA; (e) the filing of a notice of intent to terminate, the treatment of a plan amendment as a termination under Section 4041 or 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate a Pension Plan or Multiemployer Plan; (f) the imposition of liability on any Loan Party or any ERISA Affiliate thereof pursuant to Sections 4062(e) or 4069 of ERISA or by reason of the application of Section 4212(c) of ERISA;

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(g) the failure by any Loan Party or any ERISA Affiliate thereof to make any required contribution to a Pension Plan, or the failure to meet the minimum funding standard of Section 412 of the Code with respect to any Pension Plan (whether or not waived in accordance with Section 412(c) of the Code) or the failure to make by its due date a required installment under Section 430 of the Code with respect to any Pension Plan or the failure to make any required contribution to a Multiemployer Plan; (h) the determination that any Pension Plan is considered an at-risk plan or a plan in endangered to critical status within the meaning of Sections 430, 431 and 432 of the Code or Sections 303, 304 and 305 of ERISA; (i) an event or condition which might reasonably be expected to constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan or Multiemployer Plan; (j) the imposition of any liability under Title I or Title IV of ERISA, other than PBGC premiums due but not delinquent under Section 4007 of ERISA, upon any Loan Party or any ERISA Affiliate thereof; (k) an application for a funding waiver under Section 303 of ERISA or an extension of any amortization period pursuant to Section 412 of the Code with respect to any Pension Plan; (l) the occurrence of a non-exempt prohibited transaction under Sections 406 or 407 of ERISA for which any Loan Party or any Subsidiary thereof may be directly or indirectly liable; (m) the occurrence of an act or omission which could give rise to the imposition on any Loan Party or any ERISA Affiliate thereof of fines, penalties, taxes or related charges under Chapter 43 of the Code or under Sections 409, 502(c), (i) or (1) or 4071 of ERISA; (n) the assertion of a material claim (other than routine claims for benefits) against any Pension Plan or the assets thereof, or against any Loan Party or any Subsidiary thereof in connection with any such Pension Plan; (o) receipt from the IRS of notice of the failure of any Pension Plan to qualify under Section 401(a) of the Code, or the failure of any trust forming part of any Pension Plan to fail to qualify for exemption from taxation under Section 501(a) of the Code; or (p) the imposition of any lien (or the fulfillment of the conditions for the imposition of any lien) on any of the rights, properties or assets of any Loan Party or any ERISA Affiliate thereof, in either case pursuant to Title I or IV, including Section 302(f) or 303(k) of ERISA or to Section 401(a)(29) or 430(k) of the Code.

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

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

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

**“Excluded Foreign Subsidiary”**: in respect of any Loan Party, any Subsidiary of such Loan Party, at any date of determination, (a) that is a “controlled foreign corporation” as defined in Section 957 of the Code, (b) that is a Subsidiary of a “controlled foreign corporation” as defined in Section 957 of the Code, or (c) substantially all of the assets of which are equity interests in a “controlled foreign corporation” as defined in Section 957 of the Code, and in each case, either (a) the pledge of all of the Capital Stock of such Subsidiary as Collateral or (b) the guaranteeing by such Subsidiary of the Obligations, would, in the good faith judgment of the Loan Parties, reasonably be expected to result in material adverse tax consequences to the Loan Parties.

**“Excluded Taxes”**: any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in any such case (i) to the extent imposed as a result of such Recipient being organized under the laws of, or having its principal

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office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof), or (ii) to the extent constituting Other Connection Taxes; (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or 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 2.23](#)) or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to [Section 2.20](#), amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office; (c) Taxes attributable to such Recipient's failure to comply with [Section 2.20\(f\)](#); and (d) any U.S. federal withholding Taxes imposed under FATCA.

**"Existing Credit Facility"**: the credit facility described in the Loan and Security Agreement dated as of August 27, 2013, by and between the Existing Lender and certain of the Borrowers, as the same has been amended, restated, supplemented or otherwise modified from time to time prior to the Closing Date.

**"Existing Lender"**: SVB, as the sole lender under the Existing Credit Facility.

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

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

**"FATCA"**: (a) Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with) and any current or future regulations or official interpretations thereof, (b) any treaty, law, regulation or other official guidance enacted in any other jurisdiction, or relating to an intergovernmental agreement between the United States and any other jurisdiction with the purpose (in either case) of facilitating the implementation of (a) above, or (c) any agreement pursuant to the implementation of paragraphs (a) or (b) above with the United States Internal Revenue Service, the United States government or any governmental or taxation authority in the United States.

**"Federal Funds Effective Rate"**: for any day, the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average of the quotations for the day of such transactions received by the Administrative Agent from three federal funds brokers of recognized standing selected by it. In no event shall the Funds Federal Effective Rate be less than zero.

**"Fee Letter"**: the amended and restated fee letter agreement dated October 11, 2016, by and among the Borrowers and the Administrative Agent, as may be amended, supplemented or otherwise modified from time to time.

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

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**“Foreign Currency”**: lawful money of a country other than the United States.

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

**“Foreign Subsidiary”**: any Subsidiary that is not a Domestic Subsidiary.

**“Fourth Amendment”**: the Fourth Amendment to Credit Agreement, dated as of October 28, 2016.

**“Fourth Amendment Effective Date”**: as defined in the Fourth Amendment.

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

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

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

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

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

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**“Group Members”**: the collective reference to the Borrowers and their respective Subsidiaries.

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

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

**“Guarantors”**: a collective reference to each Borrower and each Subsidiary of the Borrowers which has become a Guarantor pursuant to the Guarantee and Collateral Agreement.

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

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

**“Indebtedness”**: of any Person at any date, without duplication, (a) all indebtedness of such Person for borrowed money, (b) all obligations of such Person for the deferred purchase price of property or services (other than current trade payables incurred in the ordinary course of such Person’s business), (c) all obligations of such Person evidenced by notes, bonds, debentures or other similar instruments, (d) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property), (e) all Capital Lease Obligations and all Synthetic Lease Obligations of such Person, (f) all obligations of such Person, contingent or otherwise, as an account party or applicant under or in respect of acceptances, letters of credit, surety bonds or similar arrangements, (g) all obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment in respect of any Capital Stock in such Person or any other Person (including, without limitation, Disqualified Stock), or any warrant, right or option to acquire such Capital Stock, valued, in the case of a redeemable preferred interest, at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends, (h) all Guarantee Obligations of such Person in respect of obligations of the kind referred to in clauses (a) through (g)

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above, (i) all obligations of the kind referred to in clauses (a) through (h) above secured by (or for which the holder of such obligation has an existing right, contingent or otherwise, to be secured by) any Lien on property (including accounts and contract rights) owned by such Person, whether or not such Person has assumed or become liable for the payment of such obligation, and (j) the net obligations of such Person in respect of Swap Agreements. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person's ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness expressly provide that such Person is not liable therefor.

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

**"Indemnitee"**: as defined in [Section 10.5\(b\)](#).

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

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

**"Intellectual Property Security Agreement"**: an intellectual property security agreement entered into between a Loan Party and the Administrative Agent pursuant to the terms of the Guarantee and Collateral Agreement in form and substance satisfactory to the Administrative Agent, together with each other intellectual property security agreement and supplement thereto, in each case as amended, restated, supplemented or otherwise modified from time to time.

**"Interest Payment Date"**: as to any Loan (including any Swingline Loan), the fifth day (or, if such day is not a Business Day, the immediately succeeding Business Day) of each calendar month to occur while such Loan is outstanding and the final maturity date of such Loan.

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

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

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**“Investments”**: as defined in [Section 7.8](#).

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

**“ISP”**: with respect to any Letter of Credit, the “International Standby Practices 1998” published by the Institute of International Banking Law & Practice (or such later version thereof as may be in effect at the time of issuance).

**“Issuing Lender”**: as the context may require, (a) SVB or any Affiliate thereof, in its capacity as issuer of any Letter of Credit, and (b) any other Lender that may become an Issuing Lender pursuant to [Section 3.12](#), with respect to Letters of Credit issued by such Lender. The Issuing Lender may, in its discretion, arrange for one or more Letters of Credit to be issued by Affiliates of the Issuing Lender or other financial institutions, in which case the term “Issuing Lender” shall include any such Affiliate or other financial institution with respect to Letters of Credit issued by such Affiliate or other financial institution.

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

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

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

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

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

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

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

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

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

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

**“L/C-Related Documents”**: collectively, each Letter of Credit, all applications for any Letter of

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Credit (and applications for the amendment of any Letter of Credit) submitted by a Borrower to the Issuing Lender and any other document, agreement and instrument relating to any Letter of Credit, including any of the Issuing Lender's standard form documents for letter of credit issuances.

**"Lenders"**: as defined in the preamble hereto; provided that unless the context otherwise requires, each reference herein to the Lenders shall be deemed to include the Issuing Lender and the Swingline Lender.

**"Letter of Credit"**: as defined in Section 3.1(a).

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

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

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

**"Letter of Credit Maturity Date"**: the date occurring 15 days prior to the Revolving Termination Date then in effect (or, if such day is not a Business Day, the next preceding Business Day).

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

**"Liquidity"**: at any time, the sum of (i) the aggregate amount of unrestricted cash and Cash Equivalents (including short term marketable securities) held by the Borrowers and the Guarantors in Deposit Accounts or Securities Accounts maintained with SVB or SVB's Affiliates or another Lender or an Affiliate thereof, or with National Bank of South Carolina ("**NBSC**", provided that the aggregate amounts held in deposit accounts with NBSC shall not exceed \$6,500,000 at any time), and in each case subject to a first priority lien in favor of the Administrative Agent, including, without limitation, pursuant to a Deposit Account Control Agreement with respect to each such Deposit Account or Securities Account Control Agreement with respect to each such Securities Account, plus (ii) the Available Revolving Commitment at such time; provided that, in connection with any calculation of Liquidity required hereunder, at least \$25,000,000 must consist of unrestricted cash and Cash Equivalents (including short term marketable securities) satisfying the requirements of clause (i) above.

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

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

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

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

**“Material Adverse Effect”**: (a) a material impairment in the perfection or priority of the Administrative Agent’s Lien in the Collateral or in the value of such Collateral; (b) a material adverse change in the business, operations, or condition (financial or otherwise) of all of the Borrowers taken as a whole; or (c) a material impairment of the prospect of repayment of any portion of the Obligations.

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

**“Maximum Rate”**: as defined in Section 10.9.

**“Measurement Period”**: for any period of measurement, the trailing three (3) month period ending as of the then-current measurement date. A measurement period can be either a calendar quarter, or any trailing three (3) calendar month period.

**“Minority Lender”**: as defined in Section 10.1(b).

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

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

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

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

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

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

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

**“Notice of Borrowing”**: a notice substantially in the form of Exhibit I.

**“Obligations”**: the unpaid principal of and interest on (including interest accruing after the maturity of the Loans and interest accruing after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding, relating to any Loan Party, whether or not a claim for post-filing or post-petition interest is allowed or allowable in such proceeding) the Loans and all other

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obligations and liabilities of the Loan Parties to the Administrative Agent, the Issuing Lender, any other Lender, any Bank Services Provider (in its capacity as provider of Bank Services), and any Qualified Counterparty party to a Specified Swap Agreement, whether direct or indirect, absolute or contingent, due or to become due, or now existing or hereafter incurred, which may arise under, out of, or in connection with, this Agreement, any other Loan Document (including, for the avoidance of doubt, any Bank Services Agreement), the Letters of Credit, any Specified Swap Agreement or any other document made, delivered or given in connection herewith or therewith, whether on account of principal, interest, reimbursement obligations, payment obligations, fees, indemnities, costs, expenses (including all reasonable and documented fees, charges and disbursements of one primary counsel to the Administrative Agent, the Issuing Lender, and the Lenders, or any Bank Services Provider, to the extent that any applicable Bank Services Agreement requires the reimbursement by any applicable Group Member of any such expenses, and any Qualified Counterparty party to a Specified Swap Agreement that are required to be paid by any Loan Party pursuant to such Specified Swap Agreement) or otherwise. For the avoidance of doubt, the Obligations shall not include any obligations arising under any warrants or other equity instruments issued by any Loan Party to any Lender.

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

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

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

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

**“Overadvance”**: as defined in [Section 2.8](#).

**“Parent”**: as defined in the Preamble hereto.

**“Participant”**: as defined in [Section 10.6\(d\)](#).

**“Participant Register”**: as defined in [Section 10.6\(d\)](#).

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

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

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

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

**“Permitted Acquisition”**: as defined in [Section 7.8\(l\)](#).

**“Permitted Bond Hedge Transaction”**: [any call or capped call option \(or substantively equivalent derivative transaction\) relating to Parent’s common stock \(or other securities or property following a merger event, reclassification or other change of the common stock of Parent\), purchased by Parent in connection with the issuance of any Permitted Convertible Indebtedness and settled in common stock of Parent \(or such other securities or property\), cash or a combination thereof \(such amount of cash determined by reference to the price of Parent’s common stock or such other securities or property\), and cash in lieu of fractional shares of common stock of Parent; provided that \(a\) the purchase price for such Permitted Bond Hedge Transaction does not exceed the net cash proceeds received by Parent from the sale of the Permitted Convertible Indebtedness in connection with which such Permitted Bond Hedge Transaction was purchased, \(b\) the other terms, conditions and covenants of each such transaction shall be such as are customary for transactions of such type \(as determined by Parent in good faith\), and \(c\) any payments or settlements by a Group Member in respect of such Permitted Bond Hedge Transaction shall only be permitted to the extent permitted under Section 7.6](#)

**“Permitted Convertible Indebtedness”**: [senior unsecured Indebtedness of Parent that \(a\) as of the date of issuance thereof contains terms, conditions, covenants, conversion or exchange rights, redemption rights and offer to repurchase rights, in each case, as are typical and customary for Indebtedness of such type \(in each case, as determined by Parent in good faith\) and \(b\) is convertible or exchangeable into shares of common stock of Parent \(or other securities or property following a merger event, reclassification or other change of the common stock of Parent\), cash or a combination thereof \(such amount of cash determined by reference to the price of Parent’s common stock or such other securities or property\), and cash in lieu of fractional shares of common stock of Parent; provided that \(i\) such Permitted Convertible Indebtedness shall have a stated final maturity no earlier than 91 days after February 20, 2020 and shall not be subject to any conditions that could result in such stated final maturity occurring on a date earlier than 91 days after February 20, 2020 \(it being understood that any conversion of such Indebtedness \(whether into cash, shares of common stock in Parent or any combination thereof\), a repurchase of such Indebtedness on account of the occurrence of a “fundamental change” or any redemption of such Indebtedness at the option of Parent shall not be deemed to constitute a change in the stated final maturity thereof\), \(ii\) such Indebtedness shall not be required to be repaid, prepaid, redeemed, repurchased or defeased, whether on one or more fixed dates, upon the occurrence of one or more events or at the option of any holder thereof \(except, in each case, upon any conversion of such](#)

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Indebtedness (whether into cash, shares of common stock in Parent or any combination thereof), the occurrence of an event of default or a “fundamental change” or following Parent’s election to redeem such Indebtedness) prior to the date that is 91 days after February 20, 2020, (iii) no Subsidiary that is not a Loan Party shall have Guarantee Obligations with respect to obligations of Parent thereunder, (iv) notwithstanding anything in clauses (i) and (ii) above to the contrary, any payments in respect thereof shall only be permitted to the extent permitted by Section 7.6, and (v) such Indebtedness shall include a 30-day customary (as determined by Parent in good faith) cure period with respect to any cross-default or cross-acceleration related to the Obligations.

**“Permitted Discretion”**: the commercially reasonable (from the perspective of a secured lender) credit judgment exercised in good faith, in accordance with customary business practices of the Administrative Agent for comparable secured lending transactions.

**“Permitted Holders”**: GS Capital Partners VI Fund, L.P., GS Capital Partners VI Offshore Fund, L.P., GS Capital Partners VI Parallel, L.P., GS Capital Partners VI GmbH & Co. KG, Oak Investment Partners XII, L.P., Mason R. Holland, Jr., Holland Family Trust, and Shawn A. Jenkins and any of their respective Affiliates and any funds, investment vehicles or partnerships managed, advised or sub-advised by any of them or any of their respective Affiliates but not including any portfolio operating company of any of the foregoing.

**“Permitted Refinancing Indebtedness”**: Indebtedness of any Person (**“Refinancing Indebtedness”**) issued or incurred by such Person (including by means of the extension or renewal of existing Indebtedness) to refinance, refund, extend, renew or replace existing Indebtedness of such Person (**“Refinanced Indebtedness”**); provided that (a) the principal amount of such Refinancing Indebtedness is not greater than the principal amount of such Refinanced Indebtedness plus the amount of any premiums or penalties and accrued and unpaid interest paid thereon and reasonable fees and expenses, in each case associated with such Refinancing Indebtedness, (b) other than Refinancing Indebtedness in respect of Indebtedness permitted pursuant to Sections 7.2(d) and 7.2(e), such Refinancing Indebtedness has a final maturity that is no sooner than, and a weighted average life to maturity that is no shorter than, such Refinanced Indebtedness, (c) if such Refinanced Indebtedness or any Guarantee Obligation thereof or any security therefor are subordinated to the Obligations, such Refinancing Indebtedness and any Guarantee Obligations thereof and any security therefor remain so subordinated on terms no less favorable to the Lenders and the other Secured Parties, (d) the obligors in respect of such Refinanced Indebtedness immediately prior to such refinancing, refunding extension, renewal or replacement are the only obligors on such Refinancing Indebtedness and (e) any Guarantee Obligations which constitute all or a portion of such Refinancing Indebtedness, taken as a whole, are determined in good faith by a Responsible Officer of such Person to be no less favorable to such Person and the Lenders and the other Secured Parties in any material respect than the covenants and events of default or Guarantee Obligations, if any, applicable to such Refinanced Indebtedness.

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

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

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

**“Prime Rate”**: the rate of interest per annum from time to time published in the money rates section of the Wall Street Journal or any successor publication thereto as the “prime rate” then in effect; provided that if such rate of interest, as set forth from time to time in the money rates section of the Wall Street

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Journal, becomes unavailable for any reason as determined by the Administrative Agent, the "Prime Rate" shall mean the rate of interest per annum announced by the Administrative Agent as its prime rate in effect at its principal office (such Administrative Agent announced Prime Rate not being intended to be the lowest rate of interest charged by the Administrative Agent in connection with extensions of credit to debtors). In no event shall the Prime Rate be less than zero.

**"Pro Forma Financial Statements"**: balance sheets, income statements and cash flow statements prepared by the Parent and its consolidated Subsidiaries that give effect (as if such events had occurred on such date) to (a) the Loans and extensions of credit to be made on the Closing Date and the use of proceeds thereof and (b) the payment of fees and expenses in connection with the foregoing, in each case prepared for (i) the month ending December 31, 2014, as if such transactions had occurred on the first date of such month and (ii) on a monthly basis through the Revolving Termination Date, in each case, demonstrating pro forma compliance with the covenants set forth in Section 7.1.

**"Projections"**: as defined in Section 6.2(b).

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

**"Protective Overadvance"**: as defined in Section 2.8(b).

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

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

**"Recurring Revenue"**: the Borrowers' software services revenue and professional services revenue related to the Benefit Service Center business line as currently classified and presented in the Parent's consolidated GAAP financial statements (e.g. monthly managed services, testing services, maintenance, license fees, video, voluntary benefits) that in each case meets all of the Borrowers' representations and warranties set forth in the Loan Documents. Monthly revenue from the Benefitstore business line shall be calculated based on the average trailing twelve months period.

**"Recurring Revenue Lost"**: (i) the total quarterly Recurring Revenue of a customer from the penultimate quarter, for which Recurring Revenue for such customer in the Measurement Period was either zero (0) or less in the last month of the Measurement Period, or (ii) the decrease in Recurring Revenue for a customer from the penultimate quarter to the Measurement Period when such change is both greater than or equal to fifty percent (50%), and Two Hundred Thousand Dollars (\$200,000).

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

**"Register"**: as defined in Section 10.6(c).

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

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

**"Replacement Lender"**: as defined in Section 2.23.

**"Required Lenders"**: at any time, (a) if only one Lender holds the Total Revolving Commitments,

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such Lender; and (b) if more than one Lender who are not Affiliates of one another holds the Total Revolving Commitments, then at least two unaffiliated Lenders who together hold more than 50% of the Total Revolving Commitments (including, without duplication, the L/C Commitments) then in effect or, if the Revolving Commitments have been terminated, the Total Revolving Extensions of Credit then outstanding; provided that for the purposes of this clause (b), the Revolving Commitments of, and the portion of the Revolving Loans and participations in L/C Exposure and Swingline Loans held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Lenders.

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

**“Reserves”**: as of any date of determination, such amounts as the Administrative Agent may from time to time establish and revise in its Permitted Discretion, reducing the amount of Revolving Loans and other financial accommodations which would otherwise be available to the Borrowers (a) to reflect events, conditions, contingencies or risks which, as determined by the Administrative Agent in its Permitted Discretion, do or are reasonably likely to adversely affect (i) the Collateral or any other property which is security for the Obligations or its value (including without limitation any increase in delinquencies of Accounts), (ii) the assets, business or prospects of any Loan Party, or (iii) the security interests and other rights of the Administrative Agent and the Secured Parties in the Collateral (including the enforceability, perfection and priority thereof); or (b) to reflect the Administrative Agent’s reasonable belief that any collateral report or financial information furnished by or on behalf of the Loan Parties, if any, to the Administrative Agent is or may have been incomplete, inaccurate or misleading in any material respect; or (c) in respect of any state of facts which the Administrative Agent determines constitutes an Event of Default or may, with notice or passage of time or both, constitute an Event of Default.

**“Responsible Officer”**: the chief executive officer, president, chief financial officer, treasurer, controller or comptroller of an applicable Loan Party, but in any event, with respect to financial matters, the chief executive officer, the chief financial officer, treasurer, controller or comptroller of such Loan Party and solely for the purposes of notices given pursuant to Section 2, any other officer or employee of the applicable Loan Party so designated by any of the foregoing officers in a written notice to the Administrative Agent (together with incumbency and other related documentation reasonably requested by the Administrative Agent). Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

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

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

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

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

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

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

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

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

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

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

**“Revolving Termination Date”**: is February 20, 2020.

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

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

**“Sanctioned Entity”**: (a) a country or a government of a country, (b) an agency of the government of a country, (c) an organization directly or indirectly controlled by a country or its government, or (d) a Person resident in or determined to be resident in a country, in each case, that is subject to a country sanctions program administered and enforced by OFAC.

**“Sanctioned Person”**: a Person named on the list of Specially Designated Nationals maintained by OFAC.

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

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

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

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

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

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

**“Security Documents”**: the collective reference to (a) the Guarantee and Collateral Agreement, (b) the Mortgages, (c) the Intellectual Property Security Agreements, (d) each Deposit Account Control Agreement, (e) each Securities Account Control Agreement, (f) all other security documents hereafter delivered to the Administrative Agent granting a Lien on any property of any Person to secure the Obligations of any Loan Party arising under any Loan Document, and (g) all financing statements, fixture filings, patent, trademark and copyright filings, assignments, acknowledgments and other filings, documents and agreements made or delivered pursuant to any of the foregoing.

**“Seventh Amendment”**: the Seventh Amendment Agreement by and among the Borrowers, the Lenders and the Administrative Agent, dated as of March 29, 2018.

**“Seventh Amendment Effective Date”**: as defined in the Seventh Amendment.

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

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

**“Specified Swap Agreement”**: any Swap Agreement entered into by any Loan Party and any

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Qualified Counterparty (or any Person who was a Qualified Counterparty as of the Closing Date or as of the date such Swap Agreement was entered into).

**“Subordinated Debt Document”**: any agreement, certificate, document or instrument executed or delivered by any Loan Party or any of its respective Subsidiaries and evidencing Indebtedness of such Loan Party or such Subsidiary which is either subordinated to the payment of the Obligations or the lien securing such indebtedness is subordinated to the Administrative Agent’s Lien, in each case, in a manner approved in writing by the Administrative Agent, and any renewals, modifications, or amendments thereof which are approved in writing by the Administrative Agent.

**“Subordinated Indebtedness”**: Indebtedness of a Loan Party, the payment of which and/or the lien securing such Indebtedness, is subordinated to the Obligations and/or the Administrative Agent’s Lien, as applicable, pursuant to subordination terms (including payment, lien and remedies subordination terms, as applicable) reasonably acceptable to the Administrative Agent.

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

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

**“Swap Agreement”**: any agreement with respect to any swap, hedge, forward, future or derivative transaction or option or similar agreement (including without limitation, any Interest Rate Agreement) involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions; provided that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees or consultants of the Borrowers and their Subsidiaries shall be deemed to be a “Swap Agreement.” [For the avoidance of doubt, a Permitted Bond Hedge Transaction shall not constitute a Swap Agreement.](#)

**“Swap Termination Value”**: in respect of any one or more Swap Agreements, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Agreements, (a) for any date on or after the date such Swap Agreements have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Swap Agreements, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Agreements (which may include a Qualified Counterparty).

**“Swingline Commitment”**: the obligation of the Swingline Lender to make Swingline Loans pursuant to [Section 2.6](#) in an aggregate principal amount at any one time outstanding not to exceed \$5,000,000.

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

**“Swingline Loan Note”**: a promissory note in the form of [Exhibit G-2](#), as it may be amended,

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supplemented or otherwise modified from time to time.

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

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

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

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

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

**“Total L/C Commitments”**: at any time, the sum of all L/C Commitments at such time, as the same may be reduced from time to time pursuant to Section 2.10 or 3.5(b). The initial amount of the Total L/C Commitments on the Closing Date is \$5,000,000.

**“Total Revolving Commitments”**: at any time, the aggregate amount of the Revolving Commitments then in effect. The original amount of the Total Revolving Commitments is \$60,000,000. As of the Fourth Amendment Effective Date the amount of the Total Revolving Commitments is \$95,000,000. The L/C Commitment and the Swingline Commitment are each sublimits of the Total Revolving Commitments.

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

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

**“Transaction Report”**: that certain report of transactions and schedule of collections, including calculations of the Borrowing Base and the Recurring Revenue, a form of which has been provided by the Administrative Agent to the Borrowers.

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

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

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

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

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

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

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

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

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

## 1.2 Other Definitional Provisions.

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

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

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

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

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## AMOUNT AND TERMS OF REVOLVING COMMITMENTS

2.1 Reserved.

2.2 Reserved.

2.3 Reserved.

2.4 **Revolving Commitments.**

(a) Subject to the terms and conditions hereof, each Revolving Lender severally agrees to make revolving credit loans (each, a “**Revolving Loan**” and, collectively, the “**Revolving Loans**”) to the Borrowers from time to time during the Revolving Commitment Period in an aggregate principal amount at any one time outstanding for each Revolving Lender which, when added to the sum of (i) such Revolving Lender’s Revolving Percentage of any Swingline Loans then outstanding and (ii) such Revolving Lender’s L/C Exposure, if any, at such time, does not exceed the amount of such Revolving Lender’s Revolving Commitment; provided, that the Total Revolving Extensions of Credit outstanding at such time, after giving effect to the making of such Revolving Loans, shall not exceed (x) the lesser of (i) the Total Revolving Commitments in effect at such time and (ii) the Borrowing Base in effect at such time, less (y) Reserves imposed by the Administrative Agent in its Permitted Discretion from time to time. During the Revolving Commitment Period the Borrowers may use the Revolving Commitments by borrowing, prepaying the Revolving Loans in whole or in part, and reborrowing, all in accordance with the terms and conditions hereof.

(b) The Borrowers shall repay all outstanding Revolving Loans on the Revolving Termination Date; provided, however, that during the existence of an Event of Default, the Revolving Loans then outstanding shall be repaid from funds in the Cash Collateral Account in accordance with Section 6.3(c).

**2.5 Procedure for Revolving Loan Borrowing.** The Borrowers may borrow up to the Available Revolving Commitment under the Revolving Commitments during the Revolving Commitment Period on any Business Day; provided that the Borrowers shall give the Administrative Agent an irrevocable Notice of Borrowing (which must be received by the Administrative Agent prior to 10:00 A.M., Pacific time one (1) Business Day prior to the requested Borrowing Date (provided that any such Notice of Borrowing under the Revolving Facility to finance payments under Section 3.5(a) may be given not later than 10:00 A.M., Pacific time, on the date of the proposed borrowing), in each such case specifying (i) the amount of Revolving Loans to be borrowed, (ii) the requested Borrowing Date, and (iii) instructions for remittance of the proceeds of the Loans to be borrowed. Except as provided in Sections 3.5(b) and 2.7(b), each borrowing shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof (or, if the then aggregate Available Revolving Commitments are less than \$1,000,000, such lesser amount). In addition to such Notice of Borrowing, the Borrowers shall contemporaneously deliver to the Administrative Agent a completed Transaction Report executed by a Responsible Officer, together with such other supporting reports and information, including without limitation, cash receipts journals, and accounts receivable aging reports, as the Administrative Agent may reasonably request. Upon receipt of any such Notice of Borrowing and Transaction Report from the Borrowers, the Administrative Agent shall promptly notify each Revolving Lender thereof. Each Revolving Lender will make the amount of its pro rata share of each such borrowing available to the Administrative Agent for the account of the Borrowers at the Revolving Loan Funding Office prior to 12:00 P.M., Pacific time, on the Borrowing Date requested by the Borrowers in funds immediately available to the Administrative Agent. Such borrowing will then be made available to the Borrowers by the Administrative Agent crediting such account as is designated in writing to the Administrative Agent by the Borrowers with the aggregate of the amounts made available to the Administrative Agent by the Revolving Lenders and in like funds as received by the Administrative Agent or, if so specified in the Flow of Funds Agreement, the Administrative Agent shall wire transfer all or a

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portion of such aggregate amounts to the Existing Lender (for application against amounts then outstanding under the Existing Credit Facility), in accordance with the Flow of Funds Agreement.

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

**2.7 Procedure for Swingline Borrowing; Refunding of Swingline Loans.**

(a) Whenever the Borrowers desire that the Swingline Lender make Swingline Loans, the Borrowers shall give the Swingline Lender irrevocable telephonic or electronic notice (which notice must be received by the Swingline Lender not later than 12:00 P.M., Pacific time, on the proposed Borrowing Date) confirmed promptly in writing by a Notice of Borrowing, specifying (i) the amount to be borrowed, (ii) the requested Borrowing Date (which shall be a Business Day during the Revolving Commitment Period), and (iii) instructions for the remittance of the proceeds of such Loan. Each borrowing under the Swingline Commitment shall be in an amount equal to \$500,000 or a whole multiple of \$100,000 in excess thereof. Promptly thereafter, on the Borrowing Date specified in a notice in respect of any Swingline Loan, the Swingline Lender shall make available to the Borrowers an amount in immediately available funds equal to the amount of such Swingline Loan by depositing such amount in the account designated in writing to the Administrative Agent by the Borrowers (or, in the case of a Swingline Loan made to finance the reimbursement of an L/C Disbursement as provided in Section 3.5(b), by remittance to the Issuing Lender). Unless a Swingline Loan is sooner refinanced by the advance of a Revolving Loan pursuant to Section 2.7(b), such Swingline Loan shall be repaid by the Borrowers no later than five (5) Business Days after the advance of such Swingline Loan.

(b) The Swingline Lender, at any time and from time to time in its sole and absolute discretion, may, on behalf of the Borrowers (which hereby irrevocably direct the Swingline Lender to act on their behalf), on one (1) Business Day’s telephonic notice given by the Swingline Lender no later than 12:00 P.M., Pacific time, and promptly confirmed in writing, request each Revolving Lender to make, and each Revolving Lender hereby agrees to make, a Revolving Loan, in an amount equal to such Revolving Lender’s Revolving Percentage of the aggregate amount of such Swingline Loan (each a “**Refunded Swingline Loan**”) outstanding on the date of such notice, to repay the Swingline Lender. Each Revolving Lender shall make the amount of such Revolving Loan available to the Administrative Agent at the Revolving Loan Funding Office in immediately available funds, not later than 10:00 A.M., Pacific time, one (1) Business Day after the date of such written notice. The proceeds of such Revolving Loan shall immediately be made available by the Administrative Agent to the Swingline Lender for application by the Swingline Lender to the repayment of the Refunded Swingline Loan. The Borrowers irrevocably authorize the Swingline Lender to charge the Borrowers’ accounts with the Administrative Agent (up to the amount available in each such account) immediately to pay the amount of any Refunded Swingline Loan to the

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extent amounts received from the Revolving Lenders are not sufficient to repay in full such Refunded Swingline Loan.

(c) If prior to the time that the Borrowers have repaid the Swingline Loans pursuant to Section 2.7(a) or a Revolving Loan has been made pursuant to Section 2.7(b), one of the events described in Section 8.1(f) shall have occurred or if for any other reason, as determined by the Swingline Lender in its sole discretion, Revolving Loans may not be made as contemplated by Section 2.7(b), each Revolving Lender shall, on the date such Revolving Loan was to have been made pursuant to the notice referred to in Section 2.7(b) or on the date requested by the Swingline Lender (with at least one (1) Business Days' notice to the Revolving Lenders), purchase for cash an undivided participating interest in the then outstanding Swingline Loans by paying to the Swingline Lender an amount (the "**Swingline Participation Amount**") equal to (i) such Revolving Lender's Revolving Percentage times (ii) the sum of the aggregate principal amount of the outstanding Swingline Loans that were to have been repaid with such Revolving Loans.

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

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

## 2.8 Overadvances

(a) If at any time or for any reason the amount of the Total Revolving Extensions of Credit exceeds (x) the lesser of (i) the Total Revolving Commitments in effect at such time and (ii) the Borrowing Base in effect at such time, less (y) Reserves imposed by the Administrative Agent in its Permitted Discretion from time to time (any such excess, an "**Overadvance**"), the Borrower shall pay on demand the full amount of such Overadvance to the Administrative Agent for application against the Revolving Extensions of Credit in accordance with the terms hereof.

(b) Upon the occurrence and during the continuance of an Event of Default, the Administrative Agent, in its sole discretion, may make Revolving Loans to the Borrowers on behalf of the Revolving Lenders, so long as the aggregate amount of such Revolving Loans shall not exceed 10% of the Borrowing Base, if the Administrative Agent, in its Permitted Discretion, deems that such Revolving Loans are necessary or desirable (i) to protect all or any portion of the Collateral, (ii) to enhance the likelihood or maximize the amount of repayment of the Loans and the other Obligations or (iii) to pay any other amount chargeable to the Borrowers pursuant to this Agreement (such Revolving Loans, "**Protective Overadvances**"); provided that (A) in no event shall the Total Revolving Extensions of Credit exceed the amount of the Total Revolving Commitments then in effect and (B) the Required Lenders may at any time revoke the Administrative Agent's authorization to make future Protective Advances (provided that any

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existing Protective Overadvance shall not be subject to such revocation and any such revocation must be in writing and shall become effective prospectively upon the Administrative Agent's receipt thereof). Each applicable Lender shall be obligated to advance to the Borrowers its Revolving Percentage of each Protective Overadvance made in accordance with this Section 2.8(b). If Protective Overadvances are made in accordance with the preceding sentence, then all Revolving Lenders shall be bound to make, or permit to remain outstanding, such Protective Overadvances based upon their Revolving Percentages in accordance with the terms of this Agreement. All Protective Overadvances shall be repaid by the Borrowers on demand, shall be secured by the Collateral and shall bear interest as provided in this Agreement for Revolving Loans generally.

## 2.9 Fees.

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

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

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

(d) Increase in Fees. At any time that an Event of Default exists and is continuing, the Borrowers shall pay interest on any overdue fees due under subsections (a) and (b) at a rate per annum equal to 2.0% plus the rate applicable to Revolving Loans as provided in Section 2.15.

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

(a) Termination or Reduction of Total Revolving Commitments. The Borrowers shall have the right, upon not less than three (3) Business Days' written notice delivered to the Administrative Agent, to terminate the Total Revolving Commitments or, from time to time, to reduce the amount of the Total Revolving Commitments; provided that no such termination or reduction of the Total Revolving Commitment shall be permitted if, after giving effect thereto and to any prepayments of the Revolving Loans and Swingline Loans to be made on the effective date thereof the amount of the Total Revolving Extensions of Credit then outstanding would exceed (x) the lesser of (i) the Total Revolving Commitments in effect at such time and (ii) the Borrowing Base in effect at such time, less (y) Reserves imposed by the Administrative Agent in its Permitted Discretion from time to time. Any such reduction shall be in an amount equal to \$1,000,000, or a whole multiple in excess thereof (or, if the then Total Revolving

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Commitments are less than \$1,000,000, such lesser amount), and shall reduce permanently the Total Revolving Commitments then in effect. Any reduction of the Total Revolving Commitments shall be applied to the Revolving Commitments of each Lender according to its respective Revolving Percentage. All fees accrued until the effective date of any termination of the Total Revolving Commitments shall be paid on the effective date of such termination.

(b) **Termination or Reduction of Total L/C Commitments.** The Borrowers shall have the right, upon not less than three (3) Business Days' written notice delivered to the Administrative Agent, to terminate the Total L/C Commitments available to the Borrowers or, from time to time, to reduce the amount of the Total L/C Commitments available to the Borrowers; provided that, in any such case, no such termination or reduction of the Total L/C Commitments shall be permitted if, after giving effect thereto, the Total L/C Commitments shall be reduced to an amount that would result in the aggregate L/C Exposure exceeding the Total L/C Commitments (as so reduced). Any such reduction shall be in an amount equal to \$1,000,000, or a whole multiple in excess thereof (or, if the then Total L/C Commitments are less than \$1,000,000, such lesser amount), and shall reduce permanently the Total L/C Commitments then in effect. Any reduction of the Total L/C Commitments shall be applied to the L/C Commitments of each Lender according to its respective L/C Percentage. All fees accrued until the effective date of any termination of the Total L/C Commitments shall be paid on the effective date of such termination.

#### **2.11 Optional Loan Prepayments.**

The Borrowers may at any time and from time to time prepay the Loans, in whole or in part, without premium or penalty, upon irrevocable notice delivered to the Administrative Agent no later than 10:00 A.M., Pacific time, one (1) Business Day prior thereto, which notice shall specify the date and amount of the proposed prepayment; provided that if such notice of prepayment indicates that such prepayment is to be funded with the proceeds of a refinancing, such notice of prepayment may be revoked if the financing is not consummated. Upon receipt of any such notice the Administrative Agent shall promptly notify each Lender thereof. If any such notice is given, subject to any permitted revocation of such notice, the amount specified in such notice shall be due and payable on the date specified therein, together with accrued interest to such date on the amount prepaid. Partial prepayments of Revolving Loans shall be in an aggregate principal amount of \$1,000,000 or a whole multiple thereof. Partial prepayments of Swingline Loans shall be in an aggregate principal amount of \$100,000 or a whole multiple thereof.

#### **2.12 Incremental Facility.**

(a) At any time during the Revolving Commitment Period, the Borrowers may request (but subject to the conditions set forth in clause (b) below) that the Revolving Commitments be increased by an amount not to exceed the Available Revolving Increase Amount (each such increase, an "**Increase**"); provided that the Borrowers may not request an Increase on more than two occasions during the term of this Agreement. No Lender shall be obligated to increase its Revolving Commitments in connection with a proposed Increase. Any Increase shall be in an amount of at least \$5,000,000 (or, if the Available Revolving Increase Amount is less than \$5,000,000, such remaining Available Revolving Increase Amount) and integral multiples of \$1,000,000 in excess thereof. Additionally, for the avoidance of doubt, it is understood and agreed that in no event shall the aggregate amount of the Increases to the Revolving Commitments exceed the Available Revolving Increase Amount during the term of the Agreement.

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

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

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

(iii) each Lender agreeing to such Increase, the Borrowers and the Administrative Agent shall have signed an Increase Joinder (any Increase Joinder may, with the consent of the Administrative Agent, the Borrowers and the Lenders agreeing to such Increase, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate to effectuate the provisions of this Section 2.12) and the Borrowers shall have executed any Notes requested by any Lender in connection with the making of the Increase. Notwithstanding anything to the contrary in this Agreement or in any other Loan Document, an Increase Joinder reasonably satisfactory to the Administrative Agent, and the amendments to this Agreement effected thereby, shall not require the consent of any Lender other than the Lender(s) agreeing to fund such Increase;

(iv) each of the conditions precedent set forth in Section 5.2 shall be satisfied with respect to such Increase;

(v) after giving *pro forma* effect to such Increase and the use of proceeds thereof, (A) no Default or Event of Default shall have occurred and be continuing at the time of such Increase and (B) the Borrowers shall be in compliance with the then applicable financial covenants set forth in Section 7.1 hereof as of the end of the most recently ended month for which financial statements are required to be delivered prior to such Increase, and the Borrowers shall have delivered to the Administrative Agent a Compliance Certificate evidencing compliance with the requirements of this clause (v);

(vi) in connection with such Increase, the Borrowers shall pay to Administrative Agent all fees required to be paid pursuant to the terms of the Fee Letter; and

(vii) upon each Increase in accordance with this Section 2.12, all outstanding Loans, participations hereunder in Letters of Credit and participations hereunder in Swingline Loans held by each Lender shall be reallocated among the Lenders (including any newly added Lenders) in accordance with the Lenders' respective revised Revolving Percentages and L/C Percentages, pursuant to procedures reasonably determined by the Administrative Agent in consultation with the Borrowers.

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

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

**2.13 Reserved.**

**2.14 Reserved**

**2.15 Interest Rates and Payment Dates.**

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(a) Each Revolving Loan and each Swingline Loan shall bear interest at a rate per annum equal to (i) the ABR plus (ii) the Applicable Margin.

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

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

#### **2.16 Computation of Interest and Fees.**

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

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

#### **2.17 Reserved**

#### **2.18 Pro Rata Treatment and Payments.**

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

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

(c) All payments (including prepayments) to be made by the Borrowers hereunder, whether on account of principal, interest, fees or otherwise, shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff and shall be made prior to 10:00 A.M., Pacific time, on the due date thereof to the Administrative Agent, for the account of the Lenders, at the applicable Revolving Loan Funding Office, in Dollars and in immediately available funds. The Administrative Agent shall distribute such payments to the Lenders promptly upon receipt in like funds as received. Any payment received by the Administrative Agent after 10:00 A.M. Pacific time shall be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. If any payment hereunder becomes due and payable on a day other than a Business Day, such payment shall be extended

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to the next succeeding Business Day. In the case of any extension of any payment of principal pursuant to the preceding sentence, interest thereon shall be payable at the then applicable rate during such extension.

(d) Unless the Administrative Agent shall have been notified in writing by any Lender prior to the date of any borrowing that such Lender will not make the amount that would constitute its share of such borrowing available to the Administrative Agent, the Administrative Agent may assume that such Lender is making such amount available to the Administrative Agent on such date in accordance with Section 2, and the Administrative Agent may, in reliance upon such assumption, make available to the Borrowers a corresponding amount. If such amount is not in fact made available to the Administrative Agent by the required time on the Borrowing Date therefor, such Lender and the Borrowers severally agree to pay to the Administrative Agent, on demand, such corresponding amount with interest thereon, for each day from and including the date on which such amount is made available to the Borrowers but excluding the date of payment to the Administrative Agent, at (i) in the case of a payment to be made by such Lender, a rate equal to the greater of (A) the Federal Funds Effective Rate and (B) a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation, and (ii) in the case of a payment to be made by the Borrowers, the rate per annum applicable to Revolving Loans under the Revolving Facility. If the Borrowers 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 Borrowers the amount of such interest paid by the Borrowers for such period. If such Lender pays its share of the applicable borrowing to the Administrative Agent, then the amount so paid shall constitute such Lender's Revolving Loan included in such borrowing. Any payment by the Borrowers shall be without prejudice to any claim the Borrowers may have against a Lender that shall have failed to make such payment to the Administrative Agent.

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

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

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

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be responsible for the failure of any other Lender to so make its Loan, to purchase its participation or to make its payment under [Section 9.7](#).

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

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

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

(k) Any amounts actually paid to or collected by the Administrative Agent pursuant to [Section 6.3\(c\)](#) at any time during the existence of an Event of Default shall be applied by the Administrative

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Agent to the Revolving Loans then outstanding and distributed by the Administrative Agent to the Revolving Lenders, in each case, (i) in accordance with the Revolving Percentages of such Revolving Lenders then in effect, and (ii) by no later than the date occurring three days after the date on which such payments or proceeds are so received or collected by the Administrative Agent, with any remaining amounts to be returned to the Borrower as specified in Section 6.3(c).

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

## **2.19 Requirements of Law.**

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

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

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

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

and the result of any of the foregoing is to increase the cost to such Lender or such other Recipient of issuing or participating in Letters of Credit, or to reduce any amount receivable or received by such Lender or other Recipient hereunder in respect thereof (whether in respect of principal, interest or any other amount), then, in any such case, upon the request of such Lender or other Recipient, the Borrowers shall promptly pay such Lender or other Recipient, as the case may be, any additional amounts necessary to compensate such Lender or other Recipient, as the case may be, for such increased cost or reduced amount receivable. If any Lender becomes entitled to claim any additional amounts pursuant to this paragraph, it shall promptly notify the Borrowers (with a copy to the Administrative Agent) of the event by reason of which it has become so entitled.

(b) If any Lender determines that any change in any Requirement of Law affecting such Lender or any lending office of such Lender or such Lender's holding company, if any, regarding capital or liquidity requirements, has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement, the Revolving Commitments of such Lender or the Loans made by, or participations in Letters of Credit or

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Swingline Loans held by, such Lender, or the Letters of Credit issued by the Issuing Lender, to a level below that which such Lender or such Lender's holding company could have achieved but for such change in such Requirement of Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy), then from time to time upon demand of such Lender, the Borrowers will pay to such Lender or the Issuing Lender, as the case may be, such additional amount or amounts as will compensate such Lender or the Issuing Lender or such Lender's or Issuing Lender's holding company for any such reduction suffered.

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

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

## **2.20 Taxes.**

For purposes of this [Section 2.20](#), the term "Lender" includes the Issuing Lender and the term "applicable law" includes FATCA.

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

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

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

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

(e) Indemnification by Lenders. Each Lender shall severally indemnify the Administrative Agent, within 10 days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that any Loan Party has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Loan Parties to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 10.6 relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this paragraph (e).

(f) Status of Lenders.

(i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrowers and the Administrative Agent, at the time or times reasonably requested by the Borrowers or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrowers 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 Borrowers or the Administrative Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Borrowers or the Administrative Agent as will enable the Borrowers or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Sections 2.20(f)(ii)(A), (ii)(B) and (ii)(D) below) shall not be required if the Lender is not legally entitled to

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complete, execute or deliver such documentation or, in the Lender's reasonable judgment, such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

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

(A) any Lender that is a U.S. Person shall deliver to the Borrowers 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 Borrowers or the Administrative Agent), executed originals of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrowers 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 Borrowers or the Administrative Agent), whichever of the following is applicable:

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

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

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

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

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrowers 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 Borrowers or the Administrative Agent), executed originals of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary

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documentation as may be prescribed by applicable law to permit the Borrowers 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 Borrowers and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrowers 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 Borrowers or the Administrative Agent as may be necessary for the Borrowers and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

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

(g) Right to Contest Taxes; Treatment of Certain Refunds. If the Borrowers determine in good faith that a reasonable basis exists for contesting any Taxes for which indemnification has been demanded or additional amounts have been payable hereunder, the relevant Lender or the Administrative Agent, as applicable, shall cooperate with the Borrowers in a reasonable challenge of such Taxes if so requested by the Borrowers; provided that (i) such Lender or the Administrative Agent determines in its reasonable discretion that it would not be prejudiced by cooperating in such challenge, (ii) the Borrowers pay all related expenses of the Administrative Agent or such Lender, (iii) the Borrowers indemnify such Lender or the Administrative Agent for any liabilities or other costs incurred by such party in connection with such challenge, and (iv) the Borrowers indemnify the Administrative Agent or such Lender, as applicable, for any indemnified Taxes or Other Taxes before any such contest. If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 2.20 (including by the payment of additional amounts pursuant to this Section 2.20), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section 2.20 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (g) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (g), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (g) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph shall not be construed to

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require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

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

## 2.21 Reserved.

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

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

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

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

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

then the Borrowers may, at their sole expense and effort, upon notice to the Administrative Agent and such Affected Lender: (i) request that one or more of the other Lenders acquire and assume all or part of such Affected Lender's Loans and Revolving Commitments and all other Obligations owing to such Affected Lender; or (ii) designate a replacement lending institution (which shall be an Eligible Assignee) to acquire and assume all or a ratable part of such Affected Lender's Loans and Revolving Commitments and all other Obligations owing to such Affected Lender (provided that, for the avoidance of doubt, such replacement lending institution shall not be a Disqualified Institution unless an Event of Default has occurred and is continuing) (the replacing Lender or lender in (i) or (ii) being a "**Replacement Lender**"); provided, however, that if the Borrowers elect to exercise such right with respect to any Affected Lender under clause (a) or (b) of this Section 2.23, then the Borrowers shall be obligated to replace all Affected Lenders under such clauses. The Affected Lender replaced pursuant to this Section 2.23 shall be required to assign and delegate, without recourse, all of its interests, rights and obligations under this Agreement and the related Loan Documents to one or more Replacement Lenders that so agree to acquire and assume all or a ratable

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part of such Affected Lender's Loans and Revolving Commitments and all other Obligations owing to such Affected Lender upon payment to such Affected Lender of an amount (in the aggregate for all Replacement Lenders) equal to 100% of the outstanding principal of the Affected Lender's Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents from such Replacement Lenders (to the extent of such outstanding principal and accrued interest and fees) or the Borrowers (in the case of all other amounts, including amounts under Section 2.21 hereof). Any such designation of a Replacement Lender shall be effected in accordance with, and subject to the terms and conditions of, the assignment provisions contained in Section 10.6 (with the assignment fee to be paid by the Borrowers in such instance); provided that if such Affected Lender does not comply with Section 10.6 within ten (10) Business Days after the Borrowers' request, compliance with Section 10.6 shall not be required to effect such assignment, and, if such Replacement Lender is not already a Lender hereunder or an Affiliate of a Lender or an Approved Fund, shall be subject to the prior written consent of the Administrative Agent (which consent shall not be unreasonably withheld). Notwithstanding the foregoing, with respect to any assignment pursuant to this Section 2.23, (a) in the case of any such assignment resulting from a claim for compensation under Section 2.19 or payments required to be made pursuant to Section 2.20, such assignment shall result in a reduction in such compensation or payments thereafter; (b) such assignment shall not conflict with applicable law and (c) in the case of any assignment resulting from a Lender being a Minority Lender referred to in clause (b) of this Section 2.23, the applicable assignee shall have consented to the applicable amendment, waiver or consent. Notwithstanding the foregoing, an Affected Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Affected Lender or otherwise, the circumstances entitling the Borrowers to require such assignment and delegation cease to apply.

#### **2.24 Defaulting Lenders.**

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

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

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

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as a result of such Defaulting Lender's breach of its obligations under this Agreement; seventh, so long as no Default or Event of Default has occurred and is continuing, to the payment of any amounts owing to the Borrowers as a result of any judgment of a court of competent jurisdiction obtained by the Borrowers against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and eighth, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (A) such payment is a payment of the principal amount of any Loans or L/C Advances in respect of which such Defaulting Lender has not fully funded its appropriate share and (B) such Loans or L/C Advances were made at a time when the conditions set forth in Section 5.2 were satisfied or waived, such payment shall be applied solely to pay the Loans of, and L/C Advances owed to, all non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, or L/C Advances owed to, such Defaulting Lender until such time as all Loans and funded and unfunded participations in L/C Advances and Swingline Loans are held by the Lenders pro rata in accordance with the Revolving Commitments without giving effect to Section 2.24(a)(iv). Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this Section 2.24(a)(ii) shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) Certain Fees.

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

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

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

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

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the Borrowers shall be deemed to have represented and warranted that such conditions are satisfied at such time). No reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that Lender having become a Defaulting Lender, including any claim of a non-Defaulting Lender as a result of such non-Defaulting Lender's increased exposure following such reallocation.

(v) Cash Collateral, Repayment of Swingline Loans. If the reallocation described in clause (iv) above cannot, or can only partially, be effected, the Borrowers shall, without prejudice to any right or remedy available to them hereunder or under law and subject to Section 2.25, (x) first, prepay Swingline Loans in an amount equal to the Swingline Lender's Fronting Exposure, and (y) second, Cash Collateralize the Issuing Lender's Fronting Exposure in accordance with the procedures set forth in Section 3.10.

(b) Defaulting Lender Cure. If the Borrowers, the Administrative Agent, the Swingline Lender and the Issuing Lender agree in writing in their sole discretion that a Defaulting Lender should no longer be deemed to be a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), such Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Loans and funded and unfunded participations in Letters of Credit and Swingline Loans to be held on a *pro rata* basis by the Lenders in accordance with their respective Revolving Percentages and L/C Percentages, as applicable (without giving effect to Section 2.24(a)(iv)), whereupon such Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrowers while such Lender was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from such Lender having been a Defaulting Lender.

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

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

## **2.25 Joint and Several Liability of the Borrowers.**

(a) Each Borrower is accepting joint and several liability hereunder and under the other Loan Documents in consideration of the financial accommodations to be provided by the Lenders under this Agreement, for the mutual benefit, directly and indirectly, of each Borrower and in consideration of the undertakings of the other the Borrowers to accept joint and several liability for the Obligations.

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(b) Each Borrower, jointly and severally, hereby irrevocably and unconditionally accepts, not merely as a surety but also as a co-debtor, joint and several liability with the other the Borrowers, with respect to the payment and performance of all of the Obligations (including any Obligations arising under this [Section 2.25](#)), it being the intention of the parties hereto that all the Obligations shall be the joint and several obligations of each Borrower without preferences or distinction among them.

(c) If and to the extent that any Borrower shall fail to make any payment with respect to any of the Obligations as and when due or to perform any of the Obligations in accordance with the terms thereof, then in each such event the other Borrowers will make such payment with respect to, or perform, such Obligations.

(d) The Obligations of each Borrower under the provisions of this [Section 2.25](#) constitute the absolute and unconditional, full recourse Obligations of each Borrower enforceable against each Borrower to the full extent of its properties and assets, irrespective of the validity, regularity or enforceability of this Agreement or any other circumstances whatsoever.

(e) Except as otherwise expressly provided in this Agreement, each Borrower hereby waives notice of acceptance of its joint and several liability, notice of any Loans made or Letters of Credit issued under or pursuant to this Agreement, notice of the occurrence of any Default, Event of Default, or of any demand for any payment under this Agreement, notice of any action at any time taken or omitted by the Administrative Agent or Lenders under or in respect of any of the Obligations, any requirement of diligence or to mitigate damages and, generally, to the extent permitted by applicable law, all demands, notices and other formalities of every kind in connection with this Agreement (except as otherwise provided in this Agreement). Each Borrower hereby assents to, and waives notice of, any extension or postponement of the time for the payment of any of the Obligations, the acceptance of any payment of any of the Obligations, the acceptance of any partial payment thereon, any waiver, consent or other action or acquiescence by the Administrative Agent or Lenders at any time or times in respect of any default by any Borrower in the performance or satisfaction of any term, covenant, condition or provision of this Agreement, any and all other indulgences whatsoever by the Administrative Agent or Lenders in respect of any of the Obligations, and the taking, addition, substitution or release, in whole or in part, at any time or times, of any security for any of the Obligations or the addition, substitution or release, in whole or in part, of any Borrower. Without limiting the generality of the foregoing, each Borrower assents to any other action or delay in acting or failure to act on the part of the Administrative Agent or Lender with respect to the failure by any Borrower to comply with any of its respective Obligations, including, without limitation, any failure strictly or diligently to assert any right or to pursue any remedy or to comply fully with applicable laws or regulations thereunder, which might, but for the provisions of this [Section 2.25](#) afford grounds for terminating, discharging or relieving any Borrower, in whole or in part, from any of its Obligations under this [Section 2.25](#), it being the intention of each Borrower that, so long as any of the Obligations hereunder remain unsatisfied, the Obligations of each Borrower under this [Section 2.25](#) shall not be discharged except by performance and then only to the extent of such performance. The Obligations of each Borrower under this [Section 2.25](#) shall not be diminished or rendered unenforceable by any winding up, reorganization, arrangement, liquidation, reconstruction or similar proceeding with respect to any Borrower, the Administrative Agent or any Lender.

(f) Each Borrower represents and warrants to the Administrative Agent and Lenders that such Borrower is currently informed of the financial condition of the Borrowers and of all other circumstances which a diligent inquiry would reveal and which bear upon the risk of nonpayment of the Obligations. Each Borrower further represents and warrants to the Administrative Agent and Lenders that such Borrower has read and understands the terms and conditions of the Loan Documents. Each Borrower hereby covenants that such Borrower will continue to keep informed of the Borrowers' financial condition,

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the financial condition of other guarantors, if any, and of all other circumstances which bear upon the risk of nonpayment or nonperformance of the Obligations.

(g) Each Borrower waives all rights and defenses arising out of an election of remedies by the Administrative Agent or any Lender, even though that election of remedies, such as a nonjudicial foreclosure with respect to security for a guaranteed obligation, has destroyed the Administrative Agent's or such Lender's rights of subrogation and reimbursement against such Borrower by the operation of Section 580(d) of the California Code of Civil Procedure or otherwise:

(h) Each Borrower waives all rights and defenses that such Borrower may have because the Obligations are secured by real property at any time. This means, among other things:

(i) The Administrative Agent and Lenders may collect from such Borrower without first foreclosing on any real or personal property Collateral pledged by the Borrowers.

(ii) If the Administrative Agent or any Lender forecloses on any Collateral consisting of real property pledged by the Borrowers:

(A) The amount of the Obligations may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price.

(B) The Administrative Agent and Lenders may collect from such Borrower even if the Administrative Agent or Lenders, by foreclosing on real property, has destroyed any right such Borrower may have to collect from the other Borrowers.

This is an unconditional and irrevocable waiver of any rights and defenses such Borrower may have because the Obligations are secured by real property. These rights and defenses include, but are not limited to, any rights or defenses based upon Section 580a, 580b, 580d or 726 of the California Code of Civil Procedure.

(i) The provisions of this Section 2.25 are made for the benefit of the Administrative Agent, Lenders and their respective successors and assigns, and may be enforced by it or them from time to time against any or all the Borrowers as often as occasion therefor may arise and without requirement on the part of the Administrative Agent, any Lender, any successor or any assign first to marshal any of its or their claims or to exercise any of its or their rights against any Borrower or to exhaust any remedies available to it or them against any Borrower or to resort to any other source or means of obtaining payment of any of the Obligations hereunder or to elect any other remedy. The provisions of this Section 2.25 shall remain in effect until all of the Obligations shall have been paid in full or otherwise fully satisfied. If at any time, any payment, or any part thereof, made in respect of any of the Obligations, is rescinded or must otherwise be restored or returned by the Administrative Agent or any Lender upon the insolvency, bankruptcy or reorganization of any Borrower, or otherwise, the provisions of this Section 2.25 will forthwith be reinstated in effect, as though such payment had not been made.

(j) Each Borrower hereby agrees that it will not enforce any of its rights of contribution or subrogation against any other Borrower with respect to any liability incurred by it hereunder or under any of the other Loan Documents, any payments made by it to the Administrative Agent or Lenders with respect to any of the Obligations or any collateral security therefor until such time as all of the Obligations have been paid in full in cash. Any claim which any Borrower may have against any other Borrower with respect to any payments to the Administrative Agent or Lender hereunder or under any other Loan Documents are hereby expressly made subordinate and junior in right of payment, without limitation as to any increases in the Obligations arising hereunder or thereunder, to the prior payment in full in cash of the

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Obligations and, in the event of any insolvency, bankruptcy, receivership, liquidation, reorganization or other similar proceeding under the laws of any jurisdiction relating to any Borrower, its debts or its assets, whether voluntary or involuntary, all such Obligations shall be paid in full in cash before any payment or distribution of any character, whether in cash, securities or other property, shall be made to any other Borrower therefor. Notwithstanding anything to the contrary contained in this [Section 2.25](#), no Borrower shall exercise any rights of subrogation, contribution, indemnity, reimbursement or other similar rights against, and shall not proceed or seek recourse against or with respect to any property or asset of, any other Borrower (the “**Foreclosed Borrower**”), including after payment in full of the Obligations, if all or any portion of the Obligations have been satisfied in connection with an exercise of remedies in respect of the Capital Stock of such Foreclosed Borrower whether pursuant to the Security Documents or otherwise.

(k) Each Borrower hereby agrees that, after the occurrence and during the continuance of any Default or Event of Default, the payment of any amounts due with respect to the indebtedness owing by any Borrower to any other Borrower is hereby subordinated to the prior payment in full in cash of the Obligations. Each Borrower hereby agrees that after the occurrence and during the continuance of any Default or Event of Default, such Borrower will not demand, sue for or otherwise attempt to collect any indebtedness of any other Borrower owing to such Borrower until the Obligations shall have been paid in full in cash. If, notwithstanding the foregoing sentence, such Borrower shall collect, enforce or receive any amounts in respect of such indebtedness, such amounts shall be collected, enforced and received by such Borrower as trustee for the Administrative Agent, and such Borrower shall deliver any such amounts to the Administrative Agent for application to the Obligations in accordance with the terms of this Agreement.

(l) Subject to the foregoing, to the extent that any Borrower shall, under this Agreement as a joint and several obligor, repay any of the Obligations made to another Borrower hereunder or other Obligations incurred directly and primarily by any other Borrower (an “**Accommodation Payment**”), then the Borrower making such Accommodation Payment shall be entitled to contribution and indemnification from, and be reimbursed by, each other Borrower in an amount, for each of such other Borrower, equal to a fraction of such Accommodation Payment, the numerator of which fraction is such other Borrower’s Allocable Amount and the denominator of which is the sum of the Allocable Amounts of all of the Borrowers. As of any date of determination, the “**Allocable Amount**” of each Borrower shall be equal to the maximum amount of liability for Accommodation Payments which could be asserted against such Borrower hereunder without (a) rendering such Borrower “insolvent” within the meaning of Section 101(31) of the Bankruptcy Code, Section 2 of the Uniform Fraudulent Transfer Act (“**UFTA**”) or Section 2 of the Uniform Fraudulent Conveyance Act (“**UFCA**”), (b) leaving such Borrower with unreasonably small capital or assets, within the meaning of Section 548 of the Bankruptcy Code, Section 4 of the UFTA, or Section 5 of the UFCA, or (c) leaving such Borrower unable to pay its debts as they become due within the meaning of Section 548 of the Bankruptcy Code or Section 4 of the UFTA, or Section 5 of the UFCA.

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

### SECTION 3 LETTERS OF CREDIT

#### 3.1 L/C Commitment.

(a) Subject to the terms and conditions hereof, the Issuing Lender agrees to issue letters of credit (“**Letters of Credit**”) for the account of the Borrowers on any Business Day during the Letter of Credit Availability Period in such form as may reasonably be approved from time to time by the Issuing

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Lender; provided that the Issuing Lender shall have no obligation to issue any Letter of Credit if, after giving effect to such issuance, either (x) the L/C Exposure would exceed the Total L/C Commitments or (y) the Available Revolving Commitments would be less than zero. Each Letter of Credit shall (i) be denominated in Dollars or, in the sole discretion of the Issuing Lender with respect to any particular Letter of Credit, a Foreign Currency and (ii) expire no later than the earlier of (x) the first anniversary of its date of issuance and (y) the Letter of Credit Maturity Date, provided that any Letter of Credit with a one-year term may provide for the renewal thereof for additional one-year periods (which shall in no event extend beyond the date referred to in clause (y) above). For purposes of this Agreement, the stated amount of any Letter of Credit issued in a Foreign Currency shall be converted into Dollars from time to time by the Issuing Lender and upon any drawing under such Letter of Credit.

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

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

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

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

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

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

(vi) except as otherwise agreed by the Administrative Agent and the Issuing Lender, such Letter of Credit is in an initial face amount less than \$100,000; or

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

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

### **3.3 Fees and Other Charges.**

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

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

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

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

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

### **3.4 L/C Participations.**

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

### **3.5 Reimbursement.**

(a) If the Issuing Lender shall make any L/C Disbursement in respect of a Letter of Credit, the Issuing Lender shall notify the Borrowers and the Administrative Agent thereof and the Borrowers shall pay or cause to be paid to the Issuing Lender an amount equal to the entire amount of such L/C Disbursement not later than (i) the immediately following Business Day if the Issuing Lender issues such notice before 10:00 a.m. Pacific time on the date of such L/C Disbursement, or (ii) on the second following Business Day if the Issuing Lender issues such notice at or after 10:00 a.m. Pacific time on the date of such L/C Disbursement. Each such payment shall be made to the Issuing Lender at its address for notices referred to herein in Dollars and in immediately available funds; provided that the Borrowers may, subject to the conditions to borrowing set forth herein, request in accordance with Section 2.5 or Section 2.7(a) that such payment be financed with a Revolving Loan or a Swingline Loan, as applicable, in an equivalent amount and, to the extent so financed, the Borrowers' obligations to make such payment shall be discharged and replaced by the resulting Revolving Loan or Swingline Loan.

(b) If the Issuing Lender shall not have received from the Borrowers the payment that they are required to make pursuant to Section 3.5(a) with respect to a Letter of Credit within the time specified in such Section, the Issuing Lender will promptly notify the Administrative Agent of the L/C Disbursement and the Administrative Agent will promptly notify each L/C Lender of such L/C Disbursement and its L/C Percentage thereof, and each L/C Lender shall pay to the Issuing Lender upon demand at the Issuing Lender's address for notices specified herein an amount equal to such L/C Lender's L/C Percentage of such L/C Disbursement (and the Administrative Agent may apply Cash Collateral provided for this purpose) and upon such payment pursuant to this paragraph to reimburse the Issuing Lender for any L/C Disbursement, the Borrowers shall be required to reimburse the L/C Lenders for such payments (including interest accrued thereon from the date of such payment until the date of such reimbursement at the rate applicable to Revolving Loans plus 2% per annum) on demand; provided that if at the time of and after giving effect to such payment by the L/C Lenders, the conditions to borrowings and

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Revolving Loan Conversions set forth in Section 5.2 are satisfied, the Borrowers may, by written notice to the Administrative Agent certifying that such conditions are satisfied and that all interest owing under this paragraph has been paid, request that such payments by the L/C Lenders be converted into Revolving Loans (a “**Revolving Loan Conversion**”), in which case, if such conditions are in fact satisfied, the L/C Lenders shall be deemed to have extended, and the Borrowers shall be deemed to have accepted, a Revolving Loan in the aggregate principal amount of such payment without further action on the part of any party; any amount so paid pursuant to this paragraph shall, on and after the payment date thereof, be deemed to be Revolving Loans for all purposes hereunder; provided that the Issuing Lender, at its option, may effectuate a Revolving Loan Conversion regardless of whether the conditions to borrowings and Revolving Loan Conversions set forth in Section 5.2 are satisfied.

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

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

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

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

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

### **3.10 Cash Collateral.**

(a) Certain Credit Support Events. Upon the request of the Administrative Agent or the Issuing Lender (i) if the Issuing Lender has honored any full or partial drawing request under any Letter of Credit and such drawing has resulted in an L/C Advance by all the L/C Lenders that is not reimbursed by the Borrowers or converted into a Revolving Loan pursuant to Section 3.5(b), or (ii) if, as of the Letter of Credit Maturity Date, any L/C Exposure for any reason remains outstanding, the Borrowers shall, in each case, immediately Cash Collateralize the then effective L/C Exposure in an amount equal to 105% (110% in the case of any L/C Exposure in respect of any Letter of Credit denominated in a Foreign Currency) of such L/C Exposure.

At any time that there shall exist a Defaulting Lender, within one (1) Business Day following the request of the Administrative Agent or the Issuing Lender (with a copy to the Administrative Agent), the Borrowers shall deliver to the Administrative Agent Cash Collateral in an amount sufficient to cover 105% (110% in the case of any L/C Exposure in respect of any Letter of Credit denominated in a Foreign Currency) of the Fronting Exposure relating to the Letters of Credit (after giving effect to Section 2.24(a)(iv) and any Cash Collateral provided by such Defaulting Lender).

(b) Grant of Security Interest. All Cash Collateral (other than credit support not constituting funds subject to deposit) shall be maintained in blocked, non-interest bearing deposit accounts with the Administrative Agent. The Borrowers, and to the extent provided by any Lender or Defaulting Lender, such Lender or Defaulting Lender, hereby grants to (and subjects to the control of) the Administrative Agent, for the benefit of the Administrative Agent, the Issuing Lender and the L/C Lenders, and agrees to maintain, a first priority security interest and Lien in all such Cash Collateral and in all proceeds thereof, as security for the Obligations to which such Cash Collateral may be applied pursuant to Section 3.10(c). If at any time the Administrative Agent determines that Cash Collateral is subject to any right or claim of any Person other than the Administrative Agent or any Issuing Lender as herein provided, or that the total amount of such Cash Collateral is less than 105% (110% in the case of any L/C Exposure in respect of any Letter of Credit denominated in a Foreign Currency) of the applicable L/C Exposure, Fronting Exposure and other Obligations secured thereby, the Borrowers or the relevant Lender or Defaulting Lender, as applicable, will, promptly upon demand by the Administrative Agent, pay or provide to the Administrative Agent additional Cash Collateral in an amount sufficient to eliminate such deficiency (after giving effect to any Cash Collateral provided by such Defaulting Lender).

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

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

**3.11 Reserved.**

**3.12 Reserved.**

**3.13 Applicability of ISP.** Unless otherwise expressly agreed by the Issuing Lender and the Borrowers when a Letter of Credit is issued and subject to applicable laws, the Letters of Credit shall be governed by and subject to the rules of the ISP.

#### **SECTION 4 REPRESENTATIONS AND WARRANTIES**

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

##### **4.1 Financial Condition.**

(a) The Pro Forma Financial Statements have been prepared giving effect (as if such events had occurred on such date in the case of the balance sheets and the beginning of the period presented in the case of the statements of income and cash flows) to (i) the Loans to be made on the Closing Date and the use of proceeds thereof, and (ii) the payment of fees and expenses in connection with the foregoing. The Pro Forma Financial Statements have been prepared based on the information available to the Borrowers as of the date of delivery thereof, and present fairly in all material respects on a *pro forma* basis the estimated financial position of the Parent and its consolidated Subsidiaries as of December 31, 2014 assuming that the events specified in the preceding sentence had actually occurred at such date in the case of the balance sheets and at the beginning of the period presented in the case of the statements of income and cash flows

(b) The audited consolidated balance sheets of the Parent (or its predecessor) and its Subsidiaries as of December 31, 2012 and December 31, 2013, and the related consolidated statements of income and of cash flows for the fiscal years ended on such dates, reported on by and accompanied by an unqualified report from Ernst & Young LLP, present fairly in all material respects the consolidated financial condition of the Parent and its Subsidiaries as at such date, and the consolidated results of its operations and its consolidated cash flows for the respective fiscal years then ended. The unaudited consolidated balance sheet of the Parent and its Subsidiaries as at December 31, 2014, and the related unaudited consolidated statements of income and cash flows for the three-month period ended on such date, present

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fairly in all material respects the consolidated financial condition of the Parent and its Subsidiaries as at such date, and the consolidated results of its operations and its consolidated cash flows for the three-month period then ended (subject to normal year-end audit adjustments and the absence of footnotes). All such financial statements, including the related schedules and notes thereto, have been prepared in accordance with GAAP applied consistently throughout the periods involved (except with respect to audited financial statements as approved by the aforementioned firm of accountants and disclosed therein) subject in the case of unaudited financial statements to changes resulting from normal year-end adjustments and the absence of footnotes. No Group Member has, as of the Closing Date, any material Guarantee Obligations, contingent liabilities and liabilities for taxes, or any long-term leases or unusual forward or long-term commitments, including any interest rate or foreign currency swap or exchange transaction or other obligation in respect of derivatives, that are not reflected in the most recent financial statements referred to in this paragraph. During the period from December 31, 2013 to and including the date hereof, there has been no Disposition by any Group Member of any material part of its business or property.

**4.2 No Change.** Since December 31, 2013, there has been no development or event that has had or would reasonably be expected to have a Material Adverse Effect.

**4.3 Existence; Compliance with Law.** Each Group Member (a) is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, (b) has the power and authority, and the legal right, to own and operate its property, to lease the property it operates as lessee and to conduct the business in which it is currently engaged, (c) is duly qualified as a foreign corporation or other organization and in good standing under the laws of each jurisdiction where the failure to be so qualified would reasonably be expected to have a Material Adverse Effect and (d) is in material compliance with all Requirements of Law except in such instances in which (i) such Requirement of Law is being contested in good faith by appropriate proceedings diligently conducted and the prosecution of such contest would not reasonably be expected to result in a Material Adverse Effect, or (ii) the failure to comply therewith, either individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect.

**4.4 Power, Authorization; Enforceable Obligations.** Each Loan Party has the power and authority, and the legal right, to make, deliver and perform the Loan Documents to which it is a party and, in the case of the Borrowers, to obtain extensions of credit hereunder. Each Loan Party has taken all necessary organizational action to authorize the execution, delivery and performance of the Loan Documents to which it is a party and, in the case of the Borrowers, to authorize the extensions of credit on the terms and conditions of this Agreement. No Governmental Approval or consent or authorization of, filing with, notice to or other act by or in respect of, any other Person is required in connection with the extensions of credit hereunder or with the execution, delivery, performance, validity or enforceability of this Agreement or any of the Loan Documents, except (i) Governmental Approvals, consents, authorizations, filings and notices which have been obtained or made and are in full force and effect and the filing of a Form8-K with the SEC following the Closing Date and (ii) the filings referred to in [Section 4.19](#). Each Loan Document has been duly executed and delivered on behalf of each Loan Party party thereto. This Agreement constitutes, and each other Loan Document upon execution will constitute, a legal, valid and binding obligation of each Loan Party party thereto, enforceable against each such Loan Party in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general equitable principles (whether enforcement is sought by proceedings in equity or at law).

**4.5 No Legal Bar.** The execution, delivery and performance of this Agreement and the other Loan Documents, the issuance of Letters of Credit, the borrowings hereunder and the use of the proceeds thereof will not violate any material Requirement of Law or any material Contractual Obligation of any

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Group Member and will not result in, or require, the creation or imposition of any Lien on any of their respective properties or revenues pursuant to any material Requirement of Law or any such material Contractual Obligation (other than the Liens created by the Security Documents). No Requirement of Law or Contractual Obligation applicable to the Borrowers or any of their respective Subsidiaries would reasonably be expected to have a Material Adverse Effect.

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

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

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

**4.9 Intellectual Property.** Each Group Member owns, or is licensed to use, all Intellectual Property necessary for the conduct of its business as currently conducted. No claim has been asserted and is pending by any Person challenging or questioning any Group Member's use of any Intellectual Property or the validity or effectiveness of any such Group Member's Intellectual Property, nor does any Borrower know of any valid basis for any such claim, unless such claim would not reasonably be expected to have a Material Adverse Effect. To the knowledge of the Loan Parties, the use of Intellectual Property by each Group Member, and the conduct of such Group Member's business, as currently conducted, does not infringe on or otherwise violate the rights of any Person, unless such infringement would not reasonably be expected to have a Material Adverse Effect, and there are no claims pending or, to the knowledge of any Borrower, threatened to such effect.

**4.10 Taxes.** Each Group Member has filed or caused to be filed all Federal, all income and all other material state and other tax returns that are required to be filed and has paid all material taxes shown to be due and payable on said returns or on any assessments made against it or any of its property and all other material taxes, fees or other charges imposed on it or any of its property by any Governmental Authority (other than any the amount or validity of which are currently being contested in good faith by appropriate proceedings and with respect to which reserves in conformity with GAAP have been provided on the books of the relevant Group Member); no tax Lien has been filed (other than Liens permitted by Section 7.3(a)), and, to the knowledge of each Borrower, no material claim is being asserted, with respect to any such tax, fee or other charge.

**4.11 Federal Regulations.** No part of the proceeds of any Loans, and no other extensions of credit hereunder, will be used (a) for "buying" or "carrying" any "margin stock" within the respective meanings of each of the quoted terms under Regulation U as now and from time to time hereafter in effect for any purpose that violates the provisions of the Regulation U of the Board or (b) for any purpose that violates the provisions of the other regulations of the Board. If requested by any Lender or the Administrative Agent, the Borrowers will furnish to the Administrative Agent and each Lender a statement

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to the foregoing effect in conformity with the requirements of FR Form G-3 or FR Form U-1, as applicable, referred to in Regulation U.

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

**4.13 ERISA.**

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

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

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

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

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

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

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

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

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not be subject to state statutes applicable to such Loan Party regulating investments of fiduciaries with respect to governmental plans.

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

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

**4.16 Use of Proceeds.** The proceeds of the Revolving Loans shall be to refinance the obligations of the Borrowers outstanding under the Existing Credit Facility, to pay related fees and expenses and for general corporate purposes. All or a portion of the proceeds of the Swingline Loans and the Letters of Credit, shall be used for general corporate purposes.

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

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

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

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

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

(e) to the knowledge of the Borrowers, there has been no release or threat of release of Materials of Environmental Concern at or from the Properties arising from or related to the operations of

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any Group Member or otherwise in connection with the Business, in violation of or in amounts or in a manner that could give rise to liability under Environmental Laws;

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

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

**4.18 Accuracy of Information, Etc.** No statement or information contained in this Agreement, any other Loan Document or any other document, certificate or statement furnished by or on behalf of any Loan Party to the Administrative Agent or the Lenders, or any of them, for use in connection with the transactions contemplated by this Agreement or the other Loan Documents, contained as of the date such statement, information, document or certificate was so furnished, any untrue statement of a material fact or omitted to state a material fact necessary to make the statements contained herein or therein, in light of the circumstances, not misleading in any material respect. The projections and *pro forma* financial information contained in the materials referenced above are based upon good faith estimates and assumptions believed by the Borrowers to be reasonable at the time made, it being recognized by the Lenders that such financial information as it relates to future events is not to be viewed as fact and that actual results during the period or periods covered by such financial information may differ from the projected results set forth therein by a material amount and that no assurance can be given that any particular projected result will be realized. There is no fact known to any Loan Party that would reasonably be expected to have a Material Adverse Effect that has not been expressly disclosed herein, in the other Loan Documents or in any other documents, certificates and statements furnished to the Administrative Agent and the Lenders for use in connection with the transactions contemplated hereby and by the other Loan Documents.

#### **4.19 Security Documents.**

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

(b) Any Mortgages delivered after the Closing Date pursuant to Section 6.12 will be, upon execution, effective to create in favor of the Administrative Agent, for the benefit of the Secured Parties, a legal, valid and enforceable Lien on the Mortgaged Properties described therein and proceeds thereof, and when the Mortgages are filed in the offices for the applicable jurisdictions in which the Mortgaged Properties are located, each such Mortgage shall constitute a fully perfected Lien on, and

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security interest in, all right, title and interest of the Loan Parties in the Mortgaged Properties and the proceeds thereof, as security for the Obligations (as defined in the relevant Mortgage), in each case prior and superior in right to any other Person other than Liens permitted by Section 7.3.

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

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

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

**4.23 Reserved.**

**4.24 Insurance.** All insurance maintained by the Loan Parties is in full force and effect, all premiums have been duly paid, no Loan Party has received notice of violation or cancellation thereof, and there exists no default under any requirement of such insurance. Each Loan Party maintains, with financially sound and reputable insurance companies insurance on all its property in at least such amounts and against at least such risks (but including in any event public liability, product liability and business interruption) as are usually insured against in the same general area by companies engaged in the same or a similar business.

**4.25 No Casualty.** No Loan Party has received any notice of, nor does any Loan Party have any knowledge of, the occurrence or pendency or contemplation of any Casualty Event affecting all or any material portion of its property.

**4.26 Accounts Receivable.**

All statements made and all unpaid balances appearing in all invoices, instruments and other documents evidencing the Accounts are and shall be true and correct in all material respects and all such invoices, instruments and other documents, and all of the Borrower's books and records are genuine and in all respects what they purport to be. All sales and other transactions underlying or giving rise to each Account shall comply in all material respects with all applicable laws and governmental rules and regulations. To the best of the Borrower's knowledge, all signatures and endorsements on all documents, instruments, and agreements relating to all Accounts are genuine, and all such documents, instruments and agreements are legally enforceable in accordance with their terms.

**4.27 Definition of "Knowledge".** Except as otherwise set forth herein, for purposes of the Loan Documents, whenever a representation or warranty is made to the Borrowers' knowledge or awareness, to the "best of" the Borrowers' knowledge, or with a similar qualification, knowledge or awareness means the actual knowledge, after reasonable investigation, of any Responsible Officer.

**4.28 Patriot Act.** Each Loan Party is in compliance, in all material respects, with the (a) Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States

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Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto, and (b) the Patriot Act or the Bribery Act 2012. No part of the proceeds of the Loans made hereunder will be used by any Loan Party or any of their Affiliates, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended. Each Loan Party and their respective directors, officers and, to the knowledge of the Borrower, employees, agents, advisors and Affiliates is in compliance, in all material respects, with the United States Foreign Corrupt Practices Act of 1977, as amended.

**4.29 OFAC.** No Loan Party nor any of its Subsidiaries is in violation of any of the country or list based economic and trade sanctions administered and enforced by OFAC. No Loan Party nor any of its Subsidiaries nor their respective directors, officers nor, to the knowledge of such Loan Party, employees, agents, advisors and Affiliates (a) is a Sanctioned Person or a Sanctioned Entity, (b) has its assets located in Sanctioned Entities, or (c) derives revenues from investments in, or transactions with Sanctioned Persons or Sanctioned Entities. No proceeds of any Loan made hereunder will be used to fund any operations in, finance any investments or activities in, or make any payments to, a Sanctioned Person or a Sanctioned Entity. No Loan Party nor any of its Subsidiaries nor their respective directors, officers nor, to the knowledge of such Loan Party, employees, agents, advisors and Affiliates (a) is a Sanctioned Person or a Sanctioned Entity, (b) has its assets located in Sanctioned Entities, or (c) derives revenues from investments in, or transactions with Sanctioned Persons or Sanctioned Entities.

## SECTION 5 CONDITIONS PRECEDENT

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

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

- (i) this Agreement, executed and delivered by the Administrative Agent, each Borrower and each Lender listed on Schedule 1.1A;
  - (ii) the Collateral Information Certificate, executed by a Responsible Officer of the Loan Parties;
  - (iii) if required by any Revolving Lender, a Revolving Loan Note executed by the Borrowers in favor of such Revolving Lender;
  - (iv) if required by the Swingline Lender, the Swingline Loan Note executed by the Borrowers in favor of such Swingline Lender;
  - (v) the Guarantee and Collateral Agreement, executed and delivered by the Borrowers and each other Grantor named therein;
  - (vi) each Intellectual Property Security Agreement, executed by the applicable Grantor related thereto;
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- (vii) Control Agreements with each of SVB and NBSC;
- (viii) each other Security Document, executed and delivered by the applicable Loan Party party thereto;
- (ix) a completed Compliance Certificate as of the last day of the fiscal quarter of the Parent ended on December 31, 2014;
- (x) a completed Liquidity Report dated as of December 31, 2014;
- (xi) a completed Transaction Report dated as of December 31, 2014; and
- (xii) the Flow of Funds Agreement, executed by the Borrowers.

(b) Pro Forma Financial Statements; Financial Statements; Projections. The Administrative Agent shall have received (i) the Pro Forma Financial Statements, (ii) audited consolidated financial statements of the Parent (or its predecessor) as of December 31, 2012 and December 31, 2013, (iii) unaudited consolidated financial statements of the Parent as of December 31, 2014 and for each fiscal month ended thereafter and at least 15 days before the Closing Date, and (iv) forecasts prepared by management of the Parent, each in form reasonably satisfactory to the Administrative Agent, of balance sheets, income statements and cash flow statements on a monthly basis for each fiscal month during the term of the Revolving Facility.

(c) Approvals. All Governmental Approvals and consents and approvals of, or notices to, any other Person (including the holders of any Capital Stock issued by any Loan Party) required in connection with the execution and performance of the Loan Documents and consummation of the other transactions contemplated hereby, shall have been obtained and be in full force and effect.

(d) Secretary's Certificates; Certified Operating Documents; Good Standing Certificates. The Administrative Agent shall have received a certificate of each Loan Party, dated the Closing Date and executed by the Secretary or Assistant Secretary of such Loan Party, substantially in the form of Exhibit C, with appropriate insertions and attachments, including (i) the Operating Documents of such Loan Party, (ii) the relevant board resolutions or written consents of such Loan Party adopted by such Loan Party for the purposes of authorizing such Loan Party to enter into and perform the Loan Documents to which such Loan Party is party and (iii) the names, titles, incumbency and signature specimens of those representatives of such Loan Party who have been authorized by such resolutions and/or written consents to execute Loan Documents on behalf of such Loan Party, (iv) a good standing certificate for each Loan Party certified as of a recent date by the appropriate Governmental Authority of its respective jurisdiction of organization, and (v) certificates of qualification as a foreign corporation issued by each of North Carolina, South Carolina, California and Oklahoma.

(e) Responsible Officer's Certificates.

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

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(ii) The Administrative Agent shall have received a certificate signed by a Responsible Officer of the Parent, dated as of the Closing Date and in form and substance reasonably satisfactory to it, certifying (A) that the conditions specified in Sections 5.2(a) and (d) have been satisfied, and (B) that there has been no event or circumstance since December 31, 2013, that has had or that would reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect.

(f) Patriot Act. The Administrative Agent shall have received, prior to the Closing Date, all documentation and other information required by Governmental Authorities under applicable “know your customer” and anti-money-laundering rules and regulations, including the Patriot Act.

(g) Due Diligence Investigation. The Administrative Agent shall have completed a due diligence investigation of the Parent and its Subsidiaries in scope, and with results, satisfactory to the Administrative Agent and shall have been given such access to the management, records, books of account, contracts and properties of the Parent and its Subsidiaries and shall have received such financial, business and other information regarding each of the foregoing Persons and businesses as it shall have requested. Without limiting the foregoing, the Administrative Agent shall have received a copy of the most recent investment policy approved by the Parent’s board of directors.

(h) Reports. The Administrative Agent shall have received, in form and substance satisfactory to it, all audits and certifications as it has reasonably requested.

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

(j) Collateral Matters.

(i) Lien Searches. The Administrative Agent shall have received the results of recent lien searches in each of the jurisdictions where any of the Loan Parties is formed or organized, and such searches shall reveal no liens on any of the assets of the Loan Parties except for Liens permitted by Section 7.3, Liens to be discharged on or prior to the Closing Date, or Liens securing obligations of the Group Members under the Existing Credit Facility, which Liens shall be discharged substantially contemporaneously with the Closing Date pursuant to the Payoff Letter.

(ii) Pledged Stock; Stock Powers; Pledged Notes. The Administrative Agent shall have received original versions of (A) the certificates representing the shares of Capital Stock pledged to the Administrative Agent (for the ratable benefit of the Secured Parties) pursuant to the Guarantee and Collateral Agreement, together with an undated stock power for each such certificate executed in blank by a duly authorized officer of the pledgor thereof, and (B) each promissory note (if any) pledged to the Administrative Agent (for the ratable benefit of the Secured Parties) pursuant to the Guarantee and

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Collateral Agreement, endorsed (without recourse) in blank (or accompanied by an executed transfer form in blank) by the pledgor thereof.

(iii) Filings, Registrations, Recordings, Agreements, Etc. Each document (including any UCC financing statements, Intellectual Property Security Agreements, Deposit Account Control Agreements, Securities Account Control Agreements, and a landlord access agreement for the Borrowers' headquarters location) required by the Loan Documents or under law or reasonably requested by the Administrative Agent to be filed, executed, registered or recorded to create in favor of the Administrative Agent (for the ratable benefit of the Secured Parties), a perfected Lien on the Collateral described therein, prior and superior in right and priority to any Lien in the Collateral held by any other Person (other than with respect to Liens expressly permitted by Section 7.3), shall have been executed (if applicable) and delivered to the Administrative Agent in proper form for filing, registration or recordation.

(k) Insurance. The Administrative Agent shall have received insurance certificates satisfying the requirements of Section 6.6 hereof and Section 5.2(b) of the Guaranty and Collateral Agreement, together with evidence reasonably satisfactory to the Administrative Agent that the insurance policies of each Loan Party have been endorsed for the purpose of naming the Administrative Agent (for the ratable benefit of the Secured Parties) as an "additional insured" or "lender loss payee", as applicable, with respect to such insurance policies, in form and substance satisfactory to the Administrative Agent.

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

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

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

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

(p) No Material Adverse Effect. There shall not have occurred since December 31, 2013 any event or condition that has had or would be reasonably expected to have, individually or in the aggregate, a Material Adverse Effect.

(q) No Litigation. No litigation, investigation or proceeding of or before any arbitrator or Governmental Authority is pending or, to the knowledge of any Group Member, threatened in writing, relating to or arising out of the Loan Documents or the transactions contemplated hereby and thereby.

(r) Consistency. The final terms and conditions of the transactions contemplated by the Loan Documents shall be (i) as described in the Engagement Letter, and otherwise consistent with the

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description thereof provided to Administrative Agent in writing or (ii) otherwise reasonably satisfactory to Administrative Agent and the Lenders.

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

**5.2 Conditions to Each Extension of Credit.** The agreement of each Lender to make any extension of credit requested to be made by it hereunder on any date (including its initial Loans disbursed on the Closing Date) is subject to the satisfaction of the following conditions precedent:

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

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

(c) Notices of Borrowing; Transaction Report. The Administrative Agent shall have received a Notice of Borrowing and a Transaction Report in connection with any such request for extension of credit which complies with the requirements hereof.

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

Each borrowing by and issuance of a Letter of Credit on behalf of any Borrower hereunder shall constitute a representation and warranty by the Borrowers as of the date of such extension of credit that the conditions contained in this Section 5.2 have been satisfied.

**5.3 Post-Closing Conditions Subsequent.** The Borrowers shall satisfy each of the conditions subsequent to the Closing Date specified in this Section 5.3 to the reasonable satisfaction of the Administrative Agent, in each case by no later than the date specified for such condition below (or such other date as Administrative Agent shall agree in its sole discretion):

(a) Within thirty (30) days following the Closing Date, the Borrowers shall deliver the landlord access agreements and bailee waivers set forth on Schedule 5.3 hereto as required pursuant to Section 6.12(e) hereof.

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**SECTION 6**  
**AFFIRMATIVE COVENANTS**

Each Borrower hereby jointly and severally agrees that, at all times prior to the Discharge of Obligations, each such Borrower shall, and, where applicable, shall cause each of its respective Subsidiaries to:

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

(a) as soon as available, but in any event within 120 days after the end of each fiscal year of the Parent (commencing with the fiscal year ending December 31, 2014), a copy of the audited consolidated and consolidating balance sheet of the Parent and its consolidated Subsidiaries as at the end of such fiscal year and the related audited consolidated and consolidating statements of income and of cash flows for such fiscal year, setting forth in each case in comparative form the figures for the previous year, together with an unqualified opinion by an independent certified public accounting firm of nationally recognized standing and reasonably acceptable to the Administrative Agent;

(b) as soon as available, but in any event not later than 35 days (provided that, for the month ending January 31, 2016, such financial statements shall be due on or before March 25, 2016) after the end of each month occurring during each fiscal year of the Parent, the unaudited consolidated and consolidating balance sheet of the Parent and its consolidated Subsidiaries as at the end of such month and the related unaudited consolidated and consolidating statements of income and of cash flows for such month and the portion of the fiscal year through the end of such month, setting forth in each case in comparative form the figures for the previous year, certified by a Responsible Officer of the Parent as being fairly stated in all material respects (subject to normal year-end audit adjustments and the absence of footnotes).

(c) as soon as available, but in any event (i) within 90 days after the end of each fiscal year of the Parent, the Parent's annual report on form 10-K filed with the SEC, (ii) within 45 days after the end of each fiscal quarter of the Parent, the Parent's quarterly report on form 10-Q filed with the SEC, and (iii) each form 8-K filing made by the Parent as and when filed with the SEC; provided that documents required to be delivered pursuant to this Section 6.1(c) may be delivered electronically and if so, shall be deemed to have been delivered on the date on which the Parent posts such documents, or provides a link thereto, either: (x) on the Parent's website on the Internet at the website address listed in Section 10.2; or (y) when such documents are posted electronically on the Parent's behalf on an internet or intranet website to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent), if any.

All such financial statements shall be complete and correct in all material respects and shall be prepared in reasonable detail and in accordance with GAAP applied (except as approved by such accountants or officer, as the case may be, and disclosed in reasonable detail therein) consistently throughout the periods reflected therein and with prior periods, subject in the case of unaudited financial statements to changes resulting from normal year-end adjustments and the absence of footnotes.

**6.2 Certificates; Reports; Other Information.** Furnish to the Administrative Agent, for distribution to each Lender:

(a) concurrently with the delivery of any financial statements pursuant to Section 6.1, (i) a certificate of a Responsible Officer stating that, to the best of such Responsible Officer's knowledge, each Loan Party during such period has observed or performed all of its covenants and other agreements, and satisfied every condition contained in this Agreement and the other Loan Documents to which it is a party

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to be satisfied by it, and that such Responsible Officer has obtained no knowledge of any Default or Event of Default except as specified in such certificate and (ii) in the case of all monthly, quarterly or annual financial statements, (x) a Compliance Certificate containing all information and calculations reasonably necessary for determining compliance by each Group Member with the provisions of this Agreement referred to therein as of the last day of the month or fiscal year of the Parent, as the case may be, and (y) to the extent not previously disclosed to the Administrative Agent, a description of any change in the jurisdiction of organization of any Loan Party and a list of any registered Intellectual Property issued to or acquired by any Loan Party since the date of the most recent report delivered pursuant to this clause (y) (or, in the case of the first such report so delivered, since the Closing Date);

(b) as soon as available, and in any event no later than 60 days after the end of each fiscal year of the Parent, a detailed consolidated budget for the following fiscal year (including a projected consolidated balance sheet of the Parent and its Subsidiaries as of the end of each fiscal quarter of such fiscal year, the related consolidated statements of projected cash flow, projected changes in financial position and projected income and a description of the underlying assumptions applicable thereto), and, as soon as available, significant revisions, if any, of such budget and projections with respect to such fiscal year (collectively, the "**Projections**"), which Projections shall be commensurate with those provided to the Parent's board of directors;

(c) promptly, and in any event within five (5) Business Days after receipt thereof by any Loan Party or any Subsidiary thereof, copies of each notice or other correspondence received from the SEC (or comparable agency in any applicable non-U.S. jurisdiction) concerning any investigation or possible investigation or other inquiry by such agency regarding financial or other operational results of any Loan Party or any Subsidiary thereof (other than routine comment letters from the staff of the SEC relating to the Parent's filings with the SEC);

(d) within five days after the same are sent, copies of each annual report, proxy or financial statement or other material report that the Parent sends to the holders of any class of the Parent's debt securities or public equity securities and, within five days after the same are filed, copies of all annual, regular, periodic and special reports and registration statements which the Parent may file with the SEC under Section 13 or 15(d) of the Exchange Act, or with any national securities exchange, and not otherwise required to be delivered to the Administrative Agent pursuant hereto;

(e) upon request by the Administrative Agent, within five days after the same are sent or received, copies of all correspondence, reports, documents and other filings with any Governmental Authority regarding compliance with or maintenance of Governmental Approvals or Requirements of Law or that would reasonably be expected to have a Material Adverse Effect on any of the Governmental Approvals or otherwise on the operations of the Group Members;

(f) concurrently with each Notice of Borrowing and in any event within 35 days after the end of each month, account receivable and account payable agings (by invoice date), a deferred revenue schedule, and a Transaction Report summarizing and calculating (where applicable) the Borrowing Base, the Annualized Recurring Revenue Retention Rate, Recurring Revenue and Recurring Revenue Lost, together with all key performance metrics related to such calculations;

(g) concurrently with the delivery of financial statements referred to in Section 6.1(b), a Liquidity Report as of the last day of the month to which such financial statements relate;

(h) concurrently with the delivery of the financial statements referred to in Section 6.1(a), a report of a reputable insurance broker with respect to the insurance coverage maintained by the Borrowers

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pursuant to Section 6.6 and the terms of the Guarantee and Collateral Agreement, together with any supplemental reports with respect thereto which the Administrative Agent may reasonably request; and

- (i) promptly, such additional financial and other information as the Administrative Agent may from time to time reasonably request.

### **6.3 Accounts Receivable.**

(a) Schedules and Documents Relating to Accounts. The Borrowers shall deliver to the Administrative Agent the Transaction Reports required by Section 6.2, on the Administrative Agent's standard forms. If reasonably requested by the Administrative Agent, the Borrowers shall furnish the Administrative Agent with copies of all contracts, orders, invoices, and other similar documents, and all shipping instructions, delivery receipts, bills of lading, and other evidence of delivery, for any goods the sale or disposition of which gave rise to the Accounts relating to such collections. In addition, the Borrowers shall deliver to the Administrative Agent, upon its reasonable request therefor, the originals of all instruments, chattel paper, security agreements, guarantees and other documents and property evidencing or securing any Accounts, in the same form as received, with all necessary endorsements, and copies of all credit memos.

(b) Disputes. The Borrowers shall promptly notify the Administrative Agent of all disputes for which a claim has been filed in excess of \$1,000,000 relating to Accounts included within Recurring Revenue. The Borrowers may forgive (completely or partially), compromise, or settle any Account for less than payment in full, or agree to do any of the foregoing at any time so long as (i) the Borrowers do so in good faith, in a commercially reasonable manner, in the ordinary course of business, in arm's-length transactions, and reports the same to the Administrative Agent in the regular reports provided to the Administrative Agent; (ii) no Default or Event of Default has occurred and is continuing at such time; and (iii) after taking into account all such discounts, settlements and forgiveness, the Total Revolving Extensions of Credit then outstanding will not exceed the Available Revolving Commitment then in effect.

(c) Collection of Accounts. The Borrowers shall have the right to collect all Accounts, unless and until a Default or an Event of Default has occurred and is continuing. The Borrowers shall direct all Account Debtors to deliver or transmit all proceeds of Accounts into a lockbox account, or via electronic deposit capture into a "blocked account", as specified by the Administrative Agent (either such account, the "**Cash Collateral Account**"), which such Cash Collateral Account shall be subject to a Deposit Account Control Agreement in form and substance satisfactory to the Administrative Agent. Whether or not an Event of Default has occurred and is continuing, the Borrowers shall immediately deliver all payments on and proceeds of Accounts to the Cash Collateral Account to be (i) prior to the occurrence and the continuance of an Event of Default, at Borrower's sole discretion (x) transferred to an account of the Borrowers maintained at SVB or (y) applied immediately reduce the Obligations; and (ii) after the occurrence and during the continuance of an Event of Default applied as described in Section 8.3.

(d) Returns. Provided no Event of Default has occurred and is continuing, if any Account Debtor returns any Inventory to any Borrower, such Borrower shall promptly (i) determine the reason for such return, (ii) issue a credit memorandum to the Account Debtor in the appropriate amount, and (iii) provide a copy of such credit memorandum to the Administrative Agent, upon request from the Administrative Agent. In the event any attempted return occurs after the occurrence and during the continuance of any Event of Default, such Borrower shall hold the returned Inventory in trust for the Secured Parties, and immediately notify the Administrative Agent of the return of the Inventory.

(e) Verification. Following the occurrence and during the continuance of an Event of Default, the Administrative Agent may, from time to time, verify directly with the respective Account

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Debtors the validity, amount and other matters relating to the Accounts, either in the name of a Borrower or the Administrative Agent or any of its Affiliates as the Administrative Agent may choose, and may notify any Account Debtor of the Administrative Agent's security interest in such Account.

(f) **No Liability.** The Administrative Agent shall not be responsible or liable for any shortage or discrepancy in, damage to, or loss or destruction of, any goods, the sale or other disposition of which gives rise to an Account, or for any error, act, omission, or delay of any kind occurring in the settlement, failure to settle, collection or failure to collect any Account, or for settling any Account in good faith for less than the full amount thereof, nor shall the Administrative Agent be deemed to be responsible for any Borrower's obligations under any contract or agreement giving rise to an Account. Nothing herein shall, however, relieve the Administrative Agent from liability for its own gross negligence or willful misconduct.

**Payment of Obligations; Taxes.**

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

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

**6.5 Maintenance of Existence; Compliance.** (a) Except as otherwise permitted by Section 7.4, (i) preserve, renew and keep in full force and effect its organizational existence, in the case of the Borrowers, in any State of the United States or the District of Columbia, and (ii) unless the failure to do so would not reasonably be expected to have a Material Adverse Effect, take all reasonable action to maintain or obtain all Governmental Approvals and all other rights, privileges and franchises necessary in the normal conduct of its business or necessary for the performance by such Person of its Obligations under any Loan Document; (b) comply with all Contractual Obligations (including with respect to leasehold interests of the Borrowers) and Requirements of Law except to the extent that failure to comply therewith could not, in the aggregate, reasonably be expected to have a Material Adverse Effect; and (c) comply with all Governmental Approvals, and any term, condition, rule, filing or fee obligation, or other requirement related thereto, except to the extent that failure to do so would not reasonably be expected to have a Material Adverse Effect. Without limiting the generality of the foregoing, the Parent shall, and shall cause each of its ERISA Affiliates to: (1) maintain each Pension Plan in compliance in all material respects with the applicable provisions of ERISA, the Code or other Federal or state law; (2) cause each Pension Plan to maintain its qualified status under Section 401(a) of the Code; (3) make all required contributions to any Pension Plan; (4) not become a party to any Multiemployer Plan; (5) to the extent applicable with respect to any Pension Plan, ensure that all liabilities under such Pension Plan are either (x) funded to at least the minimum level required by law or, if higher, to the level required by the terms governing such Pension Plan; (y) insured with a reputable insurance company; or (z) provided for or recognized in the financial statements most recently delivered to the Administrative Agent and the Lenders pursuant hereto; and (6) ensure that the contributions or premium payments to or in respect of each Pension Plan are and continue to be promptly paid at no less than the rates required under the rules of such Pension Plan and in accordance with the most recent actuarial advice received in relation to such Pension Plan and applicable law.

**6.6 Maintenance of Property; Insurance.** (a) Keep all property useful and necessary in its business in good working order and condition, ordinary wear and tear excepted and (b) maintain with financially sound and reputable insurance companies insurance on all its property in at least such amounts

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and against at least such risks as is customary for companies engaged in the same or a similar business. All property policies shall have a lender's loss payable endorsement showing the Administrative Agent as an additional loss payee. All liability policies shall show, or have endorsements showing, the Administrative Agent as an additional insured. All proceeds payable under any property policy shall, at the option of the Administrative Agent, be payable to the Administrative Agent on account of the Obligations; provided, however, that the Borrowers shall be entitled to retain and apply insurance proceeds of up to \$100,000 per occurrence to the repair or replacement of any property that is the subject of a claim under such policy.

**6.7 Inspection of Property; Books and Records; Discussions.** (a) Keep proper books of records and account in which full, true and correct entries shall be made in order to enable its financial statements to be prepared in conformity with GAAP and all Requirements of Law shall be made of all dealings and transactions in relation to its business and activities and (b) at reasonable times on three (3) Business Days' notice (provided no notice is required if an Event of Default has occurred and is continuing), permit the Administrative Agent, its agents and representatives and independent contractors of the Administrative Agent to visit and inspect any of its properties and examine and make abstracts from any of its books and records and to discuss the business, operations, properties and financial and other condition of the Group Members with officers, directors and employees of the Group Members and with their independent certified public accountants; provided that such inspections shall not be undertaken more frequently once every twelve (12) months, unless an Event of Default has occurred and is continuing, in which case such inspections and audits shall occur as often as the Administrative Agent shall reasonably determine is necessary.

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

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

(b) any (i) default or event of default under any Contractual Obligation of any Group Member that, if not cured would reasonably be expected to have a Material Adverse Effect; and (ii) litigation, investigation or proceeding that may exist at any time between any Group Member and any Governmental Authority that, if adversely determined, would reasonably be expected to have a Material Adverse Effect;

(c) any litigation or proceeding to which a Group Member is a party (i) in which the amount involved is \$1,000,000 or more and not covered by insurance, (ii) in which injunctive or similar relief is sought against any Group Member, or (iii) which relates to any Loan Document;

(d) (i) the occurrence of any of the following events affecting such Borrower or any of its respective ERISA Affiliates (but in no event more than ten days after such event), the occurrence of any of the following events, and shall provide the Administrative Agent with a copy of any notice with respect to such event that may be required to be filed with a Governmental Authority and any notice delivered by a Governmental Authority to such Borrower or any of its ERISA Affiliates with respect to such event, if such event would reasonably be expected to result in liability in excess of \$250,000 to such Borrower or any of its respective ERISA Affiliates: (A) an ERISA Event, (B) the adoption of any new Pension Plan by such Borrower or any of its ERISA Affiliates, (C) the adoption of any amendment to a Pension Plan, if such amendment will result in a material increase in benefits or unfunded benefit liabilities (as defined in Section 4001(a)(18) of ERISA), or (D) the commencement of contributions by such Borrower or any of its ERISA Affiliate to any Pension Plan that is subject to Title IV of ERISA or Section 412 of the Code; and

(ii) to the extent applicable with respect to any Pension Plan, upon the reasonable request of the Administrative Agent after the giving, sending or filing thereof, or the receipt thereof, copies

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of each Schedule B (Actuarial Information) to the annual report (Form 5500 Series) filed by Loan Party or any of its respective ERISA Affiliates with the IRS with respect to such Pension Plan; and

(iii) all notices from a Multiemployer Plan sponsor concerning an ERISA Event that would reasonably be expected to result in a liability in excess of \$250,000 to such Borrower or any of its ERISA Affiliates;

- (e) any material change in accounting policies or financial reporting practices by any Loan Party; and
- (f) any development or event that has had or would reasonably be expected to have a Material Adverse Effect.

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

#### **6.9 Environmental Laws.**

(a) Comply with all applicable Environmental Laws, and obtain and comply with and maintain, any and all licenses, approvals, notifications, registrations or permits required by applicable Environmental Laws, except those the failure to obtain, comply with and maintain would not reasonably be expected to have a Material Adverse Effect.

(b) Conduct and complete all investigations, studies, sampling and testing, and all remedial, removal and other actions required of the Borrowers under Environmental Laws and promptly comply in all material respects with all lawful orders and directives of all Governmental Authorities regarding Environmental Laws, subject to the Borrowers' right to challenge the applicability of any such orders and directives in good faith.

**6.10 Operating Accounts.** Maintain its and its Subsidiaries' primary depository and operating accounts and securities accounts with SVB or with SVB's Affiliates; provided that a portion of the operating accounts and securities accounts of the Borrowers and their respective Subsidiaries' may be maintained with one or more of the Lenders or their Affiliates and the accounts listed on Schedule 6.10 may be maintained with NBSC, subject in each case to a Control Agreement.

**6.11 Audits.** Without duplication of Section 6.7 hereof, at reasonable times, on three (3) Business Days' prior notice (provided that no notice shall be required if an Event of Default has occurred and is continuing), the Administrative Agent, or its agents, shall have the right to inspect the Collateral and perform field examinations, and the right to audit the Collateral and the Group Members' business. The foregoing inspections, audits and field examinations shall be at the Borrowers' expense, and the charge therefor shall be \$850 per person per day (or such higher amount as shall represent the Administrative Agent's then-current standard charge for the same or any third party expenses in connection with performing such audit or field examination), plus reasonable out-of-pocket expenses. Such inspections, field examinations and audits shall not be undertaken more frequently than once every twelve (12) months, unless an Event of Default has occurred and is continuing, in which case such inspections and audits shall occur as often as the Administrative Agent shall reasonably determine is necessary; provided that, notwithstanding the foregoing, the Administrative Agent shall have the right to conduct one (1) additional audit and field examination within 120 days following the Closing Date at the Borrowers' expense that shall not be included in the constraints on frequency set forth above. In the event the Borrowers and the Administrative Agent schedule an audit more than ten (10) days in advance, and the Borrowers cancel or

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seek to or reschedule the audit with less than seven (7) days written notice to the Administrative Agent (without limiting any of the Administrative Agent's rights or remedies) then the Borrowers shall pay the Administrative Agent a fee of \$1,000 plus any out-of-pocket expenses incurred by the Administrative Agent to compensate the Administrative Agent for the anticipated costs and expenses of such cancellation or rescheduling.

#### 6.12 Additional Collateral, Etc.

(a) With respect to any property (to the extent included in the definition of Collateral) acquired after the Closing Date by any Loan Party (other than (x) any property described in paragraph (b), (c) or (d) below, and (y) any property subject to a Lien expressly permitted by Section 7.3(g)) as to which the Administrative Agent, for the ratable benefit of the Secured Parties, does not have a perfected Lien, promptly (and in any event within five (5) Business Days, or such longer period as the Administrative Agent may agree in its sole discretion), (i) execute and deliver to the Administrative Agent such amendments to the Guarantee and Collateral Agreement or such other documents as the Administrative Agent may reasonably deem necessary or advisable to evidence that such Loan Party is a Guarantor and to grant to the Administrative Agent, for the ratable benefit of the Secured Parties, a security interest in such property and (ii) take all actions necessary or advisable in the opinion of the Administrative Agent to grant to the Administrative Agent, for the ratable benefit of the Secured Parties, a perfected first priority (except as expressly permitted by Section 7.3) security interest and Lien in such property, including the filing of Uniform Commercial Code financing statements in such jurisdictions as may be required by the Guarantee and Collateral Agreement or by law or as may be requested by the Administrative Agent.

(b) With respect to any fee interest in any real property having a value (together with improvements thereof) of at least \$1,000,000 acquired after the Closing Date by any Loan Party (other than any such real property subject to a Lien expressly permitted by Section 7.3(g)), promptly (and in any event within forty-five (45) days (or such longer period as the Administrative Agent may agree in its sole discretion) of such request), to the extent requested by the Administrative Agent, (i) execute and deliver a first priority (except for any Liens permitted by Section 7.3(g)) Mortgage, in favor of the Administrative Agent, for the ratable benefit of the Secured Parties, covering such real property, (ii) if requested by the Administrative Agent, provide the Lenders with (x) title and extended coverage insurance covering such real property in an amount at least equal to the purchase price of such real property (or such other amount as shall be reasonably specified by the Administrative Agent, not to exceed the fair market value of the real property) as well as a current ALTA survey thereof, together with a surveyor's certificate, and (y) any consents or estoppels reasonably deemed reasonably necessary by the Administrative Agent in connection with such Mortgage, each of the foregoing in form and substance reasonably satisfactory to the Administrative Agent and (iii) if requested by the Administrative Agent, deliver to the Administrative Agent legal opinions relating to the matters described above, which opinions shall be in form and substance, and from counsel, reasonably satisfactory to the Administrative Agent. In connection with the foregoing, no later than three (3) Business Days prior to the date on which a Mortgage is executed and delivered pursuant to this Section 6.12, in order to comply with the Flood Laws, the Administrative Agent shall have received the following documents (collectively, the "**Flood Documents**"): (A) a completed standard "life of loan" flood hazard determination form (a "**Flood Determination Form**"), (B) if the improvement(s) to the applicable improved real property is located in a special flood hazard area, a notification to the applicable Loan Party ("**Loan Party Notice**") and (if applicable) notification to the applicable Loan Party that flood insurance coverage under the National Flood Insurance Program ("**NFIP**") is not available because the community does not participate in the NFIP, (C) documentation evidencing the applicable Loan Party's receipt of the Loan Party Notice (e.g., countersigned Loan Party Notice, return receipt of certified U.S. Mail, or overnight delivery), and (D) if the Loan Party Notice is required to be given and, to the extent flood insurance is required by any applicable Requirement of Law or any Lenders' written regulatory or compliance procedures and flood insurance is available in the community in which the property is located,

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a copy of one of the following: the flood insurance policy, the applicable Loan Party's application for a flood insurance policy plus proof of premium payment, a declaration page confirming that flood insurance has been issued, or such other evidence of flood insurance reasonably satisfactory to the Administrative Agent (any of the foregoing being "**Evidence of Flood Insurance**").

(c) With respect to any new direct or indirect Subsidiary (other than an Excluded Foreign Subsidiary) created or acquired after the Closing Date by any Loan Party (including pursuant to a Permitted Acquisition), promptly (and in any event within ten (10) Business Days) (i) execute and deliver to the Administrative Agent such amendments to the Guarantee and Collateral Agreement as the Administrative Agent deems necessary or advisable to grant to the Administrative Agent, for the ratable benefit of the Secured Parties, a perfected first priority security interest and Lien in the Capital Stock of such new Subsidiary that is owned directly or indirectly by such Loan Party, (ii) deliver to the Administrative Agent such documents and instruments as may be reasonably required to grant, perfect, protect and ensure the priority of such security interest, including but not limited to, the certificates representing such Capital Stock, together with undated stock powers, in blank, executed and delivered by a duly authorized officer of the relevant Loan Party, (iii) cause such new Subsidiary (A) to become a party to the Guarantee and Collateral Agreement, (B) to take such actions as are necessary or advisable in the opinion of the Administrative Agent to grant to the Administrative Agent for the ratable benefit of the Secured Parties a perfected first priority security interest and Lien in the Collateral described in the Guarantee and Collateral Agreement, with respect to such Subsidiary, including the filing of Uniform Commercial Code financing statements in such jurisdictions as may be required by the Guarantee and Collateral Agreement or by law or as may be reasonably requested by the Administrative Agent and (C) to deliver to the Administrative Agent a certificate of such Subsidiary, in a form reasonably satisfactory to the Administrative Agent, with appropriate insertions and attachments, and (iv) if requested by the Administrative Agent, deliver to the Administrative Agent legal opinions relating to the matters described above, which opinions shall be in form and substance, and from counsel, reasonably satisfactory to the Administrative Agent.

(d) With respect to any new Excluded Foreign Subsidiary created or acquired after the Closing Date by any Loan Party, promptly (and in any event within ten (10) Business Days) (i) execute and deliver to the Administrative Agent such amendments to the Guarantee and Collateral Agreement, as the Administrative Agent deems necessary or advisable to grant to the Administrative Agent, for the ratable benefit of the Secured Parties, a perfected first priority security interest and Lien in the Capital Stock of such new Excluded Foreign Subsidiary that is owned by any such Loan Party (provided that in no event shall more than 66% of the total outstanding voting Capital Stock of any such new Excluded Foreign Subsidiary be required to be so pledged), (ii) deliver to the Administrative Agent the certificates representing such Capital Stock, together with undated stock powers, in blank, executed and delivered by a duly authorized officer of the relevant Loan Party, and take such other action as may be necessary or, in the opinion of the Administrative Agent, desirable to perfect the Administrative Agent's security interest therein, and (iii) if reasonably requested by the Administrative Agent, deliver to the Administrative Agent legal opinions relating to the matters described above, which opinions shall be in form and substance, and from counsel, reasonably satisfactory to the Administrative Agent.

(e) Each Loan Party shall use commercially reasonable efforts to obtain a landlord's agreement or bailee letter, as applicable, from the lessor of its headquarters location, from the lessor of each data center of the Loan Parties, and from the lessor of or the bailee related to any other location where in excess of \$100,000 of Collateral is stored or located, which agreement or letter, in any such case, shall contain a waiver or subordination of all Liens or claims that the landlord or bailee may assert against the Collateral at that location, and shall otherwise be reasonably satisfactory in form and substance to the Administrative Agent. After the Closing Date, no Collateral having a book value in excess of \$100,000 shall be stored at any new location without the prior written consent of the Administrative Agent or unless and until a reasonably satisfactory landlord agreement or bailee letter, as appropriate, shall first have been

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obtained with respect to such location. Each Loan Party shall pay and perform its material obligations under all leases and other agreements with respect to each leased location or public warehouse where any Collateral is or may be located.

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

**6.14 Licensee Consent.**

Prior to entering into or becoming bound by any inbound Intellectual Property license or agreement (other than over-the-counter software that is commercially available to the public), the breach or termination of which would reasonably be expected to cause a Material Adverse Effect, the applicable Loan Party shall: (a) provide written notice to the Administrative Agent of the material terms of such license or agreement; and (b) to the extent reasonably requested by the Administrative Agent, obtain the consent of, or waiver by, any person whose consent or waiver is necessary for (i) the applicable Loan Party's interest in such license or agreement to be deemed Collateral and for the Administrative Agent to have a security interest in it that might otherwise be restricted by the terms of the applicable license or agreement, and (ii) the Administrative Agent to have the ability in the event of a liquidation of any Collateral to dispose of such Collateral in accordance with the Administrative Agent's rights and remedies under this Agreement and the other Loan Documents.

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

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

## SECTION 7 NEGATIVE COVENANTS

Each Borrower hereby jointly and severally agrees that, at all times prior to the Discharge of Obligations, no Borrower shall, nor shall any Borrower permit any of its Subsidiaries to, directly or indirectly:

**7.1 Financial Condition Covenants.**

(a) Minimum Liquidity. Permit Liquidity at any time, as tested on the last day of each month, to be less than \$40,000,000; provided that, in connection with any calculation of Liquidity required under this Section 7.1(a), at least \$25,000,000 must consist of unrestricted cash and Cash Equivalents (including short term marketable securities) satisfying the requirements of clause (i) of the definition of Liquidity.

(b) Minimum Consolidated EBITDA. Permit Consolidated EBITDA for any quarter specified below, as calculated on a trailing twelve (12) months basis, to be less than the correlative amount specified below:

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<b>Quarter Ending</b>	<b>Minimum Consolidated EBITDA for Applicable Trailing Twelve Month Period</b>
March 31, 2018	\$(15,100,000)
June 30, 2018	\$(14,700,000)
September 30, 2018	\$(10,300,000)
December 31, 2018	\$(2,200,000)
March 31, 2019	\$1,800,000
June 30, 2019	\$5,200,000
September 30, 2019	\$9,000,000
December 31, 2019	\$13,100,000

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

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

(b) Indebtedness of (i) any Loan Party owing to any other Loan Party, and (ii) any Group Member (which is not a Loan Party) to any other Group Member (which is not a Loan Party);

(c) Guarantee Obligations (i) of any Loan Party of the Indebtedness of any other Loan Party; (ii) of any Group Member (which is not a Loan Party) of the Indebtedness of any Loan Party, or (iii) by any Group Member (which is not a Loan Party) of the Indebtedness of any other Group Member (which is not a Loan Party), provided that, in any case (i), (ii) or (iii), the Indebtedness so guaranteed is otherwise permitted by the terms hereof;

(d) Indebtedness outstanding on the date hereof and listed on Schedule 7.2(d) and any Permitted Refinancing Indebtedness in respect thereof;

(e) Indebtedness (including, without limitation, Capital Lease Obligations, including any incurred in addition to those permitted pursuant to clause (d) above) secured by Liens permitted by Section 7.3(g) in an aggregate principal amount not to exceed \$20,000,000 at any one time outstanding and any Permitted Refinancing Indebtedness in respect thereof);

(f) Subordinated Indebtedness;

(g) unsecured Indebtedness to trade creditors incurred in the ordinary course of business;

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

(i) unsecured Indebtedness of a type not described above of the Loan Parties and their respective Subsidiaries in an aggregate principal amount, for all such Indebtedness taken together, not to exceed \$250,000 at any one time outstanding;

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(j) obligations (contingent or otherwise) of the Loan Parties and their respective Subsidiaries existing or arising under any Specified Swap Agreement, provided that such obligations are (or were) entered into by such Person in accordance with Section 7.13 and not for purposes of speculation;

(k) to the extent constituting Indebtedness, building lease obligations, whether or not reflected on the balance sheet of the Borrowers, provided that the aggregate outstanding amount of such obligations does not exceed \$180,000,000; and

(l) Indebtedness of a Person (other than a Loan Party or one of their respective Subsidiaries which constituted a Subsidiary prior to the consummation of the applicable merger referenced below) existing at the time such Person is merged with or into a Loan Party or a Subsidiary or becomes a Subsidiary; provided that (i) such Indebtedness was not, in any case, incurred by such other Person in connection with, or in contemplation of, such merger or acquisition, (ii) such merger or acquisition constitutes a Permitted Acquisition, (iii) with respect to any such Person who becomes a Subsidiary, (A) such Subsidiary is the only obligor in respect of such Indebtedness, and (B) to the extent such Indebtedness is permitted to be secured hereunder, only the assets of such Subsidiary secure such Indebtedness, and (iv) the aggregate amount of all such Indebtedness at any one time outstanding shall not exceed \$5,000,000; ~~and~~

(m) obligations incurred in the ordinary course of business in respect of bids, tenders, trade contracts, governmental contracts, statutory obligations, surety bonds, performance and return of money bonds, performance and completion guarantees and other obligations of a like nature;

(n) up to \$300,000,000 aggregate principal amount of Permitted Convertible Indebtedness; and

(o) any Permitted Bond Hedge Transaction.

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

(a) Liens for Taxes not yet due or that are being contested in good faith by appropriate proceedings; provided that adequate reserves with respect thereto are maintained on the books of the applicable Group Member in conformity with GAAP;

(b) carriers', warehousemen's, landlord's, mechanics', materialmen's, repairmen's or other like Liens arising in the ordinary course of business that are not overdue for a period of more than 30 days or that are being contested in good faith by appropriate proceedings;

(c) pledges or deposits in connection with workers' compensation, unemployment insurance and other social security legislation;

(d) deposits to secure the performance of bids, trade contracts (other than for borrowed money), leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business (other than for indebtedness or any Liens arising under ERISA);

(e) easements, rights-of-way, restrictions and other similar encumbrances incurred in the ordinary course of business that, in the aggregate, are not substantial in amount and that do not in any case materially detract from the value of the property subject thereto or materially interfere with the ordinary conduct of the business of the applicable Group Member;

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

(g) Liens securing Indebtedness incurred pursuant to Section 7.2(e) to finance the acquisition, improvement or construction of fixed or capital assets; provided that (i) such Liens shall be created substantially simultaneously with the acquisition, improvement or construction of such fixed or capital assets, (ii) such Liens do not at any time encumber any property other than the property financed by such Indebtedness, and (iii) the amount of Indebtedness secured thereby is not increased;

(h) Liens created pursuant to the Security Documents;

(i) any interest or title of a lessor or licensor under any lease or license entered into by a Group Member in the ordinary course of its business and covering only the assets so leased or licensed;

(j) judgment Liens that do not constitute a Default or an Event of Default under Section 8.1(h) of this Agreement;

(k) bankers' Liens, rights of setoff and other similar Liens existing solely with respect to cash, Cash Equivalents, securities, commodities and other funds on deposit in one or more accounts maintained by a Group Member, in each case arising in the ordinary course of business in favor of banks, other depository institutions, securities or commodities intermediaries or brokerages with which such accounts are maintained securing amounts owing to such banks or financial institutions with respect to cash management and operating account management or are arising under Section 4-208 or 4-210 of the UCC on items in the course of collection;

(l) Liens on property of a Person existing at the time such Person is acquired by, merged into or consolidated with a Loan Party or becomes a Subsidiary of a Loan Party or acquired by a Loan Party; provided that (i) such Liens were not created in contemplation of such acquisition, merger, consolidation or Investment, (ii) such Liens do not extend to any assets other than those of such Person, and (iii) the applicable Indebtedness secured by such Lien is permitted under Section 7.2;

(m) the replacement, extension or renewal of any Lien permitted by clause (l) above upon or in the same property theretofore subject thereto or the replacement, extension or renewal (without increase in the amount or change in any direct or contingent obligor) of the Indebtedness secured thereby;

(n) non-exclusive licenses of Intellectual Property granted to third parties in the ordinary course of business and licenses of Intellectual Property that could not result in a legal transfer of title of the licensed property that may be exclusive in respects other than territory and that may be exclusive as to territory only as to discreet geographical areas outside the United States; and

(o) Liens arising from precautionary UCC financing statements filed under any lease solely covering such leased items.

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

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

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

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

**7.5 Disposition of Property.** Dispose of any of its property, whether now owned or hereafter acquired, except:

(a) Dispositions of obsolete or worn out property in the ordinary course of business;

(b) Dispositions of Inventory in the ordinary course of business;

(c) Dispositions permitted by clause (i) of Section 7.4(b);

(d) the sale or issuance of the Capital Stock of any Subsidiary of the Parent (i) to a Borrower or any other Loan Party, or (ii) in connection with any transaction that does not result in a Change of Control;

(e) the use or transfer of money, cash or Cash Equivalents in a manner that is not prohibited by the terms of this Agreement or the other Loan Documents;

(f) the licensing of Intellectual Property as permitted in Section 7.3(n);

(g) the Disposition of property (i) by any Loan Party to any other Loan Party, and (ii) by any Group Member (which is not a Loan Party) to any other Group Member;

(h) Dispositions of property subject to a Casualty Event;

(i) leases or subleases of Real Property;

(j) source code escrow arrangements in the ordinary course of business;

(k) the sale or discount without recourse of accounts receivable arising in the ordinary course of business in connection with the compromise or collection thereof; provided that any such sale or discount is undertaken in accordance with Section 6.3(b);

(l) any abandonment, cancellation, non-renewal or discontinuance of use or maintenance of Intellectual Property (or rights relating thereto) of any Group Member that the Borrowers determine in good faith is desirable in the conduct of its business and not materially disadvantageous to the interests of the Lenders;

(m) Dispositions of other property having a fair market value not to exceed \$1,000,000 in the aggregate for any fiscal year of the Parent, provided that at the time of any such Disposition, no Event of Default shall have occurred and be continuing or would result from such Disposition; ~~and~~

(n) payments permitted under Section 7.6, Investments permitted under Section 7.7, and Liens permitted under Section 7.3; and

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(o) the unwinding of any Permitted Bond Hedge Transaction.

provided, however, that any Disposition made pursuant to this Section 7.5 shall be made in good faith on an arm's length basis and, other than with respect to Dispositions permitted under clauses (a), (c), (g), (h) and (l) above, for fair value.

**7.6 Restricted Payments.** Make any payment or prepayment of principal of, premium, if any, or interest on, or redemption, purchase, retirement, defeasance (including in-substance or legal defeasance), sinking fund, settlement, conversion or similar payment with respect to, any Permitted Convertible Indebtedness, Permitted Bond Hedge Transaction, earn-out payment, seller debt or deferred purchase payments, declare or pay any dividend (other than dividends payable solely in common stock of the Person making such dividend) on, or make any payment on account of, or set apart assets for a sinking or other analogous fund for, the purchase, redemption, defeasance, retirement or other acquisition of, any Capital Stock of any Group Member, whether now or hereafter outstanding, or make any other distribution in respect thereof, either directly or indirectly, whether in cash or property or in obligations of any Group Member (collectively, "**Restricted Payments**"), except that, so long as no Event of Default shall have occurred and be continuing at the time of any action described below or would result therefrom:

(a) any Group Member may (i) make Restricted Payments to any Borrower and (ii) declare and make dividends which are payable solely in the common Capital Stock of such Group Member;

(b) each Loan Party may purchase common Capital Stock or common Capital Stock options from present or former officers, employees or consultants of any Group Member pursuant to stock repurchase agreements; provided that no Default or Event of Default then exists or would result therefrom and the aggregate amount of payments made under this clause (b) shall not exceed \$750,000 during any fiscal year of the Borrower; ~~and~~

(c) the Loan Parties may make earn-out payments, payments on account of seller debt and deferred purchase payments so long as both before and after giving effect to such payments, no Event of Default has occurred and is continuing, and the Loan Parties are in pro forma compliance with the financial covenants set forth in Section 7.1 hereof;

(d) Parent may (A) convert or exchange any Permitted Convertible Indebtedness in accordance with its terms into common stock of Parent and make a payment of cash in lieu of fractional shares of common stock deliverable upon any such conversion or exchange, (B) make regularly scheduled interest payments in respect of Permitted Convertible Indebtedness, (C) deliver cash in connection with any conversion or exchange of Permitted Convertible Indebtedness in an aggregate amount since the date of the indenture governing such Permitted Convertible Indebtedness not to exceed the sum of (i) the principal amount of such Permitted Convertible Indebtedness plus (ii) any payments received by Parent pursuant to the exercise, settlement or termination of any related Permitted Bond Hedge Transaction; provided that after giving pro forma effect to such Restricted Payment, (1) the Borrower shall be in compliance with the then applicable financial covenants set forth in Section 7.1 hereof as of the end of the most recently ended quarter for which financial statements are required to be delivered prior to such Restricted Payment, and the Borrower shall have delivered to the Administrative Agent a certificate in form and substance reasonably satisfactory to the Administrative Agent evidencing compliance with the requirements of this clause (C), and (2) immediately before and after giving effect to such Restricted Payment, the Loan Parties shall have Liquidity of at least \$50,000,000, (D) make any required payments of cash upon the required repurchase (including a required repurchase in connection with the redemption of Permitted Convertible Indebtedness upon satisfaction of a condition related to the stock price of Parent's common stock) or required repayment of Permitted Convertible Indebtedness, in each case, in an amount that does not exceed the principal amount thereof plus accrued interest; provided that after giving pro forma effect to such

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Restricted Payment, (1) the Borrower shall be in compliance with the then applicable financial covenants set forth in Section 7.1 hereof as of the end of the most recently ended quarter for which financial statements are required to be delivered prior to such Restricted Payment, and the Borrower shall have delivered to the Administrative Agent a certificate in form and substance reasonably satisfactory to the Administrative Agent evidencing compliance with the requirements of this clause (D), and (2) immediately before and after giving effect to such Restricted Payment, the Loan Parties shall have Liquidity of at least \$50,000,000, and (E) make any repurchases or exchanges of Permitted Convertible Indebtedness for cash, shares of Parent's common stock or any combination of cash and shares of Parent's common stock that are not required pursuant to the terms of such Permitted Convertible Indebtedness where the aggregate amount of such cash does not exceed the principal amount thereof plus accrued interest plus cash in lieu of fractional shares of common stock; provided that after giving *pro forma* effect to such Restricted Payment, (1) the Borrower shall be in compliance with the then applicable financial covenants set forth in Section 7.1 hereof as of the end of the most recently ended quarter for which financial statements are required to be delivered prior to such Restricted Payment and the Borrower shall have delivered to the Administrative Agent a certificate in form and substance reasonably satisfactory to the Administrative Agent evidencing compliance with the requirements of this clause (E), and (2) immediately before and after giving effect to such Restricted Payment, Liquidity shall not be less than \$50,000,000; and

(e) Parent may (x) make any payments in connection with the entry into a Permitted Bond Hedge Transaction on the closing date of any Permitted Convertible Indebtedness with the proceeds of such Permitted Convertible Indebtedness and (y) acquire common stock of Parent upon exercise and settlement or termination of any Permitted Bond Hedge Transaction, in each case, in accordance with the terms of the agreement governing such Permitted Bond Hedge Transaction.

**7.7 Consolidated Capital Expenditures.** Make or commit to make any Consolidated Capital Expenditure, except Consolidated Capital Expenditures made by the Group Members in the ordinary course of business and not exceeding during any fiscal year, for all such Consolidated Capital Expenditures of all of the Group Members taken together, the amount set forth below opposite such fiscal year:

<b>Fiscal Year</b>	<b>Consolidated Capital Expenditures</b>
2015 fiscal year	\$16,500,000
2016 fiscal year	\$21,000,000
2017 fiscal year	\$19,000,000
2018 fiscal year	\$22,000,000
2019 fiscal year	\$24,000,000

; provided that (i) any such amount that is not expended in the fiscal year for which it is permitted may be carried over for expenditure in the next succeeding fiscal year only and (ii) Consolidated Capital Expenditures made pursuant to this Section 7.7 during any fiscal year shall be deemed made, first, in respect of amounts carried over from the prior fiscal year pursuant to clause (i) above and, second, in respect of amounts permitted for such fiscal year as provided above.

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

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(a) extensions of trade credit in the ordinary course of business;

(b) (i) Investments in cash and Cash Equivalents and (ii) Investments permitted by the Parent's board-approved investment policy, a copy of which has been provided to the Administrative Agent (as the same may be amended from time to time, so long as (x) such amendment is approved by the Parent's board of directors; and (y) promptly, and in any event within five (5) Business Days after approval, a copy of such amendment is provided to the Administrative Agent);

(c) Guarantee Obligations permitted by Section 7.2;

(d) (i) travel advances and employee relocation loans and other employee loans and advances in the ordinary course of business in an aggregate amount not to exceed \$250,000 at any time, and (ii) loans to employees, officers or directors relating to the purchase of equity securities of the Parent or its Subsidiaries pursuant to employee stock purchase plans or agreements approved by the Parent's board of directors in an aggregate amount not to exceed \$500,000 in any fiscal year;

(e) intercompany Investments by any Group Member in a Loan Party;

(f) Investments in the ordinary course of business consisting of endorsements of negotiable instruments for collection or deposit;

(g) Investments received in the ordinary course of business in connection with credit extensions to customers or in settlement of amounts due to any Group Member effected in the ordinary course of business or owing to such Group Member as a result of Insolvency Proceedings involving an Account Debtor or upon the foreclosure or enforcement of any Lien in favor of such Group Member;

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

(i) in addition to Investments otherwise expressly permitted by this Section, Investments by the Group Members the aggregate amount of all of which Investments (valued at cost) does not exceed \$50,000 outstanding at any time;

(j) deposits made to secure the performance of leases, licenses or contracts in the ordinary course of business, and other deposits made in connection with the incurrence of Liens permitted under Section 7.3;

(k) promissory notes and other non-cash consideration received in connection with Dispositions permitted by Section 7.5; and

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

(i) the newly-created or acquired Subsidiary (or assets acquired in connection with an asset sale) shall be (x) in the same or a related line of business as that conducted by the Borrowers

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on the date hereof, or (y) in a business that is ancillary to and in furtherance of the line of business as that conducted by the Borrowers on the date hereof;

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

(iii) no Loan Party shall, as a result of or in connection with any such purchase or acquisition, assume or incur any direct or contingent liabilities (whether relating to environmental, tax, litigation or other matters) that, as of the date of such purchase or acquisition, would reasonably be expected to result in a Material Adverse Effect;

(iv) the Borrowers shall give the Administrative Agent at least ten (10) Business Days' prior written notice of any such purchase or acquisition;

(v) the Borrowers shall provide to the Administrative Agent as soon as available but in any event not later than five (5) Business Days after the execution thereof, a copy of any executed purchase agreement or similar agreement with respect to any such purchase or acquisition;

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

(A) Liquidity shall equal or exceed \$30,000,000 as of the date the definitive agreements relating to any such acquisition or other purchase are executed (after giving effect, on a *pro forma* basis, to the consummation of such acquisition or other purchase);

(vii) (x) immediately before and immediately after giving effect to any such purchase or other acquisition, no Default or Event of Default shall have occurred and be continuing and (y) immediately before and immediately after giving effect to such purchase or other acquisition, the Borrowers shall be in compliance with each of the covenants set forth in Section 7.1, based upon financial statements delivered to the Administrative Agent which give effect, on a *pro forma* basis, to such acquisition or other purchase;

(viii) the Borrowers shall not, based upon the knowledge of the Borrowers as of the date any such acquisition or other purchase is consummated, reasonably expect such acquisition or other purchase to result in an Event of Default under Section 8.1(c), at any time during the term of this Agreement, as a result of a breach of any of the financial covenants set forth in Section 7.1;

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

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

(xi) (A) the aggregate amount of the cash consideration paid by such Group Member in connection with any particular Permitted Acquisition shall not exceed \$5,000,000, and (B) the aggregate amount of the cash consideration paid by all Group Members in connection with all such Permitted Acquisitions consummated from and after the Closing Date shall not exceed \$10,000,000;

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(xii) each such Permitted Acquisition is of a Person organized under the laws of the United States and engaged in business activities primarily conducted within the United States and in which the Borrowers are permitted to engage pursuant to [Section 7.17](#); and

(xiii) the Borrowers shall have delivered to the Administrative Agent, at least five Business Days prior to the date on which any such purchase or other acquisition is to be consummated (or such later date as is agreed by the Administrative Agent in its sole discretion), a certificate of a Responsible Officer of the Parent, in form and substance reasonably satisfactory to the Administrative Agent, certifying that all of the requirements set forth in this [Section 7.8\(l\)](#) have been satisfied or will be satisfied on or prior to the consummation of such purchase or other acquisition; ~~and~~

(m) ~~(m)~~ Investments existing on the date hereof and listed on [Schedule 7.8\(m\)](#), but excluding any increases in the amounts thereof following the Closing Date; ~~and~~

(n) ~~(n)~~ [the purchase of any Permitted Bond Hedge Transaction by Parent and, subject to Section 7.6, the performance of its obligations thereunder.](#)

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

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

**7.11 Transactions with Affiliates.** Enter into any transaction, including any purchase, sale, lease or exchange of property, the rendering of any service or the payment of any management, advisory or similar fees, with any Affiliate (other than any other Loan Party) unless such transaction is (a) otherwise permitted under this Agreement, (b) in the ordinary course of business of the relevant Group Member, and (c) upon fair and reasonable terms no less favorable to the relevant Group Member than it would obtain in a comparable arm's length transaction with a Person that is not an Affiliate.

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

**7.13 Swap Agreements.** Enter into any Swap Agreement, except Specified Swap Agreements which are (a) entered into by a Group Member to (a.1) hedge or mitigate risks to which such Group Member has actual exposure (other than those in respect of Capital Stock), or (b.2) effectively cap, collar or exchange interest rates (from fixed to floating rates or vice versa, from one floating rate to another floating rate or otherwise) with respect to any interest-bearing liability or investment of such Group Member, or (b) a [Permitted Bond Hedge Transaction](#).

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

**7.15 Negative Pledge Clauses.** Enter into or suffer to exist or become effective any agreement that prohibits or limits the ability of any Loan Party to create, incur, assume or suffer to exist any Lien upon any of its property or revenues, whether now owned or hereafter acquired, to secure its Obligations under the Loan Documents to which it is a party, other than (a) this Agreement and the other Loan Documents, (b) any agreements governing any purchase money Liens or Capital Lease Obligations otherwise permitted hereby (in which case, any prohibition or limitation shall only be effective against the assets financed thereby), (c) customary restrictions on the assignment of leases, licenses and other agreements, and (d) any agreement in effect at the time any Subsidiary becomes a Subsidiary of a Loan Party, so long as such agreement was not entered into solely in contemplation of such Person becoming a Subsidiary or, in any such case, that is set forth in any agreement evidencing any amendments, restatements, supplements, modifications, extensions, renewals and replacements of the foregoing, so long as such amendment, restatement, supplement, modification, extension, renewal or replacement applies only to such Subsidiary and does not otherwise expand in any material respect the scope of any restriction or condition contained therein.

**7.16 Clauses Restricting Subsidiary Distributions.** Enter into or suffer to exist or become effective any consensual encumbrance or restriction on the ability of any Loan Party and any of their respective Subsidiaries to (a) make Restricted Payments in respect of any Capital Stock of such Subsidiary held by, or to pay any Indebtedness owed to, any other Group Member, (b) make loans or advances to, or other Investments in, any other Group Member, or (c) transfer any of its assets to any other Group Member, except for such encumbrances or restrictions existing under or by reason of (i) any restrictions existing under the Loan Documents, (ii) any restrictions with respect to a Subsidiary imposed pursuant to an agreement that has been entered into in connection with a Disposition permitted hereby of all or substantially all of the Capital Stock or assets of such Subsidiary, (iii) customary restrictions on the assignment of leases, licenses and other agreements, (iv) restrictions of the nature referred to in [Section 7.15\(b\)](#) above under agreements governing purchase money liens or Capital Lease Obligations otherwise permitted hereby which restrictions are only effective against the assets financed thereby or (v) any agreement in effect at the time any Subsidiary becomes a Subsidiary of a Borrower, so long as such agreement applies only to such Subsidiary, was not entered into solely in contemplation of such Person becoming a Subsidiary or in each case that is set forth in any agreement evidencing any amendments, restatements, supplements, modifications, extensions, renewals and replacements of the foregoing, so long as such amendment, restatement, supplement, modification, extension, renewal or replacement does not expand in any material respect the scope of any restriction or condition contained therein.

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

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

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

**7.20 Amendments to Organizational Agreements and Material Contracts.** (a) Amend or permit any amendments to any Loan Party’s organizational documents; or (b) amend or permit any amendments to, or terminate or waive any provision of, any material Contractual Obligation, in each such case if such amendment, termination, or waiver would be adverse to Administrative Agent or the Lenders in any material respect.

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

#### **7.22 Subordinated Indebtedness.**

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

(b) Payments. Make any payment or prepayment of principal of, premium, if any, or interest on, or redemption, purchase, retirement, defeasance (including in-substance or legal defeasance), sinking fund or similar payment with respect to, any Subordinated Indebtedness, except as permitted by the subordination provisions in the applicable Subordinated Debt Documents and any subordination agreement with respect thereto in favor of the Administrative Agent and the Lenders.

**7.23 Anti-Terrorism Laws.** Conduct, deal in or engage in or permit any Affiliate or agent of any Loan Party within its control to conduct, deal in or engage in any of the following activities: (a) conduct any business or engage in any transaction or dealing with any person blocked pursuant to Executive Order No. 13224 (“**Blocked Person**”), including the making or receiving any contribution of funds, goods or services to or for the benefit of any Blocked Person; (b) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to Executive Order No. 13224; or (c) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in Executive Order No. 13224 or the Patriot

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Act. The Borrowers shall deliver to the Administrative Agent and the Lenders any certification or other evidence reasonably requested from time to time by the Administrative Agent or any Lender confirming the Borrower's compliance with this Section 7.23.

## SECTION 8 EVENTS OF DEFAULT

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

(a) the Borrowers shall fail to pay any amount of principal or interest on any Loan when due in accordance with the terms hereof (including Section 2.8); or the Borrowers shall fail to pay fees or any other amount payable hereunder or under any other Loan Document (other than those relating to Bank Services), within three (3) Business Days after any such amount becomes due in accordance with the terms hereof, or the Borrowers shall fail to pay any Obligations relating to Bank Services within ten (10) days after such Obligations become due in accordance with the terms thereof; or

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

(c) (i) any Loan Party shall default in the observance or performance of any agreement contained in Section 2.8, Section 5.3, Section 6.1 (other than clause (c) thereof), Section 6.2, Section 6.3(c), clause (i) or (ii) of Section 6.5(a), Section 6.6(b), Section 6.8(a), Section 6.10, Section 6.11 or Section 7 of this Agreement, (ii) any Loan Party shall default in the observance or performance of any agreement contained in Section 6.1(c) and such default shall continue unremedied for a period of five (5) Business Days thereafter, or (iii) an "Event of Default" under and as defined in any Security Document shall have occurred and be continuing; or

(d) any Loan Party shall default in the observance or performance of any other agreement contained in this Agreement or any other Loan Document to which it is party (other than as provided in paragraphs (a) through (c) of this Section), and such default shall continue unremedied for a period of 10 days thereafter; provided, however, that if the default cannot by its nature be cured within the ten (10) day period or cannot after diligent attempts by the Borrowers be cured within such ten (10) day period, and such default is likely to be cured within a reasonable time, then the Borrowers shall have an additional period (which shall not in any case exceed thirty (30) days) to attempt to cure such default, and within such reasonable time period the failure to cure the default shall not be deemed an Event of Default (but no Revolving Credit Extensions shall be made during such cure period); or

(e) (1) any Group Member shall (i) default in making any payment of any principal of any Indebtedness (including any Guarantee Obligation, but excluding the Loans) on the scheduled or original due date with respect thereto; or (ii) default in making any payment of any interest on any such Indebtedness beyond the period of grace, if any, provided in the instrument or agreement under which such Indebtedness was created; (iii) default in making any payment or delivery under any such Indebtedness constituting a Swap Agreement beyond the period of grace, if any, provided in such Swap Agreement; or (iv) default in the observance or performance of any other agreement or condition relating to any such Indebtedness or contained in any instrument or agreement evidencing, securing or relating thereto which such default is not cured within any applicable cure period, or any other event shall occur or condition exist,

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the effect of which default or other event or condition is to (x) cause, or to permit the holder or beneficiary of, or, in the case of any such Indebtedness constituting a Swap Agreement, counterparty under, such Indebtedness (or a trustee or agent on behalf of such holder, beneficiary, or counterparty) to cause, with the giving of notice if required, such Indebtedness to become due prior to its stated maturity or (in the case of any such Indebtedness constituting a Guarantee Obligation) to become payable or (in the case of any such Indebtedness constituting a Swap Agreement) to be terminated, or (y) to cause, with the giving of notice if required, any Group Member to purchase or redeem or make an offer to purchase or redeem such Indebtedness prior to its stated maturity; provided that, unless such Indebtedness constitutes a Specified Swap Agreement, a default, event or condition described in clause (i), (ii), (iii), or (iv) of this paragraph (e) shall not at any time constitute an Event of Default unless, at such time, one or more defaults, events or conditions of the type described in clauses (i), (ii), (iii), and (iv) of this paragraph (e) shall have occurred with respect to Indebtedness the outstanding principal amount (and, in the case of Swap Agreements, other than Specified Swap Agreements, the Swap Termination Value) of which, individually or in the aggregate of all such Indebtedness, exceeds in the aggregate \$500,000 and the holder(s) of such Indebtedness have not delivered a waiver in writing to the applicable Group Member with respect to such default, event or condition; provided, further, that this clause (e)(1) shall not apply to (x) any early payment requirement or unwinding or termination with respect to any Permitted Bond Hedge Transaction, or satisfaction of any condition giving rise to or permitting the foregoing, in accordance with the terms thereof, so long as, in any such case, Parent is not the "defaulting party" (or substantially equivalent term) under the terms of such Permitted Bond Hedge Transaction, (y) any event that permits conversion or exchange of Permitted Convertible Indebtedness (whether into cash, shares of common stock in Parent or any combination thereof) that is not the result of a breach or default by a Group Member of the terms of an agreement governing such Permitted Convertible Indebtedness or (z) any conversion or exchange of Permitted Convertible Indebtedness (whether into cash, shares of common stock in Parent or any combination thereof) that is not the result of a breach or default by a Group Member of the terms of an agreement governing such Permitted Convertible Indebtedness; or (2) any default or event of default (however designated) shall occur with respect to any Subordinated Indebtedness of any Group Member and such default or event of default has not been waived in writing by the holder thereof; or

(f) (i) any Group Member shall commence any case, proceeding or other action (a) under any Debtor Relief Law seeking to have an order for relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts, or (b) seeking appointment of a receiver, trustee, custodian, conservator, judicial manager or other similar official for it or for all or any substantial part of its assets, or any Group Member shall make a general assignment for the benefit of its creditors; or (ii) there shall be commenced against any Group Member any case, proceeding or other action of a nature referred to in clause (i) above that (a) results in the entry of an order for relief or any such adjudication or appointment, or (b) remains undismissed, undischarged or unbonded for a period of 60 days (provided that, during such 60 day period, no Loans shall be advanced or Letters of Credit issued hereunder); or (iii) there shall be commenced against any Group Member any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its assets that results in the entry of an order for any such relief that shall not have been vacated, discharged, or stayed or bonded pending appeal within 60 days from the entry thereof (provided that, during such 60 day period, no Loans shall be advanced or Letters of Credit issued hereunder); or (iv) any Group Member shall take any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in clause (i), (ii), or (iii) above; or (v) any Group Member shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts as they become due; or

(g) There shall occur one or more ERISA Events which individually or in the aggregate results in or otherwise is associated with liability of any Loan Party or any ERISA Affiliate thereof in excess

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of \$250,000 during the term of this Agreement; or there exists an amount of unfunded benefit liabilities (as defined in Section 4001(a)(18) of ERISA), individually or in the aggregate for all Pension Plans (excluding for purposes of such computation any Pension Plans with respect to which assets exceed benefit liabilities) which exceeds \$250,000; or

(h) There is entered against any Group Member (i) one or more final judgments or orders for the payment of money or fines or penalties issued by any Governmental Authority involving in the aggregate a liability (not paid or fully covered by insurance as to which the relevant insurance company has acknowledged coverage) of \$500,000 or more, or (ii) one or more non-monetary final judgments that have, or would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and, in either case (i) or (ii), (A) enforcement proceedings are commenced by any creditor or any such Governmental Authority, as applicable, upon such judgment, order, penalty or fine, as applicable, or (B) such judgment, order, penalty or fine, as applicable, shall not have been vacated, discharged, stayed or bonded, as applicable, pending appeal within 45 days from the entry or issuance thereof; or

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

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

(j) the guarantee contained in Section 2 of the Guarantee and Collateral Agreement shall cease, for any reason, to be in full force and effect or any Loan Party shall so assert; or

(k) a Change of Control shall occur; or

(l) any of the Governmental Approvals shall have been (i) revoked, rescinded, suspended, modified in an adverse manner or not renewed in the ordinary course for a full term or (ii) subject to any decision by a Governmental Authority that designates a hearing with respect to any applications for renewal of any of the Governmental Approvals or that could result in the Governmental Authority taking any of the actions described in clause (i) above, and such decision or such revocation, rescission, suspension, modification or nonrenewal (A) has, or would reasonably be expected to have, a Material Adverse Effect, or (B) materially adversely affects the legal qualifications of any Group Member to hold any material Governmental Approval in any applicable jurisdiction and such revocation, rescission, suspension, modification or nonrenewal could reasonably be expected to materially adversely affect the status of or legal qualifications of any Group Member to hold any material Governmental Approval in any other jurisdiction; or

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

(n) a Material Adverse Effect shall occur.

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

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

(b) if such event is any other Event of Default, any of the following actions may be taken: (i) with the consent of the Required Lenders, the Administrative Agent may, or upon the request of the Required Lenders, the Administrative Agent shall, by notice to the Borrowers state that no further extensions of credit shall be funded by the Lenders hereunder, and/or declare the Revolving Commitments, the Swingline Commitments and the L/C Commitments to be terminated forthwith, whereupon the Revolving Commitments, the Swingline Commitments and the L/C Commitments shall immediately terminate; (ii) with the consent of the Required Lenders, the Administrative Agent may, or upon the request of the Required Lenders, the Administrative Agent shall, by notice to the Borrowers, declare the Loans (with accrued interest thereon) and all other amounts owing under this Agreement and the other Loan Documents to be due and payable forthwith, whereupon the same shall immediately become due and payable; (iii) any Qualified Counterparty or Bank Services Provider may terminate any Specified Swap Agreement or other Bank Services Agreement then outstanding; and (iv) the Administrative Agent may exercise on behalf of itself, the Lenders and the Issuing Lender all rights and remedies available to it, the Lenders and the Issuing Lender under the Loan Documents. With respect to all Letters of Credit with respect to which presentment for honor shall not have occurred at the time of an acceleration pursuant to this paragraph, the Borrowers shall Cash Collateralize an amount equal to 105% (110% in the case of any L/C Exposure in respect of any Letter of Credit denominated in a Foreign Currency) of the aggregate then undrawn and unexpired amount of such Letters of Credit. Amounts so Cash Collateralized shall be applied by the Administrative Agent to the payment of drafts drawn under such Letters of Credit, and the unused portion thereof after all such Letters of Credit shall have expired or been fully drawn upon, if any, shall be applied to repay other Obligations of the Borrowers hereunder and under the other Loan Documents in accordance with Section 8.3. In addition, (x) the Borrowers shall also Cash Collateralize the full amount of any Swingline Loans then outstanding, and (y) to the extent elected by the applicable Bank Services Provider, the Borrowers shall also Cash Collateralize the amount of any Obligations in respect of Bank Services then outstanding. After all such Letters of Credit and Bank Services Agreements shall have been terminated, expired or fully drawn upon, as applicable, and all amounts drawn under any such Letters of Credit shall have been reimbursed in full and all other Obligations of the Borrowers and the other Loan Parties (including any such Obligations arising in connection with Bank Services) shall have been paid in full, the balance, if any, of the funds having been so Cash Collateralized shall be returned to the Borrowers (or such other Person as may be lawfully entitled thereto). Except as expressly provided above in this Section, presentment, demand, protest and all other notices of any kind are hereby expressly waived by the Borrowers.

**8.3 Application of Funds.** After the exercise of remedies provided for in Section 8.2, any amounts received by the Administrative Agent on account of the Obligations shall be applied by the Administrative Agent in the following order:

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

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

Third, to payment of that portion of the Obligations constituting accrued and unpaid Letter of Credit Fees and interest on the Loans and L/C Disbursements which have not yet been converted into Swingline Loans or Revolving Loans, in each case, ratably among them in proportion to the respective amounts described in this clause Third payable to them;

Fourth, to payment of that portion of the Obligations constituting unpaid principal of the Loans and L/C Disbursements which have not yet been converted into Revolving Loans, in each case, ratably among them in proportion to the respective amounts described in this clause Fourth held by them;

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

Sixth, if so elected by the applicable Bank Services Provider or applicable Qualified Counterparty, to the Administrative Agent for the ratable account of each Bank Services Provider and Qualified Counterparty, to repay or Cash Collateralize Obligations arising in connection with Bank Services and Specified Swap Agreements that are then due and payable;

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

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

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

## **SECTION 9 THE ADMINISTRATIVE AGENT**

### **9.1 Appointment and Authority.**

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

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(b) The provisions of Section 9 are solely for the benefit of the Administrative Agent, the Lenders and the Issuing Lender, and neither the Borrowers nor any other Loan Party shall have rights as a third party beneficiary of any of such provisions. The Administrative Agent shall not have any duties or responsibilities to any Lender or any other Person, except those expressly set forth herein and in the other Loan Documents, or any fiduciary relationship with any Lender, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against the Administrative Agent. It is understood and agreed that the use of the term “agent” herein or in any other Loan Documents (or any other similar term) with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

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

**9.2 Delegation of Duties.** The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Section shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent. 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 or monitoring of such sub-agents.

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

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

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

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

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

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

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expense that may be incurred by it by reason of taking or continuing to take any such action. The Administrative Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement and the other Loan Documents in accordance with a request of the Required Lenders (or such other number or percentage of Lenders as shall be provided for herein or in the other Loan Documents), and such request and any action taken or failure to act pursuant thereto shall be binding upon the Lenders and all future holders of the Loans.

**9.5 Notice of Default.** The Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default unless the Administrative Agent has received notice in writing from a Lender or the Borrowers referring to this Agreement, describing such Default or Event of Default and stating that such notice is a “*notice of default*.” In the event that the Administrative Agent receives such a notice, the Administrative Agent shall promptly give notice thereof to the Lenders. The Administrative Agent shall take such action with respect to such Default or Event of Default as shall be directed by the Required Lenders (or, if so specified by this Agreement, all Lenders); provided that unless and until the Administrative Agent shall have received such directions, the Administrative Agent may (but shall not be obligated to) take such action or refrain from taking such action with respect to such Default or Event of Default as it shall deem advisable in the best interests of the Lenders.

**9.6 Non-Reliance on Administrative Agent and Other Lenders.** Each Lender expressly acknowledges that neither the Administrative Agent nor any of its officers, directors, employees, agents, attorneys in fact or affiliates has made any representations or warranties to it and that no act by the Administrative Agent hereafter taken, including any review of the affairs of a Group Member or any affiliate of a Group Member, shall be deemed to constitute any representation or warranty by the Administrative Agent to any Lender. Each Lender represents to the Administrative Agent that it has, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties, and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, operations, property, financial and other condition and creditworthiness of the Group Members and their affiliates and made its own credit analysis and decision to make its Loans hereunder and enter into this Agreement. Each Lender also agrees that it will, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under or based upon this Agreement, the other Loan Documents or any related agreement or any document furnished hereunder or thereunder, and to make such investigation as it deems necessary to inform itself as to the business, operations, property, financial and other condition and creditworthiness of the Group Members and their affiliates. Except for notices, reports and other documents expressly required to be furnished to the Lenders by the Administrative Agent hereunder, the Administrative Agent shall have no duty or responsibility to provide any Lender with any credit or other information concerning the business, operations, property, condition (financial or otherwise), prospects or creditworthiness of any Group Member or any Affiliate of a Group Member that may come into the possession of the Administrative Agent or any of its officers, directors, employees, agents, attorneys in fact or affiliates.

**9.7 Indemnification.** Each of the Lenders agrees to indemnify each of the Administrative Agent, the Issuing Lender and the Swingline Lender and each of its Related Parties in its capacity as such (to the extent not reimbursed by the Borrowers or any other Loan Party pursuant to any Loan Document and without limiting the obligation of the Borrowers or any other Loan Party to do so) according to its Revolving Percentage in effect on the date on which indemnification is sought under this Section 9.7 (or, if indemnification is sought after the date upon which the Revolving Commitments shall have terminated and the Loans shall have been paid in full, in accordance with its Revolving Percentage immediately prior to such date), from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind whatsoever that may at any time (whether

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before or after the payment of the Loans) be imposed on, incurred by or asserted against the Administrative Agent or such other Person in any way relating to or arising out of, the Revolving Commitments, this Agreement, any of the other Loan Documents or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby or any action taken or omitted by the Administrative Agent or such other Person under or in connection with any of the foregoing and any other amounts not reimbursed by the Borrowers or such other Loan Party; provided that no Lender shall be liable for the payment of any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements to the extent found by a final and nonappealable decision of a court of competent jurisdiction to have resulted from the Administrative Agent's or such other Person's gross negligence or willful misconduct, and that with respect to such unpaid amounts owed to any Issuing Lender or Swingline Lender solely in its capacity as such, only the Revolving Lenders shall be required to pay such unpaid amounts, such payment to be made severally among them based on such Revolving Lenders' Revolving Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought). The agreements in this Section 9.7 shall survive the payment of the Loans and all other amounts payable hereunder.

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

**9.9 Successor Administrative Agent.**

(a) The Administrative Agent may at any time give notice of its resignation to the Lenders and the Borrowers. If the Administrative Agent at any time shall resign or if the office of the Administrative Agent shall become vacant for any other reason, the Required Lenders, with the consent of the Borrowers (which consent shall not be unreasonably withheld or delayed and shall not be required at any time that an Event of Default is continuing under Section 8.1(a) or (f)) shall, by written instrument, appoint a successor Administrative Agent. Such successor Administrative Agent shall thereupon become the Administrative Agent hereunder, as applicable, and the Administrative Agent shall deliver or cause to be delivered to any successor Administrative Agent such documents of transfer and assignment as such successor Administrative Agent may reasonably request. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation (or such earlier day as shall be agreed by the Required Lenders) (the "**Resignation Effective Date**"), then the retiring Administrative Agent may (but shall not be obligated to), on behalf of the Lenders, appoint a successor Administrative Agent that is a Lender at such time or that meets the qualifications for an Eligible Assignee hereunder. Whether or not a successor has been appointed, such resignation shall become effective in accordance with such notice on the Resignation Effective Date. Any resignation by SVB as Administrative Agent pursuant to this Section 9.9 shall also constitute its resignation as the Issuing Lender and Swingline Lender. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, (i) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring Issuing Lender and Swingline Lender, (ii) the retiring Issuing Lender and Swingline Lender shall be discharged from all of their respective duties and obligations hereunder and under the other Loan Documents, and (iii) the successor Issuing Lender shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make

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other arrangements satisfactory to the retiring Issuing Lender to effectively assume the obligations of the retiring Issuing Lender with respect to such Letters of Credit.

(b) If the Person serving as Administrative Agent is a Defaulting Lender pursuant to clause (d) of the definition thereof, the Required Lenders may, to the extent permitted by applicable law, by notice in writing to the Borrowers and such Person remove such Person as Administrative Agent and, with the consent of the Borrowers (which consent shall not be unreasonably withheld or delayed and shall not be required at any time that an Event of Default is continuing under Section 8.1(a) or (f)), appoint a successor. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days (or such earlier day as shall be agreed by the Required Lenders) (the “**Removal Effective Date**”), then such removal shall nonetheless become effective in accordance with such notice on the Removal Effective Date.

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

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

(a) to release any Lien on any Collateral or other property granted to or held by the Administrative Agent under any Loan Document (i) upon the Discharge of Obligations, (ii) that is sold or otherwise disposed of or to be sold or otherwise disposed of as part of or in connection with any sale or other disposition permitted hereunder or under any other Loan Document, or (iii) subject to Section 10.1, if approved, authorized or ratified in writing by the Required Lenders;

(b) to subordinate any Lien on any Collateral or other 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 Sections 7.3(g) and (i); and

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

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

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

**9.11 Administrative Agent May File Proofs of Claim.** In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan or Obligation in respect of any Letter of Credit shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrowers) shall be entitled and empowered (but not obligated), by intervention in such proceeding or otherwise:

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

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

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

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender to authorize the Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

#### **9.12 Reports and Financial Statements.**

Each Bank Services Provider agrees to furnish to the Administrative Agent at such frequency as the Administrative Agent may reasonably request with a summary of all Obligations in respect of Bank Services due or to become due to such Bank Services Provider. In connection with any distributions to be made hereunder, the Administrative Agent shall be entitled to assume that no amounts are due to any Bank

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Services Provider unless the Administrative Agent has received written notice thereof from such Bank Services Provider and if such notice is received, the Administrative Agent shall be entitled to assume that the only amounts due to such Bank Services Provider on account of Bank Services is the amount set forth in such notice.

To the extent that a notice, report or other written communication delivered or made available pursuant to any Loan Document is delivered or made available solely to the Administrative Agent, then the Administrative Agent shall promptly deliver or make available to the Lenders, in the manner prescribed in Section 10.2(b), all such notices, reports, and other written communications.

### **9.13 No Other Duties, Etc.**

Anything herein to the contrary notwithstanding, the "Documentation Agent" listed on the cover page hereof shall have no powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity as a Lender hereunder.

### **9.14 Survival.**

This Section 9 shall survive the Discharge of Obligations.

## **SECTION 10 MISCELLANEOUS**

### **10.1 Amendments and Waivers.**

(a) Neither this Agreement, nor any other Loan Document (other than any L/C Related Document, any Specified Swap Agreement and any Bank Services Agreement), nor any terms hereof or thereof may be amended, supplemented or modified except in accordance with the provisions of this Section 10.1. The Required Lenders and each Loan Party that is party to the relevant Loan Document may, or, with the written consent of the Required Lenders, the Administrative Agent and each Loan Party that is party to the relevant Loan Document may, from time to time, (i) enter into written amendments, supplements or modifications hereto and to the other Loan Documents for the purpose of adding any provisions to this Agreement or the other Loan Documents or changing in any manner the rights of the Lenders or of the Loan Parties hereunder or thereunder or (ii) waive, on such terms and conditions as the Required Lenders or the Administrative Agent, as the case may be, may specify in such instrument, any of the requirements of this Agreement or the other Loan Documents or any Default or Event of Default and its consequences; provided that no such waiver and no such amendment, supplement or modification shall (A) forgive the principal amount or extend the final scheduled date of maturity of any Loan, reduce the stated rate of any interest or fee payable hereunder (except that any amendment or modification of defined terms used in the financial covenants in this Agreement shall not constitute a reduction in the rate of interest or fees for purposes of this clause (A)) or waive, postpone or extend the scheduled date of any payment thereof, or alter the amount or expiration date of any Lender's Revolving Commitment, in each case without the written consent of each Lender directly affected thereby; (B) eliminate or reduce the voting rights of any Lender under this Section 10.1 without the written consent of such Lender; (C) amend the definition of Required Lenders, consent to the assignment or transfer by the Borrowers of any of their respective rights and obligations under this Agreement and the other Loan Documents, except as provided in Sections 9.10 and 10.16 release all or substantially all of the Collateral or release any of the Guarantors from their obligations under the Guarantee and Collateral Agreement, in each case without the written consent of all Lenders; (D) amend, modify or waive the pro rata requirements of Section 2.18 in a manner that adversely affects Revolving Lenders without the written consent of each Revolving Lender or amend, modify or waive the pro rata requirements of Section 2.18 in a manner that adversely affects the L/C Lenders without

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the written consent of each L/C Lender; (E) amend, modify or waive any provision of Section 9 without the written consent of the Administrative Agent; (F) amend, modify or waive any provision of Section 2.6 or 2.7 without the written consent of the Swingline Lender; (G) amend, modify or waive any provision of Section 3 without the written consent of the Issuing Lender; or (H)(i) amend or modify the application of payments set forth in Section 8.3 in a manner that adversely affects Revolving Lenders without the written consent of the Revolving Lenders, (ii) amend or modify the application of payments set forth in Section 8.3 in a manner that adversely affects the L/C Lenders without the written consent of the L/C Lenders, or (iii) amend or modify the application of payments provisions set forth in Section 8.3 in a manner that adversely affects the Issuing Lender, any Bank Services Provider or any Qualified Counterparty, as applicable, without the written consent of the Issuing Lender, Bank Services Provider or each such Qualified Counterparty, as applicable. Any such waiver and any such amendment, supplement or modification shall apply equally to each of the Lenders and shall be binding upon the Loan Parties, the Lenders, the Administrative Agent, the Issuing Lender, each Bank Services Provider, each Qualified Counterparty, and all future holders of the Loans. In the case of any waiver, the Loan Parties, the Lenders and the Administrative Agent shall be restored to their former position and rights hereunder and under the other Loan Documents, and any Default or Event of Default waived shall be deemed to be cured during the period such waiver is effective; but no such waiver shall extend to any subsequent or other Default or Event of Default, or impair any right consequent thereon. Notwithstanding the foregoing, the Issuing Lender may amend any of the L/C Documents without the consent of the Administrative Agent or any other Lender. Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that (x) the Revolving Commitment of any Defaulting Lender may not be increased or extended without the consent of such Lender and (y) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that by its terms affects any Defaulting Lender disproportionately adversely relative to other affected Lenders shall require the consent of such Defaulting Lender.

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

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

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

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

(c) Notwithstanding any provision herein to the contrary but subject to the proviso in Section 10.1(a), this Agreement may be amended (or amended and restated) with the written consent of the Required Lenders, the Administrative Agent and the Borrowers (i) to add one or more additional credit or

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term loan facilities to this Agreement and to permit all such additional extensions of credit and all related obligations and liabilities arising in connection therewith and from time to time outstanding thereunder to share ratably (or on a basis subordinated to the existing facilities hereunder) in the benefits of this Agreement and the other Loan Documents with the obligations and liabilities from time to time outstanding in respect of the existing facilities hereunder, and (ii) in connection with the foregoing, to permit, as deemed appropriate by the Administrative Agent and approved by the Required Lenders, the Lenders providing such additional credit facilities to participate in any required vote or action required to be approved by the Required Lenders. For the avoidance of doubt, no Lender shall be required to participate in any such additional credit or term loan facility or be deemed a Defaulting Lender in the event that such Lender does not approve any such additional credit or term loan facility.

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

## 10.2 Notices.

(a) All notices, requests and demands to or upon the respective parties hereto to be effective shall be in writing (including by facsimile or electronic mail), and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when delivered, or three (3) Business Days after being deposited in the mail, postage prepaid, or sent via reputable overnight courier, or, in the case of facsimile or electronic mail notice, when received, addressed as follows in the case of the Borrowers and the Administrative Agent, and as set forth in an administrative questionnaire delivered to the Administrative Agent in the case of the Lenders, or to such other address as may be hereafter notified by the respective parties hereto:

Borrowers:

Benefitfocus, Inc.  
100 Benefitfocus Way  
Charleston, South Carolina 29492  
Attention: Milt Alpern, Chief Financial Officer and Paris Cavic, General Counsel  
Facsimile No.: 843-849-6062  
Telephone No.: 843-849-8388 (Milt Alpern)  
Telephone No.: 843-856-2301 (Paris Cavic)  
E-Mail: milt.alpern@benefitfocus.com  
E-Mail: paris.cavic@benefitfocus.com  
Website address: www.benefitfocus.com

with a copy to:

Wyrick Robbins Yates & Ponton LLP  
4101 Lake Boone Trail, Suite 300  
Raleigh, NC 27607  
Attention: Carolyn Minshall  
Facsimile No.: : 919-781-4865

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Administrative Agent:

Silicon Valley Bank  
3353 Peachtree Road  
NE Tower, Suite M-10  
Atlanta, GA 30326  
Attention: Andy Kirk  
Facsimile No.: 404-467-4467  
E-Mail: AKirk@svb.com

with a copy to:

Riemer & Braunstein, LLP  
3 Center Plaza  
Boston, Massachusetts 02108  
Attn.: Charles W. Stavros, Esq.  
Facsimile No.: (617) 692-3441  
E-mail: cstavros@riemerlaw.com

(b) Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communications (including email and Internet websites) pursuant to procedures approved by the Administrative Agent and each Lender; provided that the foregoing shall not apply to notices to any Lender pursuant to Section 2 unless otherwise agreed by the Administrative Agent and the applicable Lender. The Administrative Agent or the Borrowers may, in their discretion, agree to accept notices and other communications to them hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications. Unless the Administrative Agent otherwise prescribes, (a) notices and other communications sent to an email address shall be deemed received upon the sender's receipt of an acknowledgment from the intended recipient (such as by the "return receipt requested" function, as available, return email or other written acknowledgment); and (b) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its email address as described in the foregoing clause (a) of notification that such notice or communication is available and identifying the website address therefor; provided that, for both clauses (a) and (b), if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient.

(c) Any party hereto may change its address or facsimile number for notices and other communications hereunder by notice to the other parties hereto.

(d) (i) Each Loan Party agrees that the Administrative Agent may, but shall not be obligated to, make the Communications (as defined below) available to the Issuing Lender and the other Lenders by posting the Communications on Debt Domain, Intralinks, Syndtrak or a substantially similar electronic transmission system (the "**Platform**").

(ii) the Platform is provided "as is" and "as available." The Agent Parties (as defined below) do not warrant the adequacy of the Platform and expressly disclaim liability for errors or omissions in the Communications. No warranty of any kind, express, implied or statutory, including, without limitation, any warranty of merchantability, fitness for a particular purpose, non-infringement of third-party rights or freedom from viruses or other code defects, is made by any Agent Party in connection with the Communications or the Platform. In no event shall the Administrative Agent or any of its Related Parties (collectively, the "**Agent Parties**") have any liability to the Borrowers or the other Loan Parties, any Lender or any other Person or entity for damages of any kind, including, without limitation, direct or indirect, special, incidental or consequential damages, losses or expenses (whether in tort, contract or

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otherwise) arising out of any Borrower's, any Loan Party's or the Administrative Agent's transmission of communications through the Platform. "**Communications**" means, collectively, any notice, demand, communication, information, document or other material provided by or on behalf of any Loan Party pursuant to any Loan Document or the transactions contemplated therein which is distributed to the Administrative Agent, any Lender or the Issuing Lender by means of electronic communications pursuant to this Section, including through the Platform.

**10.3 No Waiver; Cumulative Remedies.** No failure to exercise and no delay in exercising, on the part of the Administrative Agent or any Lender, any right, remedy, power or privilege hereunder or under the other Loan Documents shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. **NONE OF THE ADMINISTRATIVE AGENT OR ANY LENDER SHALL BE DEEMED TO HAVE WAIVED ANY OF ITS RESPECTIVE RIGHTS UNDER THIS AGREEMENT OR UNDER ANY OTHER LOAN DOCUMENT UNLESS SUCH WAIVER IS EXPRESSED IN WRITING AND SIGNED BY THE ADMINISTRATIVE AGENT, THE REQUIRED LENDERS, OR ALL LENDERS, AS APPLICABLE.** The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

**10.4 Survival of Representations and Warranties.** All representations and warranties made hereunder, in the other Loan Documents and in any document, certificate or statement delivered pursuant hereto or in connection herewith shall survive the execution and delivery of this Agreement and the making of the Loans and other extensions of credit hereunder.

**10.5 Expenses; Indemnity; Damage Waiver.**

(a) Costs and Expenses. The Borrowers shall pay (i) all reasonable out-of-pocket expenses incurred by the Administrative Agent and its Affiliates (including the reasonable fees, charges and disbursements of counsel for the Administrative Agent), in connection with the syndication of the Revolving Facility, the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents, or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated but subject to the limitations set forth in the Engagement Letter), (ii) all reasonable out-of-pocket expenses incurred by the Issuing Lender in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder, and (iii) all out-of-pocket expenses incurred by the Administrative Agent or any Lender (including the reasonable fees, charges and disbursements of one primary counsel for the Administrative Agent and the Lenders (and additional counsel in the case of any conflict among the Administrative Agent and the Lenders)) in connection with the enforcement or protection of their rights (A) in connection with this Agreement and the other Loan Documents, including their rights under this Section, or (B) in connection with the Loans made or Letters of Credit issued or participated in hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit.

(b) Indemnification by the Borrowers. The Borrowers shall indemnify the Administrative Agent (and any sub-agent thereof), each Lender (including the Issuing Lender), and each Related Party of any of the foregoing Persons (each such Person being called an "**Indemnitee**") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related reasonable and documented or invoiced (in reasonable detail) out-of-pocket expenses (including the reasonable fees, charges and disbursements of any counsel for any Indemnitee) incurred by any Indemnitee or asserted against any Indemnitee by any Person (including the Borrowers or any other Loan Party) other than such Indemnitee and its Related Parties arising out of, in connection with, or as a result of (i) the

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execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, (ii) any Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by the Issuing Lender to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or release of Materials of Environmental Concern on or from any property owned or operated by the Borrowers or any of their Subsidiaries, or any Environmental Liability related in any way to the Borrowers or any of their Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by a Borrower or any other Loan Party, and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence, willful misconduct or violation of law of or by such Indemnitee or (y) result from a claim brought by a Borrower or any other Loan Party against an Indemnitee for breach in bad faith of such Indemnitee's obligations hereunder or under any other Loan Document, if such Borrower or such Loan Party has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction. This Section 10.5(b) shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

(c) Reimbursement by Lenders. To the extent that the Borrowers or any other Loan Party pursuant to any other Loan Document for any reason fail indefeasibly to pay any amount required under paragraph (a) or (b) of this Section to be paid by them to the Administrative Agent (or any sub-agent thereof), the Issuing Lender, the Swingline Lender or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent), the Issuing Lender, the Swingline Lender or such Related Party, as the case may be, such Lender's *pro rata* share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought based on each Lender's share of the Total Credit Exposure at such time) of such unpaid amount (including any such unpaid amount in respect of a claim asserted by such Lender); provided that with respect to such unpaid amounts owed to the Issuing Lender or the Swingline Lender solely in its capacity as such, only the Revolving Lenders shall be required to pay such unpaid amounts, such payment to be made severally among them based on such Revolving Lenders' Revolving Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) and provided further, that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such sub-agent), the Issuing Lender or the Swingline Lender in its capacity as such, or against any Related Party of any of the foregoing acting for the Administrative Agent (or any such sub-agent), the Issuing Lender or the Swingline Lender in connection with such capacity. The obligations of the Lenders under this paragraph (c) are subject to the provisions of Sections 2.4 and 2.20(e).

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable law, no Borrower shall assert, and each such Person hereby waives, any claim of such Person against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or Letter of Credit, or the use of the proceeds thereof. No Indemnitee referred to in paragraph (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby.

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(e) Payments. All amounts due under this Section shall be payable promptly after demand therefor.

(f) Survival. Each party's obligations under this Section shall survive the resignation of the Administrative Agent, the Issuing Lender and the Swingline Lender, the replacement of any Lender, the termination of the Loan Documents, the termination of the Revolving Commitments and the Discharge of Obligations.

#### 1.06 Successors and Assigns; Participations and Assignments.

(a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that no Loan Party may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender, and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of paragraph (b) of this Section, (ii) by way of participation in accordance with the provisions of paragraph (d) of this Section, or (iii) by way of pledge or assignment of a security interest subject to the restrictions of paragraph (f) of this Section (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in paragraph (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Revolving Commitments and the Loans at the time owing to it); provided that any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Revolving Commitment and/or the Loans at the time owing to it or contemporaneous assignments to related Approved Funds that equal at least the amount specified in paragraph (b)(i)(B) of this Section in the aggregate or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and

(B) in any case not described in paragraph (b)(i)(A) of this Section, the aggregate amount of the Revolving Commitments (which for this purpose includes Loans outstanding thereunder) or, if the Revolving Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date) shall not be less than \$5,000,000, unless each of the Administrative Agent and, so long as no Default or Event of Default has occurred and is continuing, the Borrowers otherwise consent (each such consent not to be unreasonably withheld or delayed).

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loans and/or the Revolving Commitments assigned.

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(b)(i)(B) of this Section and, in addition:

(iii) Required Consents. No consent shall be required for any assignment by a Lender except to the extent required by paragraph (A) the consent of the Borrowers (such consent not to be unreasonably withheld or delayed) shall be required unless (x) a Default or an Event of Default has occurred and is continuing at the time of such assignment, or (y) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund; provided that the Borrowers shall be deemed to have consented to any such assignment unless they shall object thereto by written notice to the Administrative Agent within five Business Days after having received notice thereof; and

(B) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required for assignments if such assignment is to a Person that is not a Lender, an Affiliate of such Lender or an Approved Fund with respect to such Lender.

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of \$3,500; provided that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it is not a Lender, shall deliver to the Administrative Agent any such administrative questionnaire as the Administrative Agent may request.

(v) No Assignment to Certain Persons. No such assignment shall be made to (A) a Loan Party or any of a Loan Party's Affiliates or Subsidiaries or (B) to any Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (B).

(vi) No Assignment to Disqualified Institutions. So long as no Event of Default has occurred and is continuing, no such assignment shall be made to any Disqualified Institution.

(vii) No Assignment to Natural Persons. No such assignment shall be made to a natural Person.

(viii) Certain Additional Payments. In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Borrowers and the Administrative Agent, the applicable pro rata share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent, the Issuing Lender, the Swingline Lender and each other Lender hereunder (and interest accrued thereon), and (y) acquire (and fund as appropriate) its full pro rata share of all Loans and participations in Letters of Credit and Swingline Loans in accordance with its Revolving Percentage. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to paragraph (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the assignee

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thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 2.19, 2.20 and 10.5 with respect to facts and circumstances occurring prior to the effective date of such assignment; provided, that except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this paragraph shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (d) of this Section.

(c) Register. The Administrative Agent, acting solely for this purpose as an agent of the Borrowers, shall maintain at one of its offices in California a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Revolving Commitments of, and principal amounts (and stated interest) of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "**Register**"). The entries in the Register shall be conclusive absent manifest error, and the Borrowers, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Borrowers and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, the Borrowers or the Administrative Agent, sell participations to any Person (other than a natural Person or any Loan Party or any of any Loan Party's Affiliates or Subsidiaries) (each, a "**Participant**") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Revolving Commitments and/or the Loans owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, and (iii) the Borrowers, the Administrative Agent, the Issuing Lender and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. For the avoidance of doubt, each Lender shall be responsible for the indemnities under Sections 2.20(e) and 9.7 with respect to any payments made by such Lender to its Participant(s).

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver which affects such Participant and for which the consent of such Lender is required (as described in Section 10.1). Each Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.19 and 2.20 (subject to the requirements and limitations therein, including the requirements under Section 2.20(f) (it being understood that the documentation required under Section 2.20(f) shall be delivered to such Participant)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section; provided that such Participant (A) agrees to be subject to the provisions of Section 2.23 as if it were an assignee under paragraph (b) of this Section; and (B) shall not be entitled to receive any greater payment under Sections 2.19 or 2.20, with respect to any participation, than its participating Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a change in any Requirement of Law that occurs after the Participant acquired the applicable participation. Each Lender that sells a participation agrees, at the Borrowers'

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request and expense, to use reasonable efforts to cooperate with the Borrowers to effectuate the provisions of Section 2.23 with respect to any Participant. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 10.7 as though it were a Lender; provided that such Participant agrees to be subject to Section 2.18(j) as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as an agent of the Borrowers, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "**Participant Register**"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(e) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(f) Notes. The Borrowers, upon receipt by the Borrowers of written notice from the relevant Lender, agrees to issue Notes to any Lender requiring Notes to facilitate transactions of the type described in Section 10.6.

(g) Representations and Warranties of Lenders. Each Lender, upon execution and delivery hereof or upon succeeding to an interest in the Revolving Commitments or Loans, as the case may be, represents and warrants as of the Closing Date or as of the effective date of the applicable Assignment and Assumption that (i) it is an Eligible Assignee; (ii) it has experience and expertise in the making of or investing in commitments, loans or investments such as the Revolving Commitments and Loans; and (iii) it will make or invest in its Revolving Commitments and Loans for its own account in the ordinary course of its business and without a view to distribution of such Revolving Commitments and Loans within the meaning of the Securities Act or the Exchange Act, or other federal securities laws (it being understood that, subject to the provisions of this Section 10.6, the disposition of such Revolving Commitments and Loans or any interests therein shall at all times remain within its exclusive control).

#### **10.7 Adjustments; Set-off.**

(a) Except to the extent that this Agreement expressly provides for payments to be allocated to a particular Lender, if any Lender (a "**Benefitted Lender**") shall, at any time after the Loans and other amounts payable hereunder shall immediately become due and payable pursuant to Section 8.2, receive any payment of all or part of the Obligations owing to it, or receive any Collateral in respect thereof (whether voluntarily or involuntarily, by set-off, pursuant to events or proceedings of the nature referred to in Section 8.1(f), or otherwise), in a greater proportion than any such payment to or Collateral received by any other Lender, if any, in respect of the Obligations owing to such other Lender, such Benefitted Lender shall purchase for cash from the other Lenders a participating interest in such portion of the Obligations owing to each such other Lender, or shall provide such other Lenders with the benefits of any such Collateral, as shall be necessary to cause such Benefitted Lender to share the excess payment or benefits of

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such Collateral ratably with each of the Lenders; provided that if all or any portion of such excess payment or benefits is thereafter recovered from such Benefitted Lender, such purchase shall be rescinded, and the purchase price and benefits returned, to the extent of such recovery, but without interest.

(b) Upon (i) the occurrence and during the continuance of any Event of Default and (ii) obtaining the prior written consent of the Administrative Agent or the Required Lenders, each Lender and each of its Affiliates is hereby authorized at any time and from time to time, without prior notice to the Borrowers or any other Loan Party, any such notice being expressly waived by each Borrower and each other Loan Party, to the fullest extent permitted by applicable law, to set off and apply any and all deposits (general or special, time or demand, provisional or final), in any currency, at any time held or owing, and any other credits, indebtedness, claims or obligations, in any currency, in each case whether direct or indirect, absolute or contingent, matured or unmatured, at any time held or owing by such Lender, its Affiliates or any branch or agency thereof to or for the credit or the account of any Borrower or any other Loan Party, as the case may be, against any and all of the obligations of the Borrowers or such other Loan Party now or hereafter existing under this Agreement or any other Loan Document to such Lender or its Affiliates, irrespective of whether or not such Lender or Affiliate shall have made any demand under this Agreement or any other Loan Document and although such obligations of the Borrowers or such other Loan Party may be contingent or unmatured or are owed to a branch, office or Affiliate of such Lender different from the branch, office or Affiliate holding such deposit or obligated on such indebtedness; provided, that in the event that any Defaulting Lender or any of its Affiliates shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.23 and, pending such payment, shall be segregated by such Defaulting Lender or Affiliate thereof from its other funds and deemed held in trust for the benefit of the Administrative Agent and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender or Affiliate thereof as to which it exercised such right of setoff. Each Lender agrees to notify the Borrowers and the Administrative Agent promptly after any such setoff and application made by such Lender or any of its Affiliates; provided that the failure to give such notice shall not affect the validity of such setoff and application. The rights of each Lender and its Affiliates under this Section 10.7 are in addition to other rights and remedies (including other rights of set-off) which such Lender or its Affiliates may have.

**10.8 Payments Set Aside.** To the extent that any payment or transfer by or on behalf of the Borrowers is made to the Administrative Agent or any Lender, or the Administrative Agent or any Lender exercises its right of setoff, and such payment or transfer or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any Insolvency Proceeding or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender severally agrees to pay to the Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Effective Rate from time to time in effect. This Section 10.8 shall survive the Discharge of Obligations.

**10.9 Interest Rate Limitation.** Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable law (the "**Maximum Rate**"). If the Administrative Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the

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Borrowers. In determining whether the interest contracted for, charged, or received by the Administrative Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

**10.10 Counterparts; Electronic Execution of Assignments.**

(a) This Agreement may be executed by one or more of the parties to this Agreement on any number of separate counterparts, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. Delivery of an executed signature page of this Agreement by facsimile or other electronic mail transmission shall be effective as delivery of a manually executed counterpart hereof. A set of the copies of this Agreement signed by all the parties shall be lodged with the Borrowers and the Administrative Agent.

(b) The words “execution,” “signed,” “signature,” and words of like import in any Assignment and Assumption shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

**10.11 Severability.** Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Without limiting the foregoing provisions of this Section 10.11, if and to the extent that the enforceability of any provisions in this Agreement relating to Defaulting Lenders shall be limited under or in connection with any Insolvency Proceeding, as determined in good faith by the Administrative Agent or the Issuing Lender, as applicable, then such provisions shall be deemed to be in effect only to the extent not so limited.

**10.12 Integration.** This Agreement and the other Loan Documents represent the entire agreement of the Borrowers, the other Loan Parties, the Administrative Agent and the Lenders with respect to the subject matter hereof and thereof, and there are no promises, undertakings, representations or warranties by the Administrative Agent or any Lender relative to the subject matter hereof not expressly set forth or referred to herein or in the other Loan Documents.

**10.13 GOVERNING LAW.** THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES UNDER THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK. This Section 10.13 shall survive the Discharge of Obligations.

**10.14 Submission to Jurisdiction; Waivers.** Each Borrower hereby irrevocably and unconditionally:

(a) submits to the exclusive jurisdiction of the State and Federal courts in the Southern District of the State of New York; provided that nothing in this Agreement shall be deemed to operate to preclude the Administrative Agent or any Lender from bringing suit or taking other legal action in any other jurisdiction to realize on the Collateral or any other security for the Obligations, or to enforce a judgment

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or other court order in favor of Administrative Agent or such Lender. Borrower expressly submits and consents in advance to such jurisdiction in any action or suit commenced in any such court, and each Borrower hereby waives any objection that it may have based upon lack of personal jurisdiction, improper venue, or forum non conveniens and hereby consents to the granting of such legal or equitable relief as is deemed appropriate by such court. Each Borrower hereby waives personal service of the summons, complaints, and other process issued in such action or suit and agrees that service of such summons, complaints, and other process may be made by registered or certified mail addressed to the Borrowers at the addresses set forth in Section 10.2 of this Agreement and that service so made shall be deemed completed upon the earlier to occur of the Borrowers' actual receipt thereof or three (3) Business Days after deposit in the U.S. mails, proper postage prepaid;

(b) **WAIVES, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ITS RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF OR BASED UPON THIS AGREEMENT, THE OTHER LOAN DOCUMENTS OR ANY CONTEMPLATED TRANSACTION, INCLUDING CONTRACT, TORT, BREACH OF DUTY AND ALL OTHER CLAIMS. THIS WAIVER IS A MATERIAL INDUCEMENT FOR THE PARTIES TO ENTER INTO THIS AGREEMENT. EACH PARTY HAS REVIEWED THIS WAIVER WITH ITS COUNSEL; and**

(c) waives, to the maximum extent not prohibited by law, any right it may have to claim or recover in any legal action or proceeding referred to in this Section any special, exemplary, punitive or consequential damages.

This Section 10.14 shall survive the Discharge of Obligations.

**10.15 Acknowledgements.** Each Borrower hereby acknowledges that:

(a) it has been advised by counsel in the negotiation, execution and delivery of this Agreement and the other Loan Documents;

(b) none of the Administrative Agent nor any Lender has any fiduciary relationship with or duty to the Borrowers arising out of or in connection with this Agreement or any of the other Loan Documents, and the relationship between the Administrative Agent and Lenders, on one hand, and the Borrowers, on the other hand, in connection herewith or therewith is solely that of debtor and creditor; and

(c) no joint venture is created hereby or by the other Loan Documents or otherwise exists by virtue of the transactions contemplated hereby among the Lenders or among the Borrowers and the Lenders.

**10.16 Releases of Guarantees and Liens.**

(a) Notwithstanding anything to the contrary contained herein or in any other Loan Document, the Administrative Agent is hereby authorized by each Lender (without requirement of notice to or consent of any Lender except as expressly required by Section 10.1) to take any action requested by the Borrowers having the effect of releasing any Collateral or Guarantee Obligations (1) to the extent necessary to permit consummation of any transaction not prohibited by any Loan Document or that has been consented to in accordance with Section 10.1 or (2) under the circumstances described in Section 10.16(b) below.

(b) Upon the Discharge of Obligations, the Collateral shall be released from the Liens created by the Security Documents, and the Security Documents and all obligations (other than those

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expressly stated to survive such termination) of the Administrative Agent and each Loan Party under the Security Documents shall terminate, all without delivery of any instrument or performance of any act by any Person.

**10.17 Treatment of Certain Information; Confidentiality.** Each of the Administrative Agent and each Lender agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates and to its Related Parties (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential and will so agree to comply with such instructions and the requirements of this Section 10.17); (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, upon the request or demand of any Governmental Authority, in response to any order of any court or other Governmental Authority or as may otherwise be required pursuant to any Requirement of Law or if requested or required to do so in connection with any litigation or similar proceeding; (d) to any other party hereto; (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder; (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights and obligations under this Agreement, or (ii) any actual or prospective party (or its Related Parties) to any Swap Agreement under which payments are to be made by reference to the Borrowers and their obligations, this Agreement or payments hereunder; (g) on a confidential basis to (i) any rating agency in connection with rating the Borrowers or their Subsidiaries or the Revolving Facility or (ii) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers with respect to the Revolving Facility; (h) with the consent of the Borrowers; or (i) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section, or (y) becomes available to the Administrative Agent, any Lender or any of their respective Affiliates on a non-confidential basis from a source other than the Borrowers.

In the event that the Administrative Agent or any Lender is required or receives a demand to disclose under subparagraph (b) (excluding regulatory audits of the Lenders' loan portfolios in the ordinary course of business that do not subject the Borrowers to requests for disclosure under the Freedom of Information Act or the Physician Payments Sunshine Act or otherwise require the public disclosure of confidential Information) or (c) of the preceding paragraph, it will use reasonable efforts to promptly notify the Borrowers thereof, to the extent permitted under applicable law, in order to enable the Borrowers to seek a protective order or other appropriate remedy. In the event that no such protective order or other remedy is obtained, the Administrative Agent or such Lender agrees that it shall furnish only that portion of the Information that it is advised by counsel is required by law. The Administrative Agent and each Lender shall comply with the restrictions imposed by the United States securities laws on the purchase or sale of securities by any person who has received material, non-public information from the issuer of such.

Notwithstanding anything herein to the contrary, any party to this Agreement (and any employee, representative, or other agent of any party to this Agreement) may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the transactions contemplated by this Agreement and all materials of any kind (including opinions or other tax analyses) that are provided to it relating to such tax treatment and tax structure. However, any such information relating to the tax treatment or tax structure is required to be kept confidential to the extent necessary to comply with any applicable federal or state securities laws.

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For purposes of this Section, “**Information**” means all information received from the Borrowers or any of their Subsidiaries relating to the Borrowers or any of their Subsidiaries or any of their respective businesses, other than any such information that is available to the Administrative Agent or any Lender on a non-confidential basis prior to disclosure by the Borrowers or any of their Subsidiaries; provided that, in the case of information received from the Borrowers or any of their Subsidiaries after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

**10.18 Automatic Debits.** With respect to any principal, interest, fee, or any other cost or expense (including reasonable attorney costs of one primary counsel to the Administrative Agent and the Lenders payable by the Borrowers hereunder) due and payable to the Administrative Agent or any Lender under the Loan Documents, the Borrowers hereby irrevocably authorize the Administrative Agent to debit any deposit account of the Borrowers maintained with the Administrative Agent (and the Administrative Agent agrees to provide the Borrowers an invoice or loan statement, as applicable, with respect to such amount; provided that any such invoice with respect to an amount to be debited outside the ordinary course (including audit fees and legal fees and expenses) shall be provided prior to such debit) in an amount such that the aggregate amount debited from all such deposit accounts does not exceed such principal, interest, fee or other cost or expense. If there are insufficient funds in such deposit accounts to cover the amount then due, such debits will be reversed (in whole or in part, in the Administrative Agent’s sole discretion) and such amount not debited shall be deemed to be unpaid. No such debit under this Section 10.18 shall be deemed a set-off.

**10.19 Judgment Currency.** If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due hereunder or any other Loan Document in one currency into another currency, the rate of exchange used shall be that at which in accordance with normal banking procedures the Administrative Agent could purchase the first currency with such other currency on the Business Day preceding that on which final judgment is given. The obligation of each Borrower and each other Loan Party in respect of any such sum due from it to the Administrative Agent or any Lender hereunder or under any other Loan Document shall, notwithstanding any judgment in a currency (the “**Judgment Currency**”) other than that in which such sum is denominated in accordance with the applicable provisions of this Agreement (the “**Agreement Currency**”), be discharged only to the extent that on the Business Day following receipt by the Administrative Agent or such Lender, as the case may be, of any sum adjudged to be so due in the Judgment Currency, the Administrative Agent or such Lender, as the case may be, may in accordance with normal banking procedures purchase the Agreement Currency with the Judgment Currency. If the amount of the Agreement Currency so purchased is less than the sum originally due to the Administrative Agent or any Lender from any Borrower or any other Loan Party in the Agreement Currency, such Borrower and each other Loan Party agrees, as a separate obligation and notwithstanding any such judgment, to indemnify the Administrative Agent or such Lender, as the case may be, against such loss. If the amount of the Agreement Currency so purchased is greater than the sum originally due to the Administrative Agent or any Lender in such currency, the Administrative Agent or such Lender, as the case may be, agrees to return the amount of any excess to such Borrower or other Loan Party, as applicable (or to any other Person who may be entitled thereto under applicable law).

**10.20 Patriot Act.** Each Lender and the Administrative Agent (for itself and not on behalf of any other party) hereby notifies the Borrowers that, pursuant to the requirements of the Patriot Act, it is required to obtain, verify and record information that identifies each Borrower, which information includes the names and addresses and other information that will allow such Lender or the Administrative Agent, as applicable, to identify each Borrower in accordance with the Patriot Act. Each Borrower will, and will cause each of its respective Subsidiaries to, provide, to the extent commercially reasonable or required by any Requirement of Law, such information and take such actions as are reasonably requested by the

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Administrative Agent or any Lender to assist the Administrative Agent and the Lenders in maintaining compliance with the Patriot Act.

**10.21 Termination.** This Agreement (other than Sections 2.19, 2.20, 9, 10.5, 10.8, 10.13 and 10.14) shall terminate upon the occurrence of the Discharge of Obligations.

*[Remainder of page left blank intentionally]*

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their proper and duly authorized officers as of the day and year first above written.

**BORROWERS:**

**BENEFITFOCUS, INC.**

as a Borrower

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**BENEFITFOCUS.COM, INC.**

as a Borrower

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

~~**BENEFIT INFORMATICS, INC.**~~

~~as a Borrower~~

~~By: \_\_\_\_\_~~

~~Name: \_\_\_\_\_~~

~~Title: \_\_\_\_\_~~

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**BENEFITSTORE, INC.**  
as a Borrower

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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**ADMINISTRATIVE AGENT:**

**SILICON VALLEY BANK,**  
as the Administrative Agent

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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**DOCUMENTATION AGENT:**

**COMERICA BANK,**  
as the Documentation Agent

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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**LENDERS:**

**SILICON VALLEY BANK,**  
as Issuing Lender, Swingline Lender and as a Lender

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**COMERICA BANK,**  
as a Lender

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

~~SQUARE 1~~ **PACIFIC WESTERN BANK,**  
as a Lender

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**SCHEDULE 1.1A**

**REVOLVING COMMITMENTS  
AND REVOLVING PERCENTAGES**

**REVOLVING COMMITMENTS**

Lender	Revolving Commitment	Revolving Percentage
Silicon Valley Bank	\$30,500,000.00	50.83333333%

**Lender**  
**Comerica Bank**  
**Revolving Commitment**

\$17,250,000.00  
**Revolving Percentage**

28.750000000%  
**Square 1 Bank**

\$12,250,000.00

20.416666667%  
**Total**

\$60,000,000.00

100.000000000%

**L/C COMMITMENTS**

(which is a sublimit of, and not in addition to, the Revolving Commitments)

Lender	L/C Commitments	L/C Percentage
Silicon Valley Bank	\$5,000,000	100.000000000%
<b>Total</b>	<b>\$5,000,000</b>	<b>100.000000000%</b>

**SWINGLINE COMMITMENT**

(which is a sublimit of, and not in addition to, the Revolving Commitments)

Lender	Swingline Commitment	Exposure Percentage
Silicon Valley Bank	\$5,000,000	100.000000000%
<b>Total</b>	<b>\$5,000,000</b>	<b>100.000000000%</b>

**SCHEDULE 4.15**

**SUBSIDIARIES**

**SCHEDULE 4.17**

**ENVIRONMENTAL MATTERS**

**SCHEDULE 4.19(a)**

**FINANCING STATEMENTS AND OTHER FILINGS**



**SCHEDULE 6.10**  
**NBSC BANK ACCOUNTS**

**SCHEDULE 7.2(d)**  
**EXISTING INDEBTEDNESS**

**SCHEDULE 7.3(f)**  
**EXISTING LIENS**

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**SCHEDULE 7.8(M)**

**EXISTING INVESTMENTS**

GOLDMAN SACHS LENDING PARTNERS LLC, as a Lender

By \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

~~2042849.8~~  
2042849.11

**SENIOR SECURED REVOLVING CREDIT FACILITY**

**CREDIT AGREEMENT**

dated as of March 3, 2020,

among

**BENEFITFOCUS, INC.**  
**BENEFITFOCUS.COM, INC.**  
**BENEFITSTORE, INC.**

jointly and severally, individually and collectively, as the Borrowers,

**THE SEVERAL LENDERS FROM TIME TO TIME PARTY HERETO,**

and

**SILICON VALLEY BANK,**

as Administrative Agent, Issuing Lender and Swingline Lender

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## **EXHIBITS**

Exhibit A:	Form of Guarantee and Collateral Agreement
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Exhibit C:	Form of Secretary's/Managing Member's Certificate
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Exhibit H:	Form of Collateral Information Certificate
Exhibit I:	Form of Notice of Borrowing

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## CREDIT AGREEMENT

THIS CREDIT AGREEMENT (this “*Agreement*”), dated as of March 3, 2020, is entered into by and among **BENEFITFOCUS, INC.**, a Delaware corporation (the “*Parent*”), **BENEFITFOCUS.COM, INC.**, a South Carolina corporation (“*Benefitfocus.com*”), and **BENEFITSTORE, INC.**, a South Carolina corporation (“*BenefitStore*”), and together with the Parent and Benefitfocus.com, each individually, a “*Borrower*”, and collectively, and jointly and severally, the “*Borrowers*”, the several banks and other financial institutions or entities from time to time party to this Agreement (each a “*Lender*” and, collectively, the “*Lenders*”), **SILICON VALLEY BANK (“SVB”)**, as the Issuing Lender and the Swingline Lender and **SVB**, as administrative agent and collateral agent for the Lenders (in such capacity, the “*Administrative Agent*”).

### RECITALS:

**WHEREAS**, the Borrowers desire to obtain working capital financing and letter of credit facilities;

**WHEREAS**, the Lenders have agreed to extend a revolving loan facility to the Borrowers, upon the terms and conditions specified in this Agreement, in an aggregate amount not to exceed \$50,000,000, with a letter of credit sub-facility in the aggregate availability amount of \$5,000,000 (as a sublimit of the revolving loan facility) and a swingline sub-facility in the aggregate availability amount of \$5,000,000 (as a sublimit of the revolving loan facility);

**WHEREAS**, each Loan Party has agreed to secure all of its respective Obligations by granting to the Administrative Agent, for the ratable benefit of the Secured Parties, a first priority lien (subject to Liens permitted by the Loan Documents) in substantially all of its respective personal property assets pursuant to the terms of the Guarantee and Collateral Agreement and the other Security Documents; and

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

**NOW, THEREFORE**, the parties hereto hereby agree as follows:

### SECTION 1 DEFINITIONS

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

“**ABR**”: for any day, a rate per annum equal to the higher of (a) the Prime Rate in effect on such day and (b) the Federal Funds Effective Rate in effect for such day plus 0.50%. Any change in the ABR due to a change in the Prime Rate or the Federal Funds Effective Rate shall be effective as of the opening of business on the effective day of such change in the Prime Rate or the Federal Funds Effective Rate. In no event shall the ABR be less than 1.00%.

“**Account Debtor**”: any Person who may become obligated to any Person under, with respect to, or on account of, an Account, chattel paper or general intangible (including a payment intangible). Unless otherwise stated, the term “Account Debtor,” when used herein, shall mean an Account Debtor in respect of an Account of a Borrower.

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

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

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

“**Affiliate**”: with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified; provided, that, neither the Administrative Agent nor the Lenders shall be deemed Affiliates of the Loan Parties as a result of the exercise of their rights and remedies under the Loan Documents.

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

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

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

“**Applicable Margin**”:

(a) from the Closing Date until March 31, 2020, the percentages set forth in Level III of the pricing grid below; and

(b) thereafter and on the fifth day of each month thereafter, the Applicable Margin shall be determined from the following pricing grids based upon Average Daily Usage as calculated by the Administrative Agent; provided however if any such calculation is at any time restated or otherwise revised such that the Applicable Margin would have been higher than was otherwise in effect during any period, without constituting a waiver of any Default or Event of Default arising as a result thereof, interest and/or fees due under this Agreement shall be immediately recalculated at such other rate for any applicable periods and shall be due and payable promptly after demand from the Administrative Agent if such other rate would have been higher.

**REVOLVING LOANS AND SWINGLINE LOANS**

<u>Level</u>	<u>Average Daily Usage</u>	<u>Revolving Loans</u>	<u>Swingline Loans</u>
I	≥ 50%	0.50%	0.50%
II	> 25% but < 50%	0.00%	0.00%
III	≤ 25%	(0.50)%	(0.50)%

**LETTER OF CREDIT FEE**

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<u>Level</u>	<u>Average Daily Usage</u>	<u>Letter of Credit Fees</u>
I	≥ 50%	0.50%
II	> 25% but < 50%	0.00%
III	≤ 25%	(0.50)%

Notwithstanding the foregoing, (a) during an Event of Default, the Applicable Margin shall be the rates corresponding to Level I in the foregoing tables, and (b) no reduction to the Applicable Margin shall become effective at any time when an Event of Default has occurred and is continuing.

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

**“Approved Fund”**: any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

**“ASC 606”**: Accounting Standards Codification (ASC) Topic 606: Revenue from Contracts with Customers issued by the Financial Accounting Standards Board.

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

**“Available Revolving Commitment”**: at any time, an amount equal to the Total Revolving Commitments in effect at such time, minus (b) the aggregate undrawn amount of all outstanding Letters of Credit at such time, minus (c) the aggregate amount of all L/C Disbursements that have not yet been reimbursed or converted into Revolving Loans at such time, minus (d) the aggregate principal balance of any Revolving Loans outstanding at such time.

**“Available Revolving Increase Amount”**: as of any date of determination, an amount equal to the result of (a) \$50,000,000 minus (b) the aggregate principal amount of Increases to the Revolving Commitments previously made pursuant to Section 2.12.

**“Average Daily Usage”**: is the average of the Usages for each day of the immediately preceding calendar month.

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

**“Bail-In Legislation”**: with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule.

**“Bankruptcy Code”**: Title 11 of the United States Code entitled “Bankruptcy,” as now or hereafter in effect, or any successor thereto.

**“Bank Services”**: any products, credit services and/or financial accommodations previously, now, or hereafter provided to any Group Member by any Bank Services Provider, including any letters of credit

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(other than any Letters of Credit provided for the account of the Borrowers hereunder), cash management services, credit cards and foreign exchange services, in each case, other than to the extent constituting Specified Swap Agreements, as any such products or services may be identified in such Bank Services Provider's various agreements related thereto (each, a "**Bank Services Agreement**").

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

**"Bank Services Provider"**: the Administrative Agent, any Lender, or any Affiliate of the foregoing who provides Bank Services to any Group Member.

**"Benefitted Lender"**: as defined in [Section 10.7\(a\)](#).

**"Blocked Person"**: as defined in [Section 7.23](#).

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

**"Borrower"** or **"Borrowers"**: as defined in the preamble hereto.

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

**"Business"**: as defined in [Section 4.17\(b\)](#).

**"Business Day"**: a day other than a Saturday, Sunday or other day on which commercial banks in the State of California or the State of New York are authorized or required by law to close.

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

**"Capital Stock"**: any and all shares, interests, participations or other equivalents (however designated) of capital stock of a corporation, any and all equivalent ownership interests in a Person (other than a corporation) and any and all warrants, rights or options to purchase any of the foregoing; *provided* that Permitted Convertible Indebtedness, or other debt securities that are or by their terms may be convertible or exchangeable into or for Capital Stock that is not Disqualified Stock, shall not constitute Capital Stock prior to settlement, conversion or exchange thereof.

**"Cash Collateralize"**: to pledge and deposit with or deliver to (a) with respect to Obligations in respect of Letters of Credit, the Administrative Agent, for the benefit of the Issuing Lender and one or more of the Lenders, as applicable, as collateral for L/C Exposure or obligations of the Lenders to fund participations in respect thereof, cash or Deposit Account balances having an aggregate value of at least 105% (110% in the case of any L/C Exposure in respect of a Letter of Credit denominated in a Foreign Currency) of the L/C Exposure or, if the Administrative Agent and the Issuing Lender shall agree in their sole discretion, other credit support, in each case pursuant to documentation in form and substance satisfactory to the Administrative Agent and the Issuing Lender; (b) with respect to Obligations arising under any Bank Services Agreement in connection with Bank Services, the applicable Bank Services Provider, for its own benefit or any of its applicable Affiliates' benefit, as provider of such Bank Services,

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cash or Deposit Account balances having an aggregate value of at least 105% of the aggregate amount of the Obligations of the Group Members arising under all such Bank Services Agreements evidencing such Bank Services, or, if such Bank Services Provider shall agree in its sole discretion, other credit support pursuant to documentation in form and substance reasonably satisfactory to the Bank Services Provider; or (c) with respect to Obligations in respect of any Specified Swap Agreements, the applicable Qualified Counterparty, as Collateral for such Obligations, cash or Deposit Account balances or, if such Qualified Counterparty shall agree in its sole discretion, other credit support, in each case pursuant to documentation in form and substance satisfactory to such Qualified Counterparty. "**Cash Collateral**" shall have a meaning correlative to the foregoing and shall include the proceeds of such cash collateral and other credit support.

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

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

**"Certificated Securities"**: as defined in [Section 4.19\(a\)](#).

**"Change of Control"**: (a) at any time, any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act but excluding any employee benefit plan of such person or its Subsidiaries and any person acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan) other than a Permitted Holder shall become, or obtain rights (whether by means of warrants, options or otherwise) to become, the "beneficial owner" (as defined in Rules 13(d)-3 and 13(d)-5 under the Exchange Act), directly or indirectly, of 35% or more of the ordinary voting power for the election of directors of the Parent (determined on a fully diluted basis); (b) during any period of 12 consecutive months, a majority of the members of the board of directors or other equivalent governing body of the Parent cease to be composed of individuals (i) who were members of that board or equivalent governing body on the first day of such period, (ii) whose election or nomination to that board or equivalent governing body was approved by individuals referred to in clause (i) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body or (iii) whose election or nomination to that board or other equivalent governing body was approved by individuals referred to in

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clauses (i) and (ii) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body; (c) except as permitted under Article VII of this Agreement, the Parent shall cease to own and control, of record and beneficially, directly or indirectly, 100% of each class of outstanding Capital Stock of each other Loan Party free and clear of all Liens (except Liens created by the Security Documents and non-consensual Liens permitted by Section 7.3 arising by operation of law); or (d) the occurrence of any “fundamental change” or similar event under any agreement governing Permitted Convertible Indebtedness.

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

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

“**Collateral**”: all property of the Loan Parties, now owned or hereafter acquired, upon which a Lien is purported to be created by any Security Document.

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

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

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

“**Commitment Fee Rate**”:

(a) from the Closing Date until March 31, 2020, the percentages set forth in Level III of the pricing grid below; and

(b) thereafter and on the fifth day of each month thereafter, the Commitment Fee Rate shall be determined from the following pricing grid based upon Average Daily Usage as calculated by the Administrative Agent; provided however if any such calculation is at any time restated or otherwise revised such that the Commitment Fee Rate would have been higher than was otherwise in effect during any period, without constituting a waiver of any Default or Event of Default arising as a result thereof, the Commitment Fee due under this Agreement shall be immediately recalculated at such other rate for any applicable periods and shall be due and payable promptly after demand from the Administrative Agent if such other rate would have been higher.

<u>Level</u>	<u>Average Daily Usage</u>	<u>Commitment Fee Rate</u>
I	≥ 50%	0.00%
II	> 25% but < 50%	0.25%
III	≤ 25%	0.40%

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Notwithstanding the foregoing, (a) during an Event of Default, the Commitment Fee Rate shall be the rate corresponding to Level III in the foregoing table, and (b) no reduction to the Commitment Fee Rate shall become effective at any time when an Event of Default has occurred and is continuing.

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

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

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

“**Consolidated Adjusted Quick Ratio**”: as of the last day of any testing period, the ratio of (a) Consolidated Quick Assets on such day to (b) Consolidated Current Liabilities minus the current portion of Deferred Revenue on such day.

“**Consolidated Capital Expenditures**”: for any period, with respect to the Parent and its consolidated Subsidiaries, the aggregate of all expenditures (whether paid in cash or other consideration or accrued as a liability and including that portion of Capital Lease Obligations which is capitalized on the consolidated balance sheet of the Parent) by such Group Members during such period for the acquisition or leasing (pursuant to a capital lease) of fixed or capital assets or additions to equipment (including replacements, capitalized repairs and improvements during such period) that, in conformity with GAAP, are included in “additions to property, plant or equipment” or comparable items reflected in the consolidated statement of cash flows of the Parent., including, without limitation, capitalized software development expenses.

“**Consolidated Current Liabilities**”: at any date, all amounts that would, in conformity with GAAP, be set forth opposite the caption “total current liabilities” or like caption) on the consolidated balance sheet of Parent and its consolidated Subsidiaries plus, without duplication, all outstanding Obligations owing to the Lenders.

“**Consolidated EBITDA**”: with respect to the Parent and its consolidated Subsidiaries for any trailing twelve month period for which a calculation is to be made under this Agreement, (a) the sum, without duplication, of the amounts for such period of (i) Consolidated Net Income, plus (ii) Consolidated Interest Expense, plus (iii) provisions for taxes based on income, plus (iv) total depreciation expense, plus (v) total amortization expense, plus (vi) non-cash compensation expense, plus (vii) the fees, costs and expenses incurred in connection with this Agreement and the other Loan Documents and the transactions hereunder and thereunder, plus (viii) reasonable one-time fees, costs and expenses incurred in connection with a Permitted Acquisition or a successful offering or issuance of Capital Stock, in each case to the extent approved in writing by the Administrative Agent as an ‘add-back’ to Consolidated EBITDA, plus (ix) other non-cash items reducing Consolidated Net Income (excluding any such non-cash item to the extent that it represents an accrual or reserve for potential cash items in any future period or amortization of a prepaid cash item that was paid in a prior period) approved by the Administrative Agent in writing as an ‘add back’ to Consolidated EBITDA, plus (x) any extraordinary or non-recurring losses, expenses or charges in connection with the transition to ASC 606 or otherwise not to exceed \$2,000,000 in the aggregate for such trailing twelve month period (or such higher amounts as may be approved by the Required Lenders as an ‘add-back’ to Consolidated EBITDA), minus (b) the sum, without duplication of the amounts for such period of (i) other non-cash items increasing Consolidated Net Income for such period (excluding any such non-cash item to the extent it represents the reversal of an accrual or reserve for potential cash item in any prior period), plus (ii) interest income.

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**“Consolidated EBITDA Testing Period”**: any testing period for which the Borrowers have reported a Consolidated Adjusted Quick Ratio less than 2.00:1.00.

**“Consolidated Interest Expense”**: for any period, total interest expense (including that portion of any Capital Lease Obligations that is treated as interest in accordance with GAAP) of the Parent and its consolidated Subsidiaries for such period with respect to all outstanding Indebtedness of such Persons (including all commissions, discounts and other fees and charges owed with respect to letters of credit and bankers’ acceptance financing and net costs under Swap Agreements in respect of interest rates to the extent such net costs are allocable to such period in accordance with GAAP).

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

**“Consolidated Quick Assets”**: at any date, with respect to the Loan Parties (a) the total amounts set forth in clause (i) of the definition of Liquidity plus (b) net billed accounts receivable, determined in accordance with GAAP.

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

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

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

**“Controlled Account”**: each Deposit Account and Securities Account that is subject to a Control Agreement in form and substance reasonably satisfactory to the Administrative Agent.

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

**“Default”**: any of the events specified in Section 8.1, whether or not any requirement for the giving

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of notice, the lapse of time, or both, has been satisfied.

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

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

**“Deferred Revenue”**: all amounts received or invoiced by the Parent and/or any of its consolidated Subsidiaries in advance of performance under contracts, which amounts have not yet been recognized as revenue in accordance with GAAP.

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

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

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**“Designated Jurisdiction”**: any country or territory to the extent that such country or territory itself is the subject of any Sanction.

**“Discharge of Obligations”**: subject to Section 10.8, the satisfaction of the Obligations (including all such Obligations relating to Bank Services) by the payment in full, in cash (or, as applicable, Cash Collateralization in accordance with the terms hereof or as otherwise may be reasonably satisfactory to the applicable Bank Services Provider) of the principal of and interest on or other liabilities relating to each Loan and any previously provided Bank Services, all fees and all other expenses or amounts payable under any Loan Document (other than contingent indemnification obligations and any other obligations which pursuant to the terms of any Loan Document specifically survive repayment of the Loans for which no claim has been made), and other Obligations under or in respect of Specified Swap Agreements and Bank Services, to the extent (a) no default or termination event shall have occurred and be continuing thereunder, (b) any such Obligations in respect of Specified Swap Agreements have, if required by any applicable Qualified Counterparties, been Cash Collateralized, (c) no Letter of Credit shall be outstanding (or, as applicable, each outstanding and undrawn Letter of Credit has been Cash Collateralized in accordance with the terms hereof or as otherwise may be reasonably satisfactory to the Issuing Lender), (d) no Obligations in respect of any Bank Services are outstanding (or, as applicable, all such outstanding Obligations in respect of Bank Services have been Cash Collateralized in accordance with the terms hereof or as otherwise may be reasonably satisfactory to the applicable Bank Services Provider), and (e) the aggregate Revolving Commitments of the Lenders are terminated.

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

**“Disqualified Institutions”**: each of (x) those Persons identified by the Borrowers in writing to SVB prior to the date of the Closing Date, (y) the Borrowers’ or any of their controlled Affiliates’ competitors identified by the Borrowers in writing to SVB prior to the date of the Closing Date and (z), in each case of clauses (x) and (y) above, any such Person’s known Affiliates that are readily identifiable by name (such Persons in clauses (x) and (y), collectively, the **“Primary Disqualified Institutions”**) excluding, in the case of clause (y) above, any affiliate of a competitor that is primarily engaged in, or that advises funds or other investment vehicles that are engaged in, making, purchasing, holding or otherwise investing in commercial loans, bonds and similar extensions of credit or securities in the ordinary course and with respect to which no Primary Disqualified Institution, directly or indirectly, possesses the power to direct or cause the direction of the investment policies of such entity.

**“Disqualified Stock”**: any Capital Stock that, by its terms (or by the terms of any security into which it is convertible, or for which it is exchangeable, in each case at the option of the holder thereof), or upon the happening of any event, matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or redeemable at the option of the holder thereof, in whole or in part, on or prior to the date that is ninety-one (91) days after the date on which the Loans mature. The amount of Disqualified Stock deemed to be outstanding at any time for purposes of this Agreement will be the maximum amount that the Borrowers and their Subsidiaries may become obligated to pay upon maturity of, or pursuant to any mandatory redemption provisions of, such Disqualified Stock or portion thereof, plus accrued dividends.

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

**“Domestic Subsidiary”**: any Subsidiary that is incorporated, organized or otherwise formed under the laws of the United States, any state thereof or the District of Columbia.

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**“EEA Financial Institution”**: (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a Subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

**“EEA Member Country”**: any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

**“EEA Resolution Authority”**: any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

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

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

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

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

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

**“ERISA Event”**: any of (a) a reportable event as defined in Section 4043 of ERISA with respect to a Pension Plan, excluding, however, such events as to which the PBGC by regulation has waived the requirement of Section 4043(a) of ERISA that it be notified within 30 days of the occurrence of such event; (b) the applicability of the requirements of Section 4043(b) of ERISA with respect to a contributing sponsor, as defined in Section 4001(a)(13) of ERISA, to any Pension Plan where an event described in paragraph (9), (10), (11), (12) or (13) of Section 4043(c) of ERISA is reasonably expected to occur with respect to such plan within the following 30 days; (c) a withdrawal by any Loan Party or any ERISA Affiliate thereof from a Pension Plan or the termination of any Pension Plan resulting in liability under Sections 4063 or 4064 of ERISA; (d) the withdrawal of any Loan Party or, to the knowledge of any Loan Party, any ERISA

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Affiliate thereof in a complete or partial withdrawal (within the meaning of Section 4203 and 4205 of ERISA) from any Multiemployer Plan if there is any potential liability therefore, or the receipt by any Loan Party or, to the knowledge of an Loan Party, any ERISA Affiliate thereof of notice from any Multiemployer Plan that it is in reorganization or insolvency pursuant to Section 4241 or 4245 of ERISA; (e) the filing of a notice of intent to terminate, the treatment of a plan amendment as a termination under Section 4041 or 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate a Pension Plan or Multiemployer Plan; (f) the imposition of liability on any Loan Party or any ERISA Affiliate thereof pursuant to Sections 4062(e) or 4069 of ERISA or by reason of the application of Section 4212(c) of ERISA; (g) the failure by any Loan Party or any ERISA Affiliate thereof to make any required contribution to a Pension Plan, or the failure to meet the minimum funding standard of Section 412 of the Code with respect to any Pension Plan (whether or not waived in accordance with Section 412(c) of the Code) or the failure to make by its due date a required installment under Section 430 of the Code with respect to any Pension Plan or the failure to make any required contribution to a Multiemployer Plan; (h) the determination that any Pension Plan is considered an at-risk plan or a plan in endangered to critical status within the meaning of Sections 430, 431 and 432 of the Code or Sections 303, 304 and 305 of ERISA; (i) an event or condition which might reasonably be expected to constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan or Multiemployer Plan; (j) the imposition of any liability under Title I or Title IV of ERISA, other than PBGC premiums due but not delinquent under Section 4007 of ERISA, upon any Loan Party or any ERISA Affiliate thereof; (k) an application for a funding waiver under Section 303 of ERISA or an extension of any amortization period pursuant to Section 412 of the Code with respect to any Pension Plan; (l) the occurrence of a non-exempt prohibited transaction under Sections 406 or 407 of ERISA for which any Loan Party or any Subsidiary thereof may be directly or indirectly liable; (m) the occurrence of an act or omission which could give rise to the imposition on any Loan Party or any ERISA Affiliate thereof of fines, penalties, taxes or related charges under Chapter 43 of the Code or under Sections 409, 502(c), (i) or (1) or 4071 of ERISA; (n) the assertion of a material claim (other than routine claims for benefits) against any Pension Plan or the assets thereof, or against any Loan Party or any Subsidiary thereof in connection with any such Pension Plan; (o) receipt from the IRS of notice of the failure of any Pension Plan to qualify under Section 401(a) of the Code, or the failure of any trust forming part of any Pension Plan to fail to qualify for exemption from taxation under Section 501(a) of the Code; or (p) the imposition of any lien (or the fulfillment of the conditions for the imposition of any lien) on any of the rights, properties or assets of any Loan Party or any ERISA Affiliate thereof, in either case pursuant to Title I or IV, including Section 302(f) or 303(k) of ERISA or to Section 401(a)(29) or 430(k) of the Code.

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

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

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

**“Excluded Foreign Subsidiary”**: in respect of any Loan Party, any Subsidiary of such Loan Party, at any date of determination, (a) that is a “controlled foreign corporation” as defined in Section 957 of the Code, (b) that is a Subsidiary of a “controlled foreign corporation” as defined in Section 957 of the Code, or (c) substantially all of the assets of which are equity interests in a “controlled foreign corporation” as defined in Section 957 of the Code, and in each case, either (a) the pledge of all of the Capital Stock of such

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Subsidiary as Collateral or (b) the guaranteeing by such Subsidiary of the Obligations, would, in the good faith judgment of the Loan Parties, reasonably be expected to result in material adverse tax consequences to the Loan Parties.

**“Excluded Swap Obligations”**: with respect to any Guarantor, any Swap Obligation if, and to the extent that, all or a portion of the Guarantee Obligation of such Guarantor with respect to, or the grant by such Guarantor of a Lien to secure, 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 such Guarantor’s failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act at the time such Guarantee Obligation of such Guarantor, or the grant by such Guarantor of such Lien, becomes effective with respect to such Swap Obligation. If such 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 Obligation or Lien is or becomes excluded in accordance with the first sentence of this definition.

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

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

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

**“FATCA”**: Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreement entered into pursuant to Section 1471(b) (1) of the Code and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities and implementing such Sections of the Code.

**“Federal Funds Effective Rate”**: for any day, the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average of the quotations for the day of such transactions received by the Administrative Agent from three federal funds brokers of recognized standing selected by it. In no event shall the Funds Federal Effective Rate be less than zero.

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**“Fee Letter”**: the fee letter agreement dated as of the Closing Date, by and among the Borrowers and the Administrative Agent, as may be amended, supplemented or otherwise modified from time to time.

**“Foreign Currency”**: lawful money of a country other than the United States.

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

**“Foreign Subsidiary”**: any Subsidiary that is not a Domestic Subsidiary.

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

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

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

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

**“Governmental Authority”**: the government of the United States of America or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank), and any group or body charged with setting accounting or regulatory capital rules or standards (including the Financial Standards Board, the Bank for International Settlements, the Basel Committee on Banking Supervision and any successor or similar authority to any of the foregoing).

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**“Group Members”**: the collective reference to the Borrowers and their respective Subsidiaries.

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

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

**“Guarantors”**: a collective reference to each Borrower and each Subsidiary of the Borrowers which has become a Guarantor pursuant to the Guarantee and Collateral Agreement.

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

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

**“Indebtedness”**: of any Person at any date, without duplication, (a) all indebtedness of such Person for borrowed money, (b) all obligations of such Person for the deferred purchase price of property or services (other than current trade payables incurred in the ordinary course of such Person’s business), (c) all obligations of such Person evidenced by notes, bonds, debentures or other similar instruments, (d) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property), (e) all Capital Lease Obligations and all Synthetic Lease Obligations of such Person, (f) all obligations of such Person, contingent or otherwise, as an account party or applicant under or in respect of acceptances, letters of credit, surety bonds or similar arrangements, (g) all obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment in respect of any Capital Stock in such Person or any other Person (including, without limitation, Disqualified Stock), or any warrant, right or option to acquire such Capital Stock, valued, in the case of a redeemable preferred interest, at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends, (h) all Guarantee Obligations of such Person in respect of obligations of the kind referred to in clauses (a) through (g) above, (i) all obligations of the kind referred to in clauses (a) through (h) above secured by (or for which the holder of such obligation has an

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existing right, contingent or otherwise, to be secured by) any Lien on property (including accounts and contract rights) owned by such Person, whether or not such Person has assumed or become liable for the payment of such obligation, and (j) the net obligations of such Person in respect of Swap Agreements. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person's ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness expressly provide that such Person is not liable therefor.

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

**"Indemnitee"**: as defined in [Section 10.5\(b\)](#).

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

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

**"Intellectual Property Security Agreement"**: an intellectual property security agreement entered into between a Loan Party and the Administrative Agent pursuant to the terms of the Guarantee and Collateral Agreement in form and substance satisfactory to the Administrative Agent, together with each other intellectual property security agreement and supplement thereto, in each case as amended, restated, supplemented or otherwise modified from time to time.

**"Interest Payment Date"**: as to any Loan (including any Swingline Loan), the fifth day (or, if such day is not a Business Day, the immediately succeeding Business Day) of each calendar month to occur while such Loan is outstanding and the final maturity date of such Loan.

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

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

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**“Investments”**: as defined in [Section 7.8](#).

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

**“ISP”**: with respect to any Letter of Credit, the “International Standby Practices 1998” published by the Institute of International Banking Law & Practice (or such later version thereof as may be in effect at the time of issuance).

**“Issuing Lender”**: as the context may require, (a) SVB or any Affiliate thereof, in its capacity as issuer of any Letter of Credit, and (b) any other Lender that may become an Issuing Lender pursuant to [Section 3.12](#), with respect to Letters of Credit issued by such Lender. The Issuing Lender may, in its discretion, arrange for one or more Letters of Credit to be issued by Affiliates of the Issuing Lender or other financial institutions, in which case the term “Issuing Lender” shall include any such Affiliate or other financial institution with respect to Letters of Credit issued by such Affiliate or other financial institution.

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

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

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

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

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

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

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

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

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

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

**“L/C-Related Documents”**: collectively, each Letter of Credit, all applications for any Letter of

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Credit (and applications for the amendment of any Letter of Credit) submitted by a Borrower to the Issuing Lender and any other document, agreement and instrument relating to any Letter of Credit, including any of the Issuing Lender's standard form documents for letter of credit issuances.

**"Lenders"**: as defined in the preamble hereto; provided that unless the context otherwise requires, each reference herein to the Lenders shall be deemed to include the Issuing Lender and the Swingline Lender.

**"Letter of Credit"**: as defined in Section 3.1(a).

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

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

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

**"Letter of Credit Maturity Date"**: the date occurring 15 days prior to the Revolving Termination Date then in effect (or, if such day is not a Business Day, the next preceding Business Day).

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

**"Liquidity"**: at any time, the sum of (i) the aggregate amount of unrestricted cash and Cash Equivalents (including short term marketable securities) held by the Borrowers and the Guarantors in Deposit Accounts or Securities Accounts maintained with SVB or SVB's Affiliates or another Lender or an Affiliate thereof, or with National Bank of South Carolina ("**NBSC**", provided that the aggregate amounts held in deposit accounts with NBSC shall not exceed \$6,500,000 at any time), and in each case subject to a first priority lien in favor of the Administrative Agent, including, without limitation, pursuant to a Deposit Account Control Agreement with respect to each such Deposit Account or Securities Account Control Agreement with respect to each such Securities Account, plus (ii) the Available Revolving Commitment at such time; provided that, in connection with any calculation of Liquidity required hereunder, at least \$25,000,000 must consist of unrestricted cash and Cash Equivalents (including short term marketable securities) satisfying the requirements of clause (i) above.

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

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

**"Loan Parties"**: each Group Member that is a party to a Loan Document as a Borrower or Guarantor.

**"Material Adverse Effect"**: (a) a material impairment in the perfection or priority of the Administrative Agent's Lien in the Collateral or in the value of such Collateral; (b) a material adverse

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change in the business, operations, or condition (financial or otherwise) of all of the Borrowers taken as a whole; or (c) a material impairment of the prospect of repayment of any portion of the Obligations.

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

**“Maximum Rate”**: as defined in [Section 10.9](#).

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

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

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

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

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

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

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

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

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

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

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Letters of Credit, any Specified Swap Agreement or any other document made, delivered or given in connection herewith or therewith, whether on account of principal, interest, reimbursement obligations, payment obligations, fees, indemnities, costs, expenses (including all reasonable and documented fees, charges and disbursements of one primary counsel to the Administrative Agent, the Issuing Lender, and the Lenders, or any Bank Services Provider, to the extent that any applicable Bank Services Agreement requires the reimbursement by any applicable Group Member of any such expenses, and any Qualified Counterparty party to a Specified Swap Agreement that are required to be paid by any Loan Party pursuant to such Specified Swap Agreement) or otherwise. For the avoidance of doubt, the Obligations shall not include any obligations arising under any warrants or other equity instruments issued by any Loan Party to any Lender.

“**OFAC**”: the Office of Foreign Assets Control of the United States Department of the Treasury and any successor thereto.

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

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

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

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

“**Overadvance**”: as defined in [Section 2.8](#).

“**Parent**”: as defined in the Preamble hereto.

“**Participant**”: as defined in [Section 10.6\(d\)](#).

“**Participant Register**”: as defined in [Section 10.6\(d\)](#).

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

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

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

**“Permitted Acquisition”**: as defined in [Section 7.8\(l\)](#).

**“Permitted Bond Hedge Transaction”**: any call or capped call option (or substantively equivalent derivative transaction) relating to Parent’s common stock (or other securities or property following a merger event, reclassification or other change of the common stock of Parent) purchased by Parent in connection with the issuance of any Permitted Convertible Indebtedness and settled in common stock of Parent (or such other securities or property), cash or a combination thereof (such amount of cash determined by reference to the price of Parent’s common stock or such other securities or property), and cash in lieu of fractional shares of common stock of Parent; *provided* that (a) the purchase price for such Permitted Bond Hedge Transaction does not exceed the net cash proceeds received by Parent from the sale of the Permitted Convertible Indebtedness in connection with which such Permitted Bond Hedge Transaction was purchased, (b) the other terms, conditions and covenants of each such transaction shall be such as are customary for transactions of such type (as determined by Parent in good faith), and (c) any payments or settlements by a Group Member in respect of such Permitted Bond Hedge Transaction shall only be permitted to the extent permitted under [Section 7.6](#).

**“Permitted Convertible Indebtedness”**: senior unsecured Indebtedness of Parent that (a) as of the date of issuance thereof contains terms, conditions, covenants, conversion or exchange rights, redemption rights and offer to repurchase rights, in each case, as are typical and customary for Indebtedness of such type (in each case, as determined by Parent in good faith) and (b) is convertible or exchangeable into shares of common stock of Parent (or other securities or property following a merger event, reclassification or other change of the common stock of Parent), cash or a combination thereof (such amount of cash determined by reference to the price of Parent’s common stock or such other securities or property), and cash in lieu of fractional shares of common stock of Parent; *provided* that (i) such Permitted Convertible Indebtedness shall have a stated final maturity no earlier than 91 days after March 3, 2023 and shall not be subject to any conditions that could result in such stated final maturity occurring on a date earlier than 91 days after March 3, 2023 (it being understood that any conversion of such Indebtedness (whether into cash, shares of common stock in Parent or any combination thereof), a repurchase of such Indebtedness on account of the occurrence of a “fundamental change” or any redemption of such Indebtedness at the option of Parent shall not be deemed to constitute a change in the stated final maturity thereof), (ii) such Indebtedness shall not be required to be repaid, prepaid, redeemed, repurchased or defeased, whether on one or more fixed dates, upon the occurrence of one or more events or at the option of any holder thereof (except, in each case, upon any conversion of such Indebtedness (whether into cash, shares of common stock in Parent or any combination thereof), the occurrence of an event of default or a “fundamental change” or following Parent’s election to redeem such Indebtedness) prior to the date that is 91 days after March 3, 2023, (iii) no Subsidiary that is not a Loan Party shall have Guarantee Obligations with respect to obligations of Parent thereunder, (iv) notwithstanding anything in clauses (i) and (ii) above to the contrary, any payments in respect thereof shall only be permitted to the extent permitted by [Section 7.6](#), and (v) such Indebtedness shall include a 30-day customary (as determined by Parent in good faith) cure period with respect to any cross-default or cross-acceleration related to the Obligations.

**“Permitted Holders”**: GS Capital Partners VI Fund, L.P., GS Capital Partners VI Offshore Fund, L.P., GS Capital Partners VI Parallel, L.P., GS Capital Partners VI GmbH & Co. KG, Oak Investment Partners XII, L.P., Mason R. Holland, Jr., Holland Family Trust, and Shawn A. Jenkins and any of their respective Affiliates and any funds, investment vehicles or partnerships managed, advised or sub-advised

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by any of them or any of their respective Affiliates but not including any portfolio operating company of any of the foregoing.

**“Permitted Refinancing Indebtedness”**: Indebtedness of any Person (**“Refinancing Indebtedness”**) issued or incurred by such Person (including by means of the extension or renewal of existing Indebtedness) to refinance, refund, extend, renew or replace existing Indebtedness of such Person (**“Refinanced Indebtedness”**); provided that (a) the principal amount of such Refinancing Indebtedness is not greater than the principal amount of such Refinanced Indebtedness plus the amount of any premiums or penalties and accrued and unpaid interest paid thereon and reasonable fees and expenses, in each case associated with such Refinancing Indebtedness, (b) other than Refinancing Indebtedness in respect of Indebtedness permitted pursuant to Sections 7.2(d) and 7.2(e), such Refinancing Indebtedness has a final maturity that is no sooner than, and a weighted average life to maturity that is no shorter than, such Refinanced Indebtedness, (c) if such Refinanced Indebtedness or any Guarantee Obligation thereof or any security therefor are subordinated to the Obligations, such Refinancing Indebtedness and any Guarantee Obligations thereof and any security therefor remain so subordinated on terms no less favorable to the Lenders and the other Secured Parties, (d) the obligors in respect of such Refinanced Indebtedness immediately prior to such refinancing, refunding extension, renewal or replacement are the only obligors on such Refinancing Indebtedness and (e) any Guarantee Obligations which constitute all or a portion of such Refinancing Indebtedness, taken as a whole, are determined in good faith by a Responsible Officer of such Person to be no less favorable to such Person and the Lenders and the other Secured Parties in any material respect than the covenants and events of default or Guarantee Obligations, if any, applicable to such Refinanced Indebtedness.

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

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

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

**“Prime Rate”**: the rate of interest per annum from time to time published in the money rates section of the Wall Street Journal or any successor publication thereto as the “prime rate” then in effect; provided that if such rate of interest, as set forth from time to time in the money rates section of the Wall Street Journal, becomes unavailable for any reason as determined by the Administrative Agent, the “Prime Rate” shall mean the rate of interest per annum announced by the Administrative Agent as its prime rate in effect at its principal office (such Administrative Agent announced Prime Rate not being intended to be the lowest rate of interest charged by the Administrative Agent in connection with extensions of credit to debtors). In no event shall the Prime Rate be less than zero.

**“Pro Forma Financial Statements”**: balance sheets, income statements and cash flow statements prepared by the Parent and its consolidated Subsidiaries that give effect (as if such events had occurred on such date) to (a) the Loans and extensions of credit to be made on the Closing Date and the use of proceeds thereof and (b) the payment of fees and expenses in connection with the foregoing, in each case prepared for (i) the month ending December 31, 2019, as if such transactions had occurred on the first date of such month and (ii) on a monthly basis through the Revolving Termination Date, in each case, demonstrating pro forma compliance with the covenants set forth in Section 7.1.

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

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

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**“Protective Overadvance”**: as defined in [Section 2.8\(b\)](#).

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

**“Qualified ECP Guarantor”**: in respect of any Swap Obligation, (a) each Guarantor that has total assets exceeding \$10,000,000 at the time the relevant Guarantee Obligation of such Guarantor provided in respect of, or the Lien granted by such Guarantor to secure, such Swap Obligation (or guaranty thereof) becomes effective with respect to such Swap Obligation, and (b) any other Guarantor that (i) constitutes an “eligible contract participant” under the Commodity Exchange Act or any regulations promulgated thereunder, or (ii) can cause another Person (including, for the avoidance of doubt, any other Guarantor not then constituting a “Qualified ECP Guarantor”) to qualify as an “eligible contract participant” at such time by entering into a “keepwell, support, or other agreement” as contemplated by Section 1a(18)(A)(v) (II) of the Commodity Exchange Act.

**“Recipient”**: the (a) Administrative Agent, (b) any Lender or (c) the L/C Issuer, as applicable.

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

**“Register”**: as defined in [Section 10.6\(c\)](#).

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

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

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

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

**“Replacement Lender”**: as defined in [Section 2.23](#).

**“Required Lenders”**: at any time, (a) if only one Lender holds the Total Revolving Commitments, such Lender; and (b) if more than one Lender who are not Affiliates of one another holds the Total Revolving Commitments, then at least two unaffiliated Lenders who together hold more than 50% of the Total Revolving Commitments (including, without duplication, the L/C Commitments) then in effect or, if the Revolving Commitments have been terminated, the Total Revolving Extensions of Credit then outstanding; provided that for the purposes of this [clause \(b\)](#), the Revolving Commitments of, and the portion of the Revolving Loans and participations in L/C Exposure and Swingline Loans held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Lenders.

**“Requirement of Law”**: as to any Person, the Operating Documents of such Person, and any law, treaty, rule or regulation or determination of an arbitrator or a court or other Governmental Authority (including, for the avoidance of doubt, the Basel Committee on Banking Supervision and any successor thereto or similar authority or successor thereto), in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

**“Responsible Officer”**: the chief executive officer, president, chief financial officer, treasurer,

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controller or comptroller of an applicable Loan Party, but in any event, with respect to financial matters, the chief executive officer, the chief financial officer, treasurer, controller or comptroller of such Loan Party and solely for the purposes of notices given pursuant to Section 2, any other officer or employee of the applicable Loan Party so designated by any of the foregoing officers in a written notice to the Administrative Agent (together with incumbency and other related documentation reasonably requested by the Administrative Agent). Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

**“Restricted Payments”**: as defined in [Section 7.6](#).

**“Revolving Commitment”**: as to any Lender, the obligation of such Lender, if any, to make Revolving Loans and participate in Swingline Loans and Letters of Credit in an aggregate principal amount not to exceed the amount set forth under the heading “Revolving Commitment” opposite such Lender’s name on [Schedule 1.1A](#) or in the Assignment and Assumption or the Increase Joinder pursuant to which such Lender becomes a party hereto, as the same may be changed from time to time pursuant to the terms hereof (including in connection with assignments and Increases permitted hereunder).

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

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

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

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

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

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

**“Revolving Loans”**: as defined in [Section 2.4\(a\)](#).

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

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**“Revolving Termination Date”**: is March 3, 2023.

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

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

**“Sanction(s)”**: any international economic sanction administered or enforced by the United States Government (including OFAC), the United Nations Security Council, the European Union, Her Majesty’s Treasury or other relevant sanctions authority.

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

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

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

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

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

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

**“Security Documents”**: the collective reference to (a) the Guarantee and Collateral Agreement, (b) the Mortgages, (c) the Intellectual Property Security Agreements, (d) each Deposit Account Control Agreement, (e) each Securities Account Control Agreement, (f) all other security documents hereafter delivered to the Administrative Agent granting a Lien on any property of any Person to secure the Obligations of any Loan Party arising under any Loan Document, and (g) all financing statements, fixture filings, patent, trademark and copyright filings, assignments, acknowledgments and other filings, documents and agreements made or delivered pursuant to any of the foregoing.

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

**“Solvent”**: when used with respect to any Person, as of any date of determination, (a) the amount of the “fair value” of the assets of such Person will, as of such date, exceed the amount of all “liabilities of such Person, contingent or otherwise,” as of such date, as such quoted terms are determined in accordance with applicable federal and state laws governing determinations of the insolvency of debtors, (b) the “present fair saleable value” of the assets of such Person will, as of such date, be greater than the amount that will be required to pay the liability of such Person on its debts as such debts become absolute and

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matured, as such quoted terms are determined in accordance with applicable federal and state laws governing determinations of the insolvency of debtors, (c) such Person will not have, as of such date, an unreasonably small amount of capital with which to conduct its business, and (d) such Person will be able to pay its debts as they mature. For purposes of this definition, (i) "debt" means liability on a "claim," and (ii) "claim" means any (x) right to payment, whether or not such a right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured or (y) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured or unmatured, disputed, undisputed, secured or unsecured.

**"Specified Swap Agreement"**: any Swap Agreement entered into by any Loan Party and any Qualified Counterparty (or any Person who was a Qualified Counterparty as of the Closing Date or as of the date such Swap Agreement was entered into).

**"Subordinated Debt Document"**: any agreement, certificate, document or instrument executed or delivered by any Loan Party or any of its respective Subsidiaries and evidencing Indebtedness of such Loan Party or such Subsidiary which is either subordinated to the payment of the Obligations or the lien securing such indebtedness is subordinated to the Administrative Agent's Lien, in each case, in a manner approved in writing by the Administrative Agent, and any renewals, modifications, or amendments thereof which are approved in writing by the Administrative Agent.

**"Subordinated Indebtedness"**: Indebtedness of a Loan Party, the payment of which and/or the lien securing such Indebtedness, is subordinated to the Obligations and/or the Administrative Agent's Lien, as applicable, pursuant to subordination terms (including payment, lien and remedies subordination terms, as applicable) reasonably acceptable to the Administrative Agent.

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

**"SVB"**: as defined in the preamble hereto.

**"Swap Agreement"**: any agreement with respect to any swap, hedge, forward, future or derivative transaction or option or similar agreement (including without limitation, any Interest Rate Agreement) involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions; provided that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees or consultants of the Borrowers and their Subsidiaries shall be deemed to be a "Swap Agreement." For the avoidance of doubt, a Permitted Bond Hedge Transaction shall not constitute a Swap Agreement.

**"Swap Obligation"**: with respect to any Guarantor, any obligation of such Guarantor to pay or perform under any agreement, contract or transaction that constitutes a "swap" within the meaning of Section 1a(47) of the Commodity Exchange Act.

**"Swap Termination Value"**: in respect of any one or more Swap Agreements, after taking into

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account the effect of any legally enforceable netting agreement relating to such Swap Agreements, (a) for any date on or after the date such Swap Agreements have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Swap Agreements, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Agreements (which may include a Qualified Counterparty).

**“Swingline Commitment”**: the obligation of the Swingline Lender to make Swingline Loans pursuant to [Section 2.6](#) in an aggregate principal amount at any one time outstanding not to exceed \$5,000,000.

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

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

**“Swingline Loans”**: as defined in [Section 2.6](#).

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

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

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

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

**“Total L/C Commitments”**: at any time, the sum of all L/C Commitments at such time, as the same may be reduced from time to time pursuant to [Section 2.10](#) or [3.5\(b\)](#). The initial amount of the Total L/C Commitments on the Closing Date is \$5,000,000.

**“Total Revolving Commitments”**: at any time, the aggregate amount of the Revolving Commitments then in effect.

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

**“Trade Date”**: as defined in [Section 10.6\(b\)\(i\)\(B\)](#).

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

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

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to obtain such approval prior to the first public announcement of an offer relating to a friendly acquisition.

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

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

“**Usage**”: means the result, expressed as a percentage, of (a) the sum of (x) the aggregate undrawn amount of all outstanding Letters of Credit at such time, (y) the aggregate amount of all Letter of Credit disbursements that have not yet been reimbursed or converted into Revolving Loans at such time, and (z) the aggregate principal balance of any Loans outstanding at such time, divided by (b) the Total Revolving Commitments at such time.

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

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

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

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

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

“**Write-Down and Conversion Powers**”: with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule.

## 1.2 Other Definitional Provisions.

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

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

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Member shall be deemed to be carried at 100% of the outstanding principal amount thereof, and the effects of FASB ASC 825 on financial liabilities shall be disregarded.

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

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

(e) Any reference herein to a merger, transfer, consolidation, amalgamation, consolidation, assignment, sale, disposition or transfer, or similar term, shall be deemed to apply to a division of or by a limited liability company, or an allocation of assets to a series of a limited liability company (or the unwinding of such a division or allocation), in each case, pursuant to Chapter 18, Title 6, Section 18-217 of the Delaware Limited Liability Company Act, as if it were a merger, transfer, consolidation, amalgamation, consolidation, assignment, sale or transfer, or similar term, as applicable, to, of or with a separate Person. Any division of a limited liability company shall constitute a separate Person hereunder (and each division of any limited liability company that is a Subsidiary, joint venture or any other like term shall also constitute such a Person or entity).

**1.3 Rounding.** Any financial ratios required to be maintained by the Borrower pursuant to this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

## SECTION 2 AMOUNT AND TERMS OF REVOLVING COMMITMENTS

**2.1 Reserved.**

**2.2 Reserved.**

**2.3 Reserved.**

**2.4 Revolving Commitments.**

(a) Subject to the terms and conditions hereof, each Revolving Lender severally agrees to make revolving credit loans (each, a “**Revolving Loan**” and, collectively, the “**Revolving Loans**”) to the Borrowers from time to time during the Revolving Commitment Period in an aggregate principal amount at any one time outstanding for each Revolving Lender which, when added to the sum of (i) such Revolving Lender’s Revolving Percentage of any Swingline Loans then outstanding and (ii) such Revolving Lender’s L/C Exposure, if any, at such time, does not exceed the amount of such Revolving Lender’s Revolving Commitment; provided, that the Total Revolving Extensions of Credit outstanding at such time, after giving effect to the making of such Revolving Loans, shall not exceed the Total Revolving Commitments in effect at such time. During the Revolving Commitment Period the Borrowers may use the Revolving

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Commitments by borrowing, repaying the Revolving Loans in whole or in part, and reborrowing, all in accordance with the terms and conditions hereof.

(b) The Borrowers shall repay all outstanding Revolving Loans on the Revolving Termination Date.

**2.5 Procedure for Revolving Loan Borrowing.** The Borrowers may borrow up to the Available Revolving Commitment under the Revolving Commitments during the Revolving Commitment Period on any Business Day; provided that the Borrowers shall give the Administrative Agent an irrevocable Notice of Borrowing (which must be received by the Administrative Agent prior to 10:00 A.M., Pacific time one (1) Business Day prior to the requested Borrowing Date (provided that any such Notice of Borrowing under the Revolving Facility to finance payments under Section 3.5(a) may be given not later than 10:00 A.M., Pacific time, on the date of the proposed borrowing), in each such case specifying (i) the amount of Revolving Loans to be borrowed, (ii) the requested Borrowing Date, and (iii) instructions for remittance of the proceeds of the Loans to be borrowed. Except as provided in Sections 3.5(b) and 2.7(b), each borrowing shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof (or, if the then aggregate Available Revolving Commitments are less than \$1,000,000, such lesser amount). Upon receipt of any such Notice of Borrowing from the Borrowers, the Administrative Agent shall promptly notify each Revolving Lender thereof. Each Revolving Lender will make the amount of its pro rata share of each such borrowing available to the Administrative Agent for the account of the Borrowers at the Revolving Loan Funding Office prior to 12:00 P.M., Pacific time, on the Borrowing Date requested by the Borrowers in funds immediately available to the Administrative Agent. Such borrowing will then be made available to the Borrowers by the Administrative Agent crediting such account as is designated in writing to the Administrative Agent by the Borrowers with the aggregate of the amounts made available to the Administrative Agent by the Revolving Lenders and in like funds as received by the Administrative Agent.

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

**2.7 Procedure for Swingline Borrowing; Refunding of Swingline Loans.**

(a) Whenever the Borrowers desire that the Swingline Lender make Swingline Loans, the Borrowers shall give the Swingline Lender irrevocable telephonic or electronic notice (which notice must be received by the Swingline Lender not later than 12:00 P.M., Pacific time, on the proposed Borrowing Date) confirmed promptly in writing by a Notice of Borrowing, specifying (i) the amount to be borrowed, (ii) the requested Borrowing Date (which shall be a Business Day during the Revolving Commitment Period), and (iii) instructions for the remittance of the proceeds of such Loan. Each borrowing under the Swingline Commitment shall be in an amount equal to \$500,000 or a whole multiple of \$100,000

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in excess thereof. Promptly thereafter, on the Borrowing Date specified in a notice in respect of any Swingline Loan, the Swingline Lender shall make available to the Borrowers an amount in immediately available funds equal to the amount of such Swingline Loan by depositing such amount in the account designated in writing to the Administrative Agent by the Borrowers (or, in the case of a Swingline Loan made to finance the reimbursement of an L/C Disbursement as provided in Section 3.5(b), by remittance to the Issuing Lender). Unless a Swingline Loan is sooner refinanced by the advance of a Revolving Loan pursuant to Section 2.7(b), such Swingline Loan shall be repaid by the Borrowers no later than five (5) Business Days after the advance of such Swingline Loan.

(b) The Swingline Lender, at any time and from time to time in its sole and absolute discretion, may, on behalf of the Borrowers (which hereby irrevocably direct the Swingline Lender to act on their behalf), on one (1) Business Day's telephonic notice given by the Swingline Lender no later than 12:00 P.M., Pacific time, and promptly confirmed in writing, request each Revolving Lender to make, and each Revolving Lender hereby agrees to make, a Revolving Loan, in an amount equal to such Revolving Lender's Revolving Percentage of the aggregate amount of such Swingline Loan (each a "**Refunded Swingline Loan**") outstanding on the date of such notice, to repay the Swingline Lender. Each Revolving Lender shall make the amount of such Revolving Loan available to the Administrative Agent at the Revolving Loan Funding Office in immediately available funds, not later than 10:00 A.M., Pacific time, one (1) Business Day after the date of such written notice. The proceeds of such Revolving Loan shall immediately be made available by the Administrative Agent to the Swingline Lender for application by the Swingline Lender to the repayment of the Refunded Swingline Loan. The Borrowers irrevocably authorize the Swingline Lender to charge the Borrowers' accounts with the Administrative Agent (up to the amount available in each such account) immediately to pay the amount of any Refunded Swingline Loan to the extent amounts received from the Revolving Lenders are not sufficient to repay in full such Refunded Swingline Loan.

(c) If prior to the time that the Borrowers have repaid the Swingline Loans pursuant to Section 2.7(a) or a Revolving Loan has been made pursuant to Section 2.7(b), one of the events described in Section 8.1(f) shall have occurred or if for any other reason, as determined by the Swingline Lender in its sole discretion, Revolving Loans may not be made as contemplated by Section 2.7(b), each Revolving Lender shall, on the date such Revolving Loan was to have been made pursuant to the notice referred to in Section 2.7(b) or on the date requested by the Swingline Lender (with at least one (1) Business Days' notice to the Revolving Lenders), purchase for cash an undivided participating interest in the then outstanding Swingline Loans by paying to the Swingline Lender an amount (the "**Swingline Participation Amount**") equal to (i) such Revolving Lender's Revolving Percentage times (ii) the sum of the aggregate principal amount of the outstanding Swingline Loans that were to have been repaid with such Revolving Loans.

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

(e) Each Revolving Lender's obligation to make the Loans referred to in Section 2.7(b) and to purchase participating interests pursuant to Section 2.7(c) shall be absolute and unconditional and shall not be affected by any circumstance, including (i) any setoff, counterclaim, recoupment, defense or other right that such Revolving Lender or the Borrowers may have against the Swingline Lender, any

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Borrower or any other Person for any reason whatsoever, (ii) the occurrence of a Default or an Event of Default or the failure to satisfy any of the other conditions specified in Section 5, (iii) any adverse change in the condition (financial or otherwise) of the Borrowers, (iv) any breach of this Agreement or any other Loan Document by the Borrowers, any other Loan Party or any other Revolving Lender, or (v) any other circumstance, happening or event whatsoever, whether or not similar to any of the foregoing.

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

## 2.8 Overadvances.

(a) If at any time or for any reason the amount of the Total Revolving Extensions of Credit exceeds the Total Revolving Commitments in effect at such time (any such excess, an "**Overadvance**"), the Borrower shall pay on demand the full amount of such Overadvance to the Administrative Agent for application against the Revolving Extensions of Credit in accordance with the terms hereof.

(b) Upon the occurrence and during the continuance of an Event of Default, the Administrative Agent, in its sole discretion, may make Revolving Loans to the Borrowers on behalf of the Revolving Lenders, so long as the aggregate amount of such Revolving Loans shall not exceed 10% of the Total Revolving Commitments, if the Administrative Agent, in its discretion, deems that such Revolving Loans are necessary or desirable (i) to protect all or any portion of the Collateral, (ii) to enhance the likelihood or maximize the amount of repayment of the Loans and the other Obligations or (iii) to pay any other amount chargeable to the Borrowers pursuant to this Agreement (such Revolving Loans, "**Protective Overadvances**"); provided that (A) in no event shall the Total Revolving Extensions of Credit exceed the amount of the Total Revolving Commitments then in effect and (B) the Required Lenders may at any time revoke the Administrative Agent's authorization to make future Protective Advances (provided that any existing Protective Overadvance shall not be subject to such revocation and any such revocation must be in writing and shall become effective prospectively upon the Administrative Agent's receipt thereof). Each applicable Lender shall be obligated to advance to the Borrowers its Revolving Percentage of each Protective Overadvance made in accordance with this Section 2.8(b). If Protective Overadvances are made in accordance with the preceding sentence, then all Revolving Lenders shall be bound to make, or permit to remain outstanding, such Protective Overadvances based upon their Revolving Percentages in accordance with the terms of this Agreement. All Protective Overadvances shall be repaid by the Borrowers on demand, shall be secured by the Collateral and shall bear interest as provided in this Agreement for Revolving Loans generally.

## 2.9 Fees.

(a) Fee Letter. The Borrowers agree to pay to the Administrative Agent the fees in the amounts and on the dates as set forth in the Fee Letter and to perform any other obligations contained therein.

(b) Commitment Fee. As additional compensation for the Total Revolving Commitments, the Borrowers shall pay to the Administrative Agent for the account of the Lenders (other

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

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

(d) Increase in Fees. At any time that an Event of Default exists and is continuing, the Borrowers shall pay interest on any overdue fees due under subsections (a) and (b) at a rate per annum equal to 2.0% plus the rate applicable to Revolving Loans as provided in Section 2.15.

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

(a) Termination or Reduction of Total Revolving Commitments. The Borrowers shall have the right, upon not less than three (3) Business Days' written notice delivered to the Administrative Agent, to terminate the Total Revolving Commitments or, from time to time, to reduce the amount of the Total Revolving Commitments; provided that no such termination or reduction of the Total Revolving Commitment shall be permitted if, after giving effect thereto and to any prepayments of the Revolving Loans and Swingline Loans to be made on the effective date thereof the amount of the Total Revolving Extensions of Credit then outstanding would exceed the Total Revolving Commitments in effect at such time. Any such reduction shall be in an amount equal to \$1,000,000, or a whole multiple in excess thereof (or, if the then Total Revolving Commitments are less than \$1,000,000, such lesser amount), and shall reduce permanently the Total Revolving Commitments then in effect. Any reduction of the Total Revolving Commitments shall be applied to the Revolving Commitments of each Lender according to its respective Revolving Percentage. All fees accrued until the effective date of any termination of the Total Revolving Commitments shall be paid on the effective date of such termination.

(b) Termination or Reduction of Total L/C Commitments. The Borrowers shall have the right, upon not less than three (3) Business Days' written notice delivered to the Administrative Agent, to terminate the Total L/C Commitments available to the Borrowers or, from time to time, to reduce the amount of the Total L/C Commitments available to the Borrowers; provided that, in any such case, no such termination or reduction of the Total L/C Commitments shall be permitted if, after giving effect thereto, the Total L/C Commitments shall be reduced to an amount that would result in the aggregate L/C Exposure exceeding the Total L/C Commitments (as so reduced). Any such reduction shall be in an amount equal to \$1,000,000, or a whole multiple in excess thereof (or, if the then Total L/C Commitments are less than \$1,000,000, such lesser amount), and shall reduce permanently the Total L/C Commitments then in effect. Any reduction of the Total L/C Commitments shall be applied to the L/C Commitments of each Lender according to its respective L/C Percentage. All fees accrued until the effective date of any termination of the Total L/C Commitments shall be paid on the effective date of such termination.

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**2.11 Optional Loan Prepayments.** The Borrowers may at any time and from time to time prepay the Loans, in whole or in part, without premium or penalty, upon irrevocable notice delivered to the Administrative Agent no later than 10:00 A.M., Pacific time, one (1) Business Day prior thereto, which notice shall specify the date and amount of the proposed prepayment; provided that if such notice of prepayment indicates that such prepayment is to be funded with the proceeds of a refinancing, such notice of prepayment may be revoked if the financing is not consummated. Upon receipt of any such notice the Administrative Agent shall promptly notify each Lender thereof. If any such notice is given, subject to any permitted revocation of such notice, the amount specified in such notice shall be due and payable on the date specified therein, together with accrued interest to such date on the amount prepaid. Partial prepayments of Revolving Loans shall be in an aggregate principal amount of \$1,000,000 or a whole multiple thereof. Partial prepayments of Swingline Loans shall be in an aggregate principal amount of \$100,000 or a whole multiple thereof.

**2.12 Incremental Facility.**

(a) At any time during the Revolving Commitment Period, the Borrowers may request (but subject to the conditions set forth in clause (b) below) that the Revolving Commitments be increased by an amount not to exceed the Available Revolving Increase Amount (each such increase, an “**Increase**”); provided that the Borrowers may not request an Increase on more than two occasions during the term of this Agreement. No Lender shall be obligated to increase its Revolving Commitments in connection with a proposed Increase. Any Increase shall be in an amount of at least \$5,000,000 (or, if the Available Revolving Increase Amount is less than \$5,000,000, such remaining Available Revolving Increase Amount) and integral multiples of \$1,000,000 in excess thereof. Additionally, for the avoidance of doubt, it is understood and agreed that in no event shall the aggregate amount of the Increases to the Revolving Commitments exceed the Available Revolving Increase Amount during the term of the Agreement.

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

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

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

(iii) each Lender agreeing to such Increase, the Borrowers and the Administrative Agent shall have signed an Increase Joinder (any Increase Joinder may, with the consent of the Administrative Agent, the Borrowers and the Lenders agreeing to such Increase, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate to effectuate the provisions of this Section 2.12) and the Borrowers shall have executed any Notes requested by any Lender in connection with the making of the Increase. Notwithstanding anything to the contrary in this Agreement or in any other Loan Document, an Increase Joinder reasonably satisfactory to the Administrative Agent, and the amendments to this Agreement effected thereby, shall not require the consent of any Lender other than the Lender(s) agreeing to fund such Increase;

(iv) each of the conditions precedent set forth in Section 5.2 shall be satisfied with respect to such Increase;

(v) after giving *pro forma* effect to such Increase and the use of proceeds thereof, (A) no Default or Event of Default shall have occurred and be continuing at the time of such Increase and (B) the Borrowers shall be in compliance with the then applicable financial covenants set forth

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in Section 7.1 hereof as of the end of the most recently ended month for which financial statements are required to be delivered prior to such Increase, and the Borrowers shall have delivered to the Administrative Agent a Compliance Certificate evidencing compliance with the requirements of this clause (v);

(vi) in connection with such Increase, the Borrowers shall pay to Administrative Agent all fees required to be paid pursuant to the terms of the Fee Letter; and

(vii) upon each Increase in accordance with this Section 2.12, all outstanding Loans, participations hereunder in Letters of Credit and participations hereunder in Swingline Loans held by each Lender shall be reallocated among the Lenders (including any newly added Lenders) in accordance with the Lenders' respective revised Revolving Percentages and L/C Percentages, pursuant to procedures reasonably determined by the Administrative Agent in consultation with the Borrowers.

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

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

**2.13 Reserved.**

**2.14 Reserved.**

**2.15 Interest Rates and Payment Dates.**

(a) Each Revolving Loan and each Swingline Loan shall bear interest at a rate per annum equal to (i) the ABR plus (ii) the Applicable Margin.

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

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

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**2.16 Computation of Interest and Fees.**

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

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

**2.17 Reserved.**

**2.18 Pro Rata Treatment and Payments.**

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

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

(c) All payments (including prepayments) to be made by the Borrowers hereunder, whether on account of principal, interest, fees or otherwise, shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff and shall be made prior to 10:00 A.M., Pacific time, on the due date thereof to the Administrative Agent, for the account of the Lenders, at the applicable Revolving Loan Funding Office, in Dollars and in immediately available funds. The Administrative Agent shall distribute such payments to the Lenders promptly upon receipt in like funds as received. Any payment received by the Administrative Agent after 10:00 A.M. Pacific time shall be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. If any payment hereunder becomes due and payable on a day other than a Business Day, such payment shall be extended to the next succeeding Business Day. In the case of any extension of any payment of principal pursuant to the preceding sentence, interest thereon shall be payable at the then applicable rate during such extension.

(d) Unless the Administrative Agent shall have been notified in writing by any Lender prior to the date of any borrowing that such Lender will not make the amount that would constitute its share of such borrowing available to the Administrative Agent, the Administrative Agent may assume that such Lender is making such amount available to the Administrative Agent on such date in accordance with Section 2, and the Administrative Agent may, in reliance upon such assumption, make available to the Borrowers a corresponding amount. If such amount is not in fact made available to the Administrative Agent by the required time on the Borrowing Date therefor, such Lender and the Borrowers severally agree to pay to the Administrative Agent, on demand, such corresponding amount with interest thereon, for each day from and including the date on which such amount is made available to the Borrowers but excluding

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the date of payment to the Administrative Agent, at (i) in the case of a payment to be made by such Lender, a rate equal to the greater of (A) the Federal Funds Effective Rate and (B) a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation, and (ii) in the case of a payment to be made by the Borrowers, the rate per annum applicable to Revolving Loans under the Revolving Facility. If the Borrowers 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 Borrowers the amount of such interest paid by the Borrowers for such period. If such Lender pays its share of the applicable borrowing to the Administrative Agent, then the amount so paid shall constitute such Lender's Revolving Loan included in such borrowing. Any payment by the Borrowers shall be without prejudice to any claim the Borrowers may have against a Lender that shall have failed to make such payment to the Administrative Agent.

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

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

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

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

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

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due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal then due to such parties.

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

(k) Any amounts actually paid to or collected by the Administrative Agent pursuant to Section 6.3(c) at any time during the existence of an Event of Default shall be applied by the Administrative Agent to the Revolving Loans then outstanding and distributed by the Administrative Agent to the Revolving Lenders, in each case, (i) in accordance with the Revolving Percentages of such Revolving Lenders then in effect, and (ii) by no later than the date occurring three days after the date on which such payments or proceeds are so received or collected by the Administrative Agent, with any remaining amounts to be returned to the Borrower as specified in Section 6.3(c).

(l) Notwithstanding anything to the contrary in this Agreement, the Administrative Agent may, in its discretion at any time or from time to time, without the Borrowers' request and even if the conditions set forth in Section 5.2 would not be satisfied, make a Revolving Loan in an amount equal to the portion of the Obligations constituting overdue interest and fees, Swingline Loans and L/C

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Disbursements that have not yet been reimbursed or converted into Revolving Loans from time to time due and payable to itself, any Revolving Lender, the Swingline Lender or the Issuing Lender, and apply the proceeds of any such Revolving Loan to those Obligations; provided that after giving effect to any such Revolving Loan, the aggregate outstanding Revolving Loans will not exceed the Total Revolving Commitments then in effect.

## 2.19 Requirements of Law.

(a) If the adoption of or any change in any Requirement of Law or in the administration, interpretation, implementation or application thereof by any Governmental Authority, or the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority made subsequent to the date hereof:

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

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

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

and the result of any of the foregoing is to increase the cost to such Lender or such other Recipient of issuing or participating in Letters of Credit, or to reduce any amount receivable or received by such Lender or other Recipient hereunder in respect thereof (whether in respect of principal, interest or any other amount), then, in any such case, upon the request of such Lender or other Recipient, the Borrowers shall promptly pay such Lender or other Recipient, as the case may be, any additional amounts necessary to compensate such Lender or other Recipient, as the case may be, for such increased cost or reduced amount receivable. If any Lender becomes entitled to claim any additional amounts pursuant to this paragraph, it shall promptly notify the Borrowers (with a copy to the Administrative Agent) of the event by reason of which it has become so entitled.

(b) If any Lender determines that any change in any Requirement of Law affecting such Lender or any lending office of such Lender or such Lender's holding company, if any, regarding capital or liquidity requirements, has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement, the Revolving Commitments of such Lender or the Loans made by, or participations in Letters of Credit or Swingline Loans held by, such Lender, or the Letters of Credit issued by the Issuing Lender, to a level below that which such Lender or such Lender's holding company could have achieved but for such change in such Requirement of Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy), then from time to time upon demand of such Lender, the Borrowers will pay to such Lender or the Issuing Lender, as the case may be, such additional amount or amounts as will compensate such Lender or the Issuing Lender or such Lender's or Issuing Lender's holding company for any such reduction suffered.

(c) For purposes of this Agreement, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines, or directives in connection therewith are

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deemed to have gone into effect and been adopted after the date of this Agreement, and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a change in any Requirement of Law, regardless of the date enacted, adopted or issued.

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

## **2.20 Taxes.**

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

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

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

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

(d) Indemnification by Loan Parties. The Borrowers shall, and shall cause each other Loan Party to, jointly and severally indemnify each Recipient, within 10 days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or

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attributable to amounts payable under this Section 2.20) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto (including any recording and filing fees with respect thereto or resulting therefrom and any liabilities with respect to, or resulting from, any delay in paying such Indemnified Taxes), whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrowers by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error. If any Loan Party fails to pay any Taxes when due to the appropriate taxing authority or fails to remit to the Administrative Agent the required receipts or other required documentary evidence, such Loan Party shall indemnify the Administrative Agent and the Lenders for any incremental taxes, interest or penalties that may become payable by the Administrative Agent or any Lender as a result of any such failure.

(e) Indemnification by Lenders. Each Lender shall severally indemnify the Administrative Agent, within 10 days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that any Loan Party has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Loan Parties to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 10.6 relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this paragraph (e).

(f) Status of Lenders.

(i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrowers and the Administrative Agent, at the time or times reasonably requested by the Borrowers or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrowers 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 Borrowers or the Administrative Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Borrowers or the Administrative Agent as will enable the Borrowers or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Sections 2.20(f)(ii)(A), (ii)(B) and (ii)(D) below) shall not be required if the Lender is not legally entitled to complete, execute or deliver such documentation or, in the Lender's reasonable judgment, such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

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

(A) any Lender that is a U.S. Person shall deliver to the Borrowers and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this

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Agreement (and from time to time thereafter upon the reasonable request of the Borrowers or the Administrative Agent), executed originals of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrowers 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 Borrowers or the Administrative Agent), whichever of the following is applicable:

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

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

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

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

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrowers 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 Borrowers or the Administrative Agent), executed originals of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit the Borrowers 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 Borrowers and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrowers or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section

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1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrowers or the Administrative Agent as may be necessary for the Borrowers and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

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

(g) Right to Contest Taxes; Treatment of Certain Refunds. If the Borrowers determine in good faith that a reasonable basis exists for contesting any Taxes for which indemnification has been demanded or additional amounts have been payable hereunder, the relevant Lender or the Administrative Agent, as applicable, shall cooperate with the Borrowers in a reasonable challenge of such Taxes if so requested by the Borrowers; provided that (i) such Lender or the Administrative Agent determines in its reasonable discretion that it would not be prejudiced by cooperating in such challenge, (ii) the Borrowers pay all related expenses of the Administrative Agent or such Lender, (iii) the Borrowers indemnify such Lender or the Administrative Agent for any liabilities or other costs incurred by such party in connection with such challenge, and (iv) the Borrowers indemnify the Administrative Agent or such Lender, as applicable, for any indemnified Taxes or Other Taxes before any such contest. If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 2.20 (including by the payment of additional amounts pursuant to this Section 2.20), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section 2.20 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (g) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (g), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (g) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

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

**2.21 Reserved.**

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

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

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

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

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

then the Borrowers may, at their sole expense and effort, upon notice to the Administrative Agent and such Affected Lender: (i) request that one or more of the other Lenders acquire and assume all or part of such Affected Lender's Loans and Revolving Commitments and all other Obligations owing to such Affected Lender; or (ii) designate a replacement lending institution (which shall be an Eligible Assignee) to acquire and assume all or a ratable part of such Affected Lender's Loans and Revolving Commitments and all other Obligations owing to such Affected Lender (provided that, for the avoidance of doubt, such replacement lending institution shall not be a Disqualified Institution unless an Event of Default has occurred and is continuing) (the replacing Lender or lender in (i) or (ii) being a "**Replacement Lender**"); provided, however, that if the Borrowers elect to exercise such right with respect to any Affected Lender under clause (a) or (b) of this [Section 2.23](#), then the Borrowers shall be obligated to replace all Affected Lenders under such clauses. The Affected Lender replaced pursuant to this [Section 2.23](#) shall be required to assign and delegate, without recourse, all of its interests, rights and obligations under this Agreement and the related Loan Documents to one or more Replacement Lenders that so agree to acquire and assume all or a ratable part of such Affected Lender's Loans and Revolving Commitments and all other Obligations owing to such Affected Lender upon payment to such Affected Lender of an amount (in the aggregate for all Replacement Lenders) equal to 100% of the outstanding principal of the Affected Lender's Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents from such Replacement Lenders (to the extent of such outstanding principal and accrued interest and fees) or the Borrowers (in the case of all other amounts, including amounts under [Section 2.21](#) hereof). Any such designation of a Replacement Lender shall be effected in accordance with, and subject to the terms and conditions of, the assignment provisions contained in [Section 10.6](#) (with the assignment fee to be paid by the Borrowers in such instance); provided that if such Affected Lender does not comply with [Section 10.6](#)

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within ten (10) Business Days after the Borrowers' request, compliance with Section 10.6 shall not be required to effect such assignment, and, if such Replacement Lender is not already a Lender hereunder or an Affiliate of a Lender or an Approved Fund, shall be subject to the prior written consent of the Administrative Agent (which consent shall not be unreasonably withheld). Notwithstanding the foregoing, with respect to any assignment pursuant to this Section 2.23, (a) in the case of any such assignment resulting from a claim for compensation under Section 2.19 or payments required to be made pursuant to Section 2.20, such assignment shall result in a reduction in such compensation or payments thereafter; (b) such assignment shall not conflict with applicable law and (c) in the case of any assignment resulting from a Lender being a Minority Lender referred to in clause (b) of this Section 2.23, the applicable assignee shall have consented to the applicable amendment, waiver or consent. Notwithstanding the foregoing, an Affected Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Affected Lender or otherwise, the circumstances entitling the Borrowers to require such assignment and delegation cease to apply.

## 2.24 Defaulting Lenders.

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

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

(ii) Defaulting Lender Waterfall. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Section 8 or otherwise, and including any amounts made available to the Administrative Agent by such Defaulting Lender pursuant to Section 10.7), shall be applied at such time or times as may be determined by the Administrative Agent as follows: first, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder; second, to the payment on a pro rata basis of any amounts owing by such Defaulting Lender to the Issuing Lender or to the Swingline Lender hereunder; third, to be held as Cash Collateral for the funding obligations of such Defaulting Lender of any participation in any Swingline Loan or Letter of Credit; fourth, as the Borrowers may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; fifth, if so determined by the Administrative Agent and the Borrowers, to be held in a deposit account and released pro rata in order to (x) satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement, and (y) be held as Cash Collateral for the future funding obligations of such Defaulting Lender of any participation in any future Swingline Loans or Letter of Credit; sixth, to the payment of any amounts owing to any L/C Lender, the Issuing Lender or the Swingline Lender as a result of any judgment of a court of competent jurisdiction obtained by any L/C Lender, the Issuing Lender or the Swingline Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; seventh, so long as no Default or Event of Default has occurred and is continuing, to the payment of any amounts owing to the Borrowers as a result of any judgment of a court of competent jurisdiction obtained by the Borrowers against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and eighth, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (A) such payment is a payment of the principal amount of any Loans or L/C Advances in respect of which such Defaulting Lender has not fully funded its appropriate share and (B) such Loans or L/C Advances were made at a time when the conditions set forth in Section 5.2 were satisfied or waived, such payment shall be applied solely to pay the Loans of, and L/C Advances owed to, all non-

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Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, or L/C Advances owed to, such Defaulting Lender until such time as all Loans and funded and unfunded participations in L/C Advances and Swingline Loans are held by the Lenders pro rata in accordance with the Revolving Commitments without giving effect to Section 2.24(a)(iv). Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this Section 2.24(a)(ii) shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) Certain Fees.

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

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

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

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

(v) Cash Collateral, Repayment of Swingline Loans. If the reallocation described in clause (iv) above cannot, or can only partially, be effected, the Borrowers shall, without prejudice to any right or remedy available to them hereunder or under law and subject to Section 2.25,

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(x) first, prepay Swingline Loans in an amount equal to the Swingline Lender's Fronting Exposure, and (y) second, Cash Collateralize the Issuing Lender's Fronting Exposure in accordance with the procedures set forth in Section 3.10.

(b) Defaulting Lender Cure. If the Borrowers, the Administrative Agent, the Swingline Lender and the Issuing Lender agree in writing in their sole discretion that a Defaulting Lender should no longer be deemed to be a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), such Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Loans and funded and unfunded participations in Letters of Credit and Swingline Loans to be held on a *pro rata* basis by the Lenders in accordance with their respective Revolving Percentages and L/C Percentages, as applicable (without giving effect to Section 2.24(a)(iv)), whereupon such Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrowers while such Lender was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from such Lender having been a Defaulting Lender.

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

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

## **2.25 Joint and Several Liability of the Borrowers.**

(a) Each Borrower is accepting joint and several liability hereunder and under the other Loan Documents in consideration of the financial accommodations to be provided by the Lenders under this Agreement, for the mutual benefit, directly and indirectly, of each Borrower and in consideration of the undertakings of the other the Borrowers to accept joint and several liability for the Obligations.

(b) Each Borrower, jointly and severally, hereby irrevocably and unconditionally accepts, not merely as a surety but also as a co-debtor, joint and several liability with the other the Borrowers, with respect to the payment and performance of all of the Obligations (including any Obligations arising under this Section 2.25), it being the intention of the parties hereto that all the Obligations shall be the joint and several obligations of each Borrower without preferences or distinction among them.

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(c) If and to the extent that any Borrower shall fail to make any payment with respect to any of the Obligations as and when due or to perform any of the Obligations in accordance with the terms thereof, then in each such event the other Borrowers will make such payment with respect to, or perform, such Obligations.

(d) The Obligations of each Borrower under the provisions of this Section 2.25 constitute the absolute and unconditional, full recourse Obligations of each Borrower enforceable against each Borrower to the full extent of its properties and assets, irrespective of the validity, regularity or enforceability of this Agreement or any other circumstances whatsoever.

(e) Except as otherwise expressly provided in this Agreement, each Borrower hereby waives notice of acceptance of its joint and several liability, notice of any Loans made or Letters of Credit issued under or pursuant to this Agreement, notice of the occurrence of any Default, Event of Default, or of any demand for any payment under this Agreement, notice of any action at any time taken or omitted by the Administrative Agent or Lenders under or in respect of any of the Obligations, any requirement of diligence or to mitigate damages and, generally, to the extent permitted by applicable law, all demands, notices and other formalities of every kind in connection with this Agreement (except as otherwise provided in this Agreement). Each Borrower hereby assents to, and waives notice of, any extension or postponement of the time for the payment of any of the Obligations, the acceptance of any payment of any of the Obligations, the acceptance of any partial payment thereon, any waiver, consent or other action or acquiescence by the Administrative Agent or Lenders at any time or times in respect of any default by any Borrower in the performance or satisfaction of any term, covenant, condition or provision of this Agreement, any and all other indulgences whatsoever by the Administrative Agent or Lenders in respect of any of the Obligations, and the taking, addition, substitution or release, in whole or in part, at any time or times, of any security for any of the Obligations or the addition, substitution or release, in whole or in part, of any Borrower. Without limiting the generality of the foregoing, each Borrower assents to any other action or delay in acting or failure to act on the part of the Administrative Agent or Lender with respect to the failure by any Borrower to comply with any of its respective Obligations, including, without limitation, any failure strictly or diligently to assert any right or to pursue any remedy or to comply fully with applicable laws or regulations thereunder, which might, but for the provisions of this Section 2.25 afford grounds for terminating, discharging or relieving any Borrower, in whole or in part, from any of its Obligations under this Section 2.25, it being the intention of each Borrower that, so long as any of the Obligations hereunder remain unsatisfied, the Obligations of each Borrower under this Section 2.25 shall not be discharged except by performance and then only to the extent of such performance. The Obligations of each Borrower under this Section 2.25 shall not be diminished or rendered unenforceable by any winding up, reorganization, arrangement, liquidation, reconstruction or similar proceeding with respect to any Borrower, the Administrative Agent or any Lender.

(f) Each Borrower represents and warrants to the Administrative Agent and Lenders that such Borrower is currently informed of the financial condition of the Borrowers and of all other circumstances which a diligent inquiry would reveal and which bear upon the risk of nonpayment of the Obligations. Each Borrower further represents and warrants to the Administrative Agent and Lenders that such Borrower has read and understands the terms and conditions of the Loan Documents. Each Borrower hereby covenants that such Borrower will continue to keep informed of the Borrowers' financial condition, the financial condition of other guarantors, if any, and of all other circumstances which bear upon the risk of nonpayment or nonperformance of the Obligations.

(g) Each Borrower waives all rights and defenses arising out of an election of remedies by the Administrative Agent or any Lender, even though that election of remedies, such as a nonjudicial foreclosure with respect to security for a guaranteed obligation, has destroyed the Administrative Agent's

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or such Lender's rights of subrogation and reimbursement against such Borrower by the operation of Section 580(d) of the California Code of Civil Procedure or otherwise:

(h) Each Borrower waives all rights and defenses that such Borrower may have because the Obligations are secured by real property at any time. This means, among other things:

(i) The Administrative Agent and Lenders may collect from such Borrower without first foreclosing on any real or personal property Collateral pledged by the Borrowers.

(ii) If the Administrative Agent or any Lender forecloses on any Collateral consisting of real property pledged by the Borrowers:

(A) The amount of the Obligations may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price.

(B) The Administrative Agent and Lenders may collect from such Borrower even if the Administrative Agent or Lenders, by foreclosing on real property, has destroyed any right such Borrower may have to collect from the other Borrowers.

This is an unconditional and irrevocable waiver of any rights and defenses such Borrower may have because the Obligations are secured by real property. These rights and defenses include, but are not limited to, any rights or defenses based upon Section 580a, 580b, 580d or 726 of the California Code of Civil Procedure.

(i) The provisions of this Section 2.25 are made for the benefit of the Administrative Agent, Lenders and their respective successors and assigns, and may be enforced by it or them from time to time against any or all the Borrowers as often as occasion therefor may arise and without requirement on the part of the Administrative Agent, any Lender, any successor or any assign first to marshal any of its or their claims or to exercise any of its or their rights against any Borrower or to exhaust any remedies available to it or them against any Borrower or to resort to any other source or means of obtaining payment of any of the Obligations hereunder or to elect any other remedy. The provisions of this Section 2.25 shall remain in effect until all of the Obligations shall have been paid in full or otherwise fully satisfied. If at any time, any payment, or any part thereof, made in respect of any of the Obligations, is rescinded or must otherwise be restored or returned by the Administrative Agent or any Lender upon the insolvency, bankruptcy or reorganization of any Borrower, or otherwise, the provisions of this Section 2.25 will forthwith be reinstated in effect, as though such payment had not been made.

(j) Each Borrower hereby agrees that it will not enforce any of its rights of contribution or subrogation against any other Borrower with respect to any liability incurred by it hereunder or under any of the other Loan Documents, any payments made by it to the Administrative Agent or Lenders with respect to any of the Obligations or any collateral security therefor until such time as all of the Obligations have been paid in full in cash. Any claim which any Borrower may have against any other Borrower with respect to any payments to the Administrative Agent or Lender hereunder or under any other Loan Documents are hereby expressly made subordinate and junior in right of payment, without limitation as to any increases in the Obligations arising hereunder or thereunder, to the prior payment in full in cash of the Obligations and, in the event of any insolvency, bankruptcy, receivership, liquidation, reorganization or other similar proceeding under the laws of any jurisdiction relating to any Borrower, its debts or its assets, whether voluntary or involuntary, all such Obligations shall be paid in full in cash before any payment or distribution of any character, whether in cash, securities or other property, shall be made to any other Borrower therefor. Notwithstanding anything to the contrary contained in this Section 2.25, no Borrower

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shall exercise any rights of subrogation, contribution, indemnity, reimbursement or other similar rights against, and shall not proceed or seek recourse against or with respect to any property or asset of, any other Borrower (the "**Foreclosed Borrower**"), including after payment in full of the Obligations, if all or any portion of the Obligations have been satisfied in connection with an exercise of remedies in respect of the Capital Stock of such Foreclosed Borrower whether pursuant to the Security Documents or otherwise.

(k) Each Borrower hereby agrees that, after the occurrence and during the continuance of any Default or Event of Default, the payment of any amounts due with respect to the indebtedness owing by any Borrower to any other Borrower is hereby subordinated to the prior payment in full in cash of the Obligations. Each Borrower hereby agrees that after the occurrence and during the continuance of any Default or Event of Default, such Borrower will not demand, sue for or otherwise attempt to collect any indebtedness of any other Borrower owing to such Borrower until the Obligations shall have been paid in full in cash. If, notwithstanding the foregoing sentence, such Borrower shall collect, enforce or receive any amounts in respect of such indebtedness, such amounts shall be collected, enforced and received by such Borrower as trustee for the Administrative Agent, and such Borrower shall deliver any such amounts to the Administrative Agent for application to the Obligations in accordance with the terms of this Agreement.

(l) Subject to the foregoing, to the extent that any Borrower shall, under this Agreement as a joint and several obligor, repay any of the Obligations made to another Borrower hereunder or other Obligations incurred directly and primarily by any other Borrower (an "**Accommodation Payment**"), then the Borrower making such Accommodation Payment shall be entitled to contribution and indemnification from, and be reimbursed by, each other Borrower in an amount, for each of such other Borrower, equal to a fraction of such Accommodation Payment, the numerator of which fraction is such other Borrower's Allocable Amount and the denominator of which is the sum of the Allocable Amounts of all of the Borrowers. As of any date of determination, the "**Allocable Amount**" of each Borrower shall be equal to the maximum amount of liability for Accommodation Payments which could be asserted against such Borrower hereunder without (a) rendering such Borrower "insolvent" within the meaning of Section 101(31) of the Bankruptcy Code, Section 2 of the Uniform Fraudulent Transfer Act ("**UFTA**") or Section 2 of the Uniform Fraudulent Conveyance Act ("**UFCA**"), (b) leaving such Borrower with unreasonably small capital or assets, within the meaning of Section 548 of the Bankruptcy Code, Section 4 of the UFTA, or Section 5 of the UFCA, or (c) leaving such Borrower unable to pay its debts as they become due within the meaning of Section 548 of the Bankruptcy Code or Section 4 of the UFTA, or Section 5 of the UFCA.

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

### SECTION 3 LETTERS OF CREDIT

#### 3.1 L/C Commitment.

(a) Subject to the terms and conditions hereof, the Issuing Lender agrees to issue letters of credit ("**Letters of Credit**") for the account of the Borrowers on any Business Day during the Letter of Credit Availability Period in such form as may reasonably be approved from time to time by the Issuing Lender; provided that the Issuing Lender shall have no obligation to issue any Letter of Credit if, after giving effect to such issuance, either (x) the L/C Exposure would exceed the Total L/C Commitments or (y) the Available Revolving Commitments would be less than zero. Each Letter of Credit shall (i) be denominated in Dollars or, in the sole discretion of the Issuing Lender with respect to any particular Letter of Credit, a Foreign Currency and (ii) expire no later than the earlier of (x) the first anniversary of its date

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of issuance and (y) the Letter of Credit Maturity Date, provided that any Letter of Credit with a one-year term may provide for the renewal thereof for additional one-year periods (which shall in no event extend beyond the date referred to in clause (y) above). For purposes of this Agreement, the stated amount of any Letter of Credit issued in a Foreign Currency shall be converted into Dollars from time to time by the Issuing Lender and upon any drawing under such Letter of Credit.

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

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

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

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

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

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

(vi) except as otherwise agreed by the Administrative Agent and the Issuing Lender, such Letter of Credit is in an initial face amount less than \$100,000; or

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

**3.2 Procedure for Issuance of Letters of Credit.** The Borrowers may from time to time request that the Issuing Lender issue a Letter of Credit for the account of the Borrowers by delivering to the Issuing Lender at its address for notices specified herein an Application therefor, completed to the satisfaction of the Issuing Lender, and such other certificates, documents and other papers and information

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

### 3.3 Fees and Other Charges.

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

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

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

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

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

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### 3.4 L/C Participations.

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

### 3.5 Reimbursement.

(a) If the Issuing Lender shall make any L/C Disbursement in respect of a Letter of Credit, the Issuing Lender shall notify the Borrowers and the Administrative Agent thereof and the Borrowers shall pay or cause to be paid to the Issuing Lender an amount equal to the entire amount of such L/C Disbursement not later than (i) the immediately following Business Day if the Issuing Lender issues such notice before 10:00 a.m. Pacific time on the date of such L/C Disbursement, or (ii) on the second following Business Day if the Issuing Lender issues such notice at or after 10:00 a.m. Pacific time on the date of such L/C Disbursement. Each such payment shall be made to the Issuing Lender at its address for notices referred to herein in Dollars and in immediately available funds; provided that the Borrowers may, subject to the conditions to borrowing set forth herein, request in accordance with Section 2.5 or Section 2.7(a) that such payment be financed with a Revolving Loan or a Swingline Loan, as applicable, in an equivalent amount and, to the extent so financed, the Borrowers' obligations to make such payment shall be discharged and replaced by the resulting Revolving Loan or Swingline Loan.

(b) If the Issuing Lender shall not have received from the Borrowers the payment that they are required to make pursuant to Section 3.5(a) with respect to a Letter of Credit within the time specified in such Section, the Issuing Lender will promptly notify the Administrative Agent of the L/C Disbursement and the Administrative Agent will promptly notify each L/C Lender of such L/C Disbursement and its L/C Percentage thereof, and each L/C Lender shall pay to the Issuing Lender upon demand at the Issuing Lender's address for notices specified herein an amount equal to such L/C Lender's L/C Percentage of such L/C Disbursement (and the Administrative Agent may apply Cash Collateral provided for this purpose) and upon such payment pursuant to this paragraph to reimburse the Issuing Lender for any L/C Disbursement, the Borrowers shall be required to reimburse the L/C Lenders for such payments (including interest accrued thereon from the date of such payment until the date of such reimbursement at the rate applicable to Revolving Loans plus 2% per annum) on demand; provided that if at the time of and after giving effect to such payment by the L/C Lenders, the conditions to borrowings and Revolving Loan Conversions set forth in Section 5.2 are satisfied, the Borrowers may, by written notice to the Administrative Agent certifying that such conditions are satisfied and that all interest owing under this paragraph has been paid, request that such payments by the L/C Lenders be converted into Revolving Loans

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(a “**Revolving Loan Conversion**”), in which case, if such conditions are in fact satisfied, the L/C Lenders shall be deemed to have extended, and the Borrowers shall be deemed to have accepted, a Revolving Loan in the aggregate principal amount of such payment without further action on the part of any party; any amount so paid pursuant to this paragraph shall, on and after the payment date thereof, be deemed to be Revolving Loans for all purposes hereunder; provided that the Issuing Lender, at its option, may effectuate a Revolving Loan Conversion regardless of whether the conditions to borrowings and Revolving Loan Conversions set forth in Section 5.2 are satisfied.

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

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

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

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

**3.9 Interim Interest.** If the Issuing Lender shall make any L/C Disbursement in respect of a Letter of Credit, then, unless either the Borrowers shall have reimbursed such L/C Disbursement in full within the time period specified in Section 3.5(a) or the L/C Lenders shall have reimbursed such L/C

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Disbursement in full on such date as provided in Section 3.5(b), in each case the unpaid amount thereof shall bear interest for the account of the Issuing Lender, for each day from and including the date of such L/C Disbursement to but excluding the date of payment by the Borrowers, at the rate per annum that would apply to such amount if such amount were a Revolving Loan; provided that the provisions of Section 2.15(c) shall be applicable to any such amounts not paid when due.

### **3.10 Cash Collateral.**

(a) Certain Credit Support Events. Upon the request of the Administrative Agent or the Issuing Lender (i) if the Issuing Lender has honored any full or partial drawing request under any Letter of Credit and such drawing has resulted in an L/C Advance by all the L/C Lenders that is not reimbursed by the Borrowers or converted into a Revolving Loan pursuant to Section 3.5(b), or (ii) if, as of the Letter of Credit Maturity Date, any L/C Exposure for any reason remains outstanding, the Borrowers shall, in each case, immediately Cash Collateralize the then effective L/C Exposure in an amount equal to 105% (110% in the case of any L/C Exposure in respect of any Letter of Credit denominated in a Foreign Currency) of such L/C Exposure.

At any time that there shall exist a Defaulting Lender, within one (1) Business Day following the request of the Administrative Agent or the Issuing Lender (with a copy to the Administrative Agent), the Borrowers shall deliver to the Administrative Agent Cash Collateral in an amount sufficient to cover 105% (110% in the case of any L/C Exposure in respect of any Letter of Credit denominated in a Foreign Currency) of the Fronting Exposure relating to the Letters of Credit (after giving effect to Section 2.24(a)(iv) and any Cash Collateral provided by such Defaulting Lender).

(b) Grant of Security Interest. All Cash Collateral (other than credit support not constituting funds subject to deposit) shall be maintained in blocked, non-interest bearing deposit accounts with the Administrative Agent. The Borrowers, and to the extent provided by any Lender or Defaulting Lender, such Lender or Defaulting Lender, hereby grants to (and subjects to the control of) the Administrative Agent, for the benefit of the Administrative Agent, the Issuing Lender and the L/C Lenders, and agrees to maintain, a first priority security interest and Lien in all such Cash Collateral and in all proceeds thereof, as security for the Obligations to which such Cash Collateral may be applied pursuant to Section 3.10(c). If at any time the Administrative Agent determines that Cash Collateral is subject to any right or claim of any Person other than the Administrative Agent or any Issuing Lender as herein provided, or that the total amount of such Cash Collateral is less than 105% (110% in the case of any L/C Exposure in respect of any Letter of Credit denominated in a Foreign Currency) of the applicable L/C Exposure, Fronting Exposure and other Obligations secured thereby, the Borrowers or the relevant Lender or Defaulting Lender, as applicable, will, promptly upon demand by the Administrative Agent, pay or provide to the Administrative Agent additional Cash Collateral in an amount sufficient to eliminate such deficiency (after giving effect to any Cash Collateral provided by such Defaulting Lender).

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

(d) Termination of Requirement. Cash Collateral (or the appropriate portion thereof) provided to reduce Fronting Exposure in respect of Letters of Credit or other Obligations shall no longer be required to be held as Cash Collateral pursuant to this Section 3.10 following (i) the elimination of the applicable Fronting Exposure and other Obligations giving rise thereto (including by the termination of the

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Defaulting Lender status of the applicable Lender), or (ii) a determination by the Administrative Agent and the Issuing Lender that there exists excess Cash Collateral; provided, however, (A) that Cash Collateral furnished by or on behalf of a Loan Party shall not be released during the continuance of an Event of Default, and (B) that, subject to Section 2.24, the Person providing such Cash Collateral and the Issuing Lender may agree that such Cash Collateral shall not be released but instead shall be held to support future anticipated Fronting Exposure or other obligations, and provided further, that to the extent that such Cash Collateral was provided by the Borrowers or any other Loan Party, such Cash Collateral shall remain subject to any security interest and Lien granted pursuant to the Loan Documents.

**3.11 Reserved.**

**3.12 Reserved.**

**3.13 Applicability of ISP.** Unless otherwise expressly agreed by the Issuing Lender and the Borrowers when a Letter of Credit is issued and subject to applicable laws, the Letters of Credit shall be governed by and subject to the rules of the ISP.

#### **SECTION 4 REPRESENTATIONS AND WARRANTIES**

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

**4.1 Financial Condition.**

(a) The Pro Forma Financial Statements have been prepared giving effect (as if such events had occurred on such date in the case of the balance sheets and the beginning of the period presented in the case of the statements of income and cash flows) to (i) the Loans to be made on the Closing Date and the use of proceeds thereof, and (ii) the payment of fees and expenses in connection with the foregoing. The Pro Forma Financial Statements have been prepared based on the information available to the Borrowers as of the date of delivery thereof, and present fairly in all material respects on a *pro forma* basis the estimated financial position of the Parent and its consolidated Subsidiaries as of December 31, 2019 assuming that the events specified in the preceding sentence had actually occurred at such date in the case of the balance sheets and at the beginning of the period presented in the case of the statements of income and cash flows

(b) The audited consolidated balance sheets of the Parent (or its predecessor) and its Subsidiaries as of December 31, 2018 and the related consolidated statements of income and of cash flows for the fiscal years ended on such dates, reported on by and accompanied by an unqualified report from Ernst & Young LLP, present fairly in all material respects the consolidated financial condition of the Parent and its Subsidiaries as at such date, and the consolidated results of its operations and its consolidated cash flows for the respective fiscal years then ended. The unaudited consolidated balance sheet of the Parent and its Subsidiaries as at December 31, 2019, and the related unaudited consolidated statements of income and cash flows for the twelve-month period ended on such date, present fairly in all material respects the consolidated financial condition of the Parent and its Subsidiaries as at such date, and the consolidated results of its operations and its consolidated cash flows for the twelve-month period then ended (subject to normal year-end audit adjustments and the absence of footnotes). All such financial statements, including the related schedules and notes thereto, have been prepared in accordance with GAAP applied consistently

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throughout the periods involved (except with respect to audited financial statements as approved by the aforementioned firm of accountants and disclosed therein) subject in the case of unaudited financial statements to changes resulting from normal year-end adjustments and the absence of footnotes. No Group Member has, as of the Closing Date, any material Guarantee Obligations, contingent liabilities and liabilities for taxes, or any long-term leases or unusual forward or long-term commitments, including any interest rate or foreign currency swap or exchange transaction or other obligation in respect of derivatives, that are not reflected in the most recent financial statements referred to in this paragraph. During the period from December 31, 2018 to and including the date hereof, there has been no Disposition by any Group Member of any material part of its business or property.

**4.2 No Change.** Since December 31, 2018, there has been no development or event that has had or would reasonably be expected to have a Material Adverse Effect.

**4.3 Existence; Compliance with Law.** Each Group Member (a) is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, (b) has the power and authority, and the legal right, to own and operate its property, to lease the property it operates as lessee and to conduct the business in which it is currently engaged, (c) is duly qualified as a foreign corporation or other organization and in good standing under the laws of each jurisdiction where the failure to be so qualified would reasonably be expected to have a Material Adverse Effect and (d) is in material compliance with all Requirements of Law except in such instances in which (i) such Requirement of Law is being contested in good faith by appropriate proceedings diligently conducted and the prosecution of such contest would not reasonably be expected to result in a Material Adverse Effect, or (ii) the failure to comply therewith, either individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect.

**4.4 Power, Authorization; Enforceable Obligations.** Each Loan Party has the power and authority, and the legal right, to make, deliver and perform the Loan Documents to which it is a party and, in the case of the Borrowers, to obtain extensions of credit hereunder. Each Loan Party has taken all necessary organizational action to authorize the execution, delivery and performance of the Loan Documents to which it is a party and, in the case of the Borrowers, to authorize the extensions of credit on the terms and conditions of this Agreement. No Governmental Approval or consent or authorization of, filing with, notice to or other act by or in respect of, any other Person is required in connection with the extensions of credit hereunder or with the execution, delivery, performance, validity or enforceability of this Agreement or any of the Loan Documents, except (i) Governmental Approvals, consents, authorizations, filings and notices which have been obtained or made and are in full force and effect and the filing of a Form 8-K or Form 10-K with the SEC following the Closing Date and (ii) the filings referred to in [Section 4.19](#). Each Loan Document has been duly executed and delivered on behalf of each Loan Party party thereto. This Agreement constitutes, and each other Loan Document upon execution will constitute, a legal, valid and binding obligation of each Loan Party party thereto, enforceable against each such Loan Party in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general equitable principles (whether enforcement is sought by proceedings in equity or at law).

**4.5 No Legal Bar.** The execution, delivery and performance of this Agreement and the other Loan Documents, the issuance of Letters of Credit, the borrowings hereunder and the use of the proceeds thereof will not violate any material Requirement of Law or any material Contractual Obligation of any Group Member and will not result in, or require, the creation or imposition of any Lien on any of their respective properties or revenues pursuant to any material Requirement of Law or any such material Contractual Obligation (other than the Liens created by the Security Documents). No Requirement of Law

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or Contractual Obligation applicable to the Borrowers or any of their respective Subsidiaries would reasonably be expected to have a Material Adverse Effect.

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

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

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

**4.9 Intellectual Property.** Each Group Member owns, or is licensed to use, all Intellectual Property necessary for the conduct of its business as currently conducted. No claim has been asserted and is pending by any Person challenging or questioning any Group Member's use of any Intellectual Property or the validity or effectiveness of any such Group Member's Intellectual Property, nor does any Borrower know of any valid basis for any such claim, unless such claim would not reasonably be expected to have a Material Adverse Effect. To the knowledge of the Loan Parties, the use of Intellectual Property by each Group Member, and the conduct of such Group Member's business, as currently conducted, does not infringe on or otherwise violate the rights of any Person, unless such infringement would not reasonably be expected to have a Material Adverse Effect, and there are no claims pending or, to the knowledge of any Borrower, threatened to such effect.

**4.10 Taxes.** Each Group Member has filed or caused to be filed all Federal, all income and all other material state and other tax returns that are required to be filed and has paid all material taxes shown to be due and payable on said returns or on any assessments made against it or any of its property and all other material taxes, fees or other charges imposed on it or any of its property by any Governmental Authority (other than any the amount or validity of which are currently being contested in good faith by appropriate proceedings and with respect to which reserves in conformity with GAAP have been provided on the books of the relevant Group Member); no tax Lien has been filed (other than Liens permitted by Section 7.3(a)), and, to the knowledge of each Borrower, no material claim is being asserted, with respect to any such tax, fee or other charge.

**4.11 Federal Regulations.** The Borrowers are not engaged and will not engage, principally or as one of their important activities, in the business of "buying" or "carrying" "margin stock" (within the respective meanings of each of the quoted terms under Regulation U as now and from time to time hereafter in effect) or extending credit for the purpose of purchasing or carrying margin stock. No part of the proceeds of any Loans, and no other extensions of credit hereunder, will be used for buying or carrying any such margin stock or for extending credit to others for the purpose of purchasing or carrying margin stock in violation of Regulations T, U or X of the Board. If any margin stock directly or indirectly constitutes Collateral securing the Obligations, if requested by any Lender or the Administrative Agent, the Borrowers

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will furnish to the Administrative Agent and each Lender a statement to the foregoing effect in conformity with the requirements of FR Form G-3 or FR Form U-1, as applicable, referred to in Regulation U.

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

**4.13 ERISA.**

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

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

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

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

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

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

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

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

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not be subject to state statutes applicable to such Loan Party regulating investments of fiduciaries with respect to governmental plans.

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

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

**4.16 Use of Proceeds.** The proceeds of the Revolving Loans shall be to pay fees and expenses related to the transactions consummated pursuant to this Agreement and for general corporate purposes. All or a portion of the proceeds of the Swingline Loans and the Letters of Credit, shall be used for general corporate purposes.

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

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

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

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

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

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

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

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

#### **4.18 Accuracy of Information, Etc.**

No statement or information contained in this Agreement, any other Loan Document or any other document, certificate or statement furnished by or on behalf of any Loan Party to the Administrative Agent or the Lenders, or any of them, for use in connection with the transactions contemplated by this Agreement or the other Loan Documents, contained as of the date such statement, information, document or certificate was so furnished, any untrue statement of a material fact or omitted to state a material fact necessary to make the statements contained herein or therein, in light of the circumstances, not misleading in any material respect. The projections and *pro forma* financial information contained in the materials referenced above are based upon good faith estimates and assumptions believed by the Borrowers to be reasonable at the time made, it being recognized by the Lenders that such financial information as it relates to future events is not to be viewed as fact and that actual results during the period or periods covered by such financial information may differ from the projected results set forth therein by a material amount and that no assurance can be given that any particular projected result will be realized. There is no fact known to any Loan Party that would reasonably be expected to have a Material Adverse Effect that has not been expressly disclosed herein, in the other Loan Documents or in any other documents, certificates and statements furnished to the Administrative Agent and the Lenders for use in connection with the transactions contemplated hereby and by the other Loan Documents.

#### **4.19 Security Documents.**

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

(b) Any Mortgages delivered after the Closing Date pursuant to Section 6.12 will be, upon execution, effective to create in favor of the Administrative Agent, for the benefit of the Secured Parties, a legal, valid and enforceable Lien on the Mortgaged Properties described therein and proceeds

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thereof, and when the Mortgages are filed in the offices for the applicable jurisdictions in which the Mortgaged Properties are located, each such Mortgage shall constitute a fully perfected Lien on, and security interest in, all right, title and interest of the Loan Parties in the Mortgaged Properties and the proceeds thereof, as security for the Obligations (as defined in the relevant Mortgage), in each case prior and superior in right to any other Person other than Liens permitted by [Section 7.3](#).

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

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

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

**4.23 Reserved.**

**4.24 Insurance.** All insurance maintained by the Loan Parties is in full force and effect, all premiums have been duly paid, no Loan Party has received notice of violation or cancellation thereof, and there exists no default under any requirement of such insurance. Each Loan Party maintains, with financially sound and reputable insurance companies insurance on all its property in at least such amounts and against at least such risks (but including in any event public liability, product liability and business interruption) as are usually insured against in the same general area by companies engaged in the same or a similar business.

**4.25 No Casualty.** No Loan Party has received any notice of, nor does any Loan Party have any knowledge of, the occurrence or pendency or contemplation of any Casualty Event affecting all or any material portion of its property.

**4.26 Accounts Receivable.** All statements made and all unpaid balances appearing in all invoices, instruments and other documents evidencing the Accounts are and shall be true and correct in all material respects and all such invoices, instruments and other documents, and all of the Borrower's books and records are genuine and in all respects what they purport to be. All sales and other transactions underlying or giving rise to each Account shall comply in all material respects with all applicable laws and governmental rules and regulations. To the best of the Borrower's knowledge, all signatures and endorsements on all documents, instruments, and agreements relating to all Accounts are genuine, and all such documents, instruments and agreements are legally enforceable in accordance with their terms.

**4.27 Definition of "Knowledge".** Except as otherwise set forth herein, for purposes of the Loan Documents, whenever a representation or warranty is made to the Borrowers' knowledge or awareness, to the "best of" the Borrowers' knowledge, or with a similar qualification, knowledge or awareness means the actual knowledge, after reasonable investigation, of any Responsible Officer.

**4.28 OFAC.** Neither Parent, the Borrowers, nor any of their respective Subsidiaries, nor, to the knowledge of Parent, the Borrowers or any such Subsidiary, any director, officer, employee, agent,

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affiliate or representative thereof, is an individual or an entity that is, or is owned or controlled by an individual or entity that is (a) currently the subject of any Sanctions, or (b) located, organized or resident in a Designated Jurisdiction.

**4.29 Anti-Corruption Laws.** Each of Parent, the Borrower and their respective Subsidiaries have conducted their businesses in compliance with applicable anti-corruption laws and have instituted and maintained policies and procedures designed to promote and achieve compliance with such laws.

## SECTION 5 CONDITIONS PRECEDENT

**5.1 Conditions to Initial Extension of Credit.** The effectiveness of this Agreement and the obligation of each Lender to make its initial extension of credit hereunder shall be subject to the satisfaction, prior to or concurrently with the making of each such extension of credit on the Closing Date, of the following conditions precedent, except as set forth in Section 5.3:

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

- (i) this Agreement, executed and delivered by the Administrative Agent, each Borrower and each Lender listed on Schedule 1.1A;
- (ii) the Collateral Information Certificate, executed by a Responsible Officer of the Loan Parties;
- (iii) if required by any Revolving Lender, a Revolving Loan Note executed by the Borrowers in favor of such Revolving Lender;
- (iv) if required by the Swingline Lender, the Swingline Loan Note executed by the Borrowers in favor of such Swingline Lender;
- (v) the Guarantee and Collateral Agreement, executed and delivered by the Borrowers and each other Grantor named therein;
- (vi) each Intellectual Property Security Agreement, executed by the applicable Grantor related thereto; and
- (vii) each other Security Document, executed and delivered by the applicable Loan Party party thereto.

(b) Pro Forma Financial Statements; Financial Statements; Projections. The Administrative Agent shall have received (i) the Pro Forma Financial Statements, and (ii) unaudited consolidated financial statements of the Parent as of December 31, 2019 and for each fiscal month ended thereafter and at least 15 days before the Closing Date, and (iii) forecasts prepared by management of the Parent, each in form reasonably satisfactory to the Administrative Agent, of balance sheets, income statements and cash flow statements on a monthly basis for each fiscal month during the term of the Revolving Facility.

(c) Approvals. All Governmental Approvals and consents and approvals of, or notices to, any other Person (including the holders of any Capital Stock issued by any Loan Party) required in connection with the execution and performance of the Loan Documents and consummation of the other transactions contemplated hereby, shall have been obtained and be in full force and effect.

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(d) Secretary's Certificates; Certified Operating Documents; Good Standing Certificates. The Administrative Agent shall have received a certificate of each Loan Party, dated the Closing Date and executed by the Secretary or Assistant Secretary of such Loan Party, substantially in the form of Exhibit C, with appropriate insertions and attachments, including (i) the Operating Documents of such Loan Party, (ii) the relevant board resolutions or written consents of such Loan Party adopted by such Loan Party for the purposes of authorizing such Loan Party to enter into and perform the Loan Documents to which such Loan Party is party and (iii) the names, titles, incumbency and signature specimens of those representatives of such Loan Party who have been authorized by such resolutions and/or written consents to execute Loan Documents on behalf of such Loan Party, and (iv) a good standing certificate for each Loan Party certified as of a recent date by the appropriate Governmental Authority of its respective jurisdiction of organization.

(e) Responsible Officer's Certificates.

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

(ii) The Administrative Agent shall have received a certificate signed by a Responsible Officer of the Parent, dated as of the Closing Date and in form and substance reasonably satisfactory to it, certifying (A) that the conditions specified in Sections 5.2(a) and (d) have been satisfied, and (B) that there has been no event or circumstance since December 31, 2018, that has had or that would reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect.

(f) Patriot Act. The Administrative Agent shall have received, prior to the Closing Date, all documentation and other information required by Governmental Authorities under applicable "know your customer" and anti-money-laundering rules and regulations, including the Patriot Act.

(g) Due Diligence Investigation. The Administrative Agent shall have completed a due diligence investigation of the Parent and its Subsidiaries in scope, and with results, satisfactory to the Administrative Agent and shall have been given such access to the management, records, books of account, contracts and properties of the Parent and its Subsidiaries and shall have received such financial, business and other information regarding each of the foregoing Persons and businesses as it shall have requested. Without limiting the foregoing, the Administrative Agent shall have received a copy of the most recent investment policy approved by the Parent's board of directors.

(h) Reports. The Administrative Agent shall have received, in form and substance satisfactory to it, all audits and certifications as it has reasonably requested.

(i) [Reserved].

(j) Collateral Matters.

(i) Lien Searches. The Administrative Agent shall have received the results of recent lien, judgment and litigation searches reasonably requested by the Administrative Agent, and such searches shall reveal no liens on any of the assets of the Loan Parties except for Liens permitted by Section 7.3 and Liens to be discharged on or prior to the Closing Date.

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

(iii) Filings, Registrations, Recordings, Agreements, Etc. Each document (including any UCC financing statements, Intellectual Property Security Agreements, Deposit Account Control Agreements, Securities Account Control Agreements, and a landlord access agreement for the Borrowers' headquarters location) required by the Loan Documents or under law or reasonably requested by the Administrative Agent to be filed, executed, registered or recorded to create in favor of the Administrative Agent (for the ratable benefit of the Secured Parties), a perfected Lien on the Collateral described therein, prior and superior in right and priority to any Lien in the Collateral held by any other Person (other than with respect to Liens expressly permitted by Section 7.3), shall have been executed (if applicable) and delivered to the Administrative Agent in proper form for filing, registration or recordation.

(k) Insurance. The Administrative Agent shall have received insurance certificates satisfying the requirements of Section 6.6 hereof and Section 5.2(b) of the Guaranty and Collateral Agreement, together with evidence reasonably satisfactory to the Administrative Agent that the insurance policies of each Loan Party have been endorsed for the purpose of naming the Administrative Agent (for the ratable benefit of the Secured Parties) as an "additional insured" or "lender loss payee", as applicable, with respect to such insurance policies, in form and substance satisfactory to the Administrative Agent.

(l) Fees. The Lenders and the Administrative Agent shall have received all fees required to be paid on or prior to the Closing Date (including pursuant to the Fee Letter), and all reasonable and documented fees and expenses for which invoices have been presented (including the reasonable and documented fees and expenses of legal counsel to the Administrative Agent) for payment on or before the Closing Date.

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

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

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

(p) No Material Adverse Effect. There shall not have occurred since December 31, 2018 any event or condition that has had or would be reasonably expected to have, individually or in the aggregate, a Material Adverse Effect.

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(q) **No Litigation.** No litigation, investigation or proceeding of or before any arbitrator or Governmental Authority is pending or, to the knowledge of any Group Member, threatened in writing, relating to or arising out of the Loan Documents or the transactions contemplated hereby and thereby.

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

**5.2 Conditions to Each Extension of Credit.** The agreement of each Lender to make any extension of credit requested to be made by it hereunder on any date (including its initial Loans disbursed on the Closing Date) is subject to the satisfaction of the following conditions precedent:

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

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

(c) **Notices of Borrowing.** The Administrative Agent shall have received a Notice of Borrowing in connection with any such request for extension of credit which complies with the requirements hereof.

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

Each borrowing by and issuance of a Letter of Credit on behalf of any Borrower hereunder shall constitute a representation and warranty by the Borrowers as of the date of such extension of credit that the conditions contained in this [Section 5.2](#) have been satisfied.

**5.3 Post-Closing Conditions Subsequent.** The Borrowers shall satisfy each of the conditions subsequent to the Closing Date specified in [Schedule 5.3](#) to the reasonable satisfaction of the Administrative Agent, in each case by no later than the date sixty (60) days after the Closing Date (or such other date as Administrative Agent shall agree in its sole discretion).

## SECTION 6 AFFIRMATIVE COVENANTS

Each Borrower hereby jointly and severally agrees that, at all times prior to the Discharge of

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Obligations, each such Borrower shall, and, where applicable, shall cause each of its respective Subsidiaries to:

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

(a) as soon as available, but in any event within 5 days after filing with the SEC and in no event later than 120 days after the end of each fiscal year of the Parent (commencing with the fiscal year ending December 31, 2019), a copy of the audited consolidated and consolidating balance sheet of the Parent and its consolidated Subsidiaries as at the end of such fiscal year and the related audited consolidated and consolidating statements of income and of cash flows for such fiscal year, setting forth in each case in comparative form the figures for the previous year, together with an unqualified opinion by an independent certified public accounting firm of nationally recognized standing and reasonably acceptable to the Administrative Agent;

(b) as soon as available, but in any event not later than 35 days after the end of each fiscal quarter occurring during each fiscal year of the Parent, the unaudited consolidated and consolidating balance sheet of the Parent and its consolidated Subsidiaries as at the end of such month and the related unaudited consolidated and consolidating statements of income and of cash flows for such month and the portion of the fiscal year through the end of such month, setting forth in each case in comparative form the figures for the previous year, certified by a Responsible Officer of the Parent as being fairly stated in all material respects (subject to normal year-end audit adjustments and the absence of footnotes).

(c) as soon as available, each form 8-K filing made by the Parent as and when filed with the SEC;

provided that documents required to be delivered pursuant to this Section 6.1 may be delivered electronically and if so, shall be deemed to have been delivered on the date on which the Parent posts such documents, or provides a link thereto, either: (x) on the Parent's website on the Internet at the website address listed in Section 10.2; or (y) when such documents are posted electronically on the Parent's behalf on an internet or intranet website to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent), if any.

All such financial statements shall be complete and correct in all material respects and shall be prepared in reasonable detail and in accordance with GAAP applied (except as approved by such accountants or officer, as the case may be, and disclosed in reasonable detail therein) consistently throughout the periods reflected therein and with prior periods, subject in the case of unaudited financial statements to changes resulting from normal year-end adjustments and the absence of footnotes.

**6.2 Certificates; Reports; Other Information.** Furnish to the Administrative Agent, for distribution to each Lender:

(a) concurrently with the delivery of any financial statements pursuant to Section 6.1, (i) a certificate of a Responsible Officer stating that, to the best of such Responsible Officer's knowledge, each Loan Party during such period has observed or performed all of its covenants and other agreements, and satisfied every condition contained in this Agreement and the other Loan Documents to which it is a party to be satisfied by it, and that such Responsible Officer has obtained no knowledge of any Default or Event of Default except as specified in such certificate and (ii) in the case of all quarterly or annual financial statements, (x) a Compliance Certificate containing all information and calculations reasonably necessary for determining compliance by each Group Member with the provisions of this Agreement referred to therein as of the last day of the quarter or fiscal year of the Parent, as the case may be, and (y) to the extent

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not previously disclosed to the Administrative Agent, a description of any change in the jurisdiction of organization of any Loan Party and a list of any registered Intellectual Property issued to or acquired by any Loan Party since the date of the most recent report delivered pursuant to this clause (y) (or, in the case of the first such report so delivered, since the Closing Date);

(b) as soon as available, and in any event no later than 90 days after the end of each fiscal year of the Parent, a detailed consolidated budget for the following fiscal year (including a projected consolidated balance sheet of the Parent and its Subsidiaries as of the end of each fiscal quarter of such fiscal year, the related consolidated statements of projected cash flow, projected changes in financial position and projected income and a description of the underlying assumptions applicable thereto), and, as soon as available, significant revisions, if any, of such budget and projections with respect to such fiscal year (collectively, the "**Projections**"), which Projections shall be commensurate with those provided to the Parent's board of directors;

(c) promptly, and in any event within five (5) Business Days after receipt thereof by any Loan Party or any Subsidiary thereof, copies of each notice or other correspondence received from the SEC (or comparable agency in any applicable non-U.S. jurisdiction) concerning any investigation or possible investigation or other inquiry by such agency regarding financial or other operational results of any Loan Party or any Subsidiary thereof (other than routine comment letters from the staff of the SEC relating to the Parent's filings with the SEC);

(d) within five days after the same are sent, copies of each annual report, proxy or financial statement or other material report that the Parent sends to the holders of any class of the Parent's debt securities or public equity securities and, within five days after the same are filed, copies of all annual, regular, periodic and special reports and registration statements which the Parent may file with the SEC under Section 13 or 15(d) of the Exchange Act, or with any national securities exchange, and not otherwise required to be delivered to the Administrative Agent pursuant hereto;

(e) upon request by the Administrative Agent, within five days after the same are sent or received, copies of all correspondence, reports, documents and other filings with any Governmental Authority regarding compliance with or maintenance of Governmental Approvals or Requirements of Law or that would reasonably be expected to have a Material Adverse Effect on any of the Governmental Approvals or otherwise on the operations of the Group Members;

(f) [reserved];

(g) [reserved];

(h) concurrently with the delivery of the financial statements referred to in Section 6.1(a), a report of a reputable insurance broker with respect to the insurance coverage maintained by the Borrowers pursuant to Section 6.6 and the terms of the Guarantee and Collateral Agreement, together with any supplemental reports with respect thereto which the Administrative Agent may reasonably request; and

(i) promptly, such additional financial and other information as the Administrative Agent may from time to time reasonably request.

**6.3 [Reserved].**

**6.4 Payment of Obligations; Taxes.**

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

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

**6.5 Maintenance of Existence; Compliance.** (a) Except as otherwise permitted by Section 7.4, (i) preserve, renew and keep in full force and effect its organizational existence, in the case of the Borrowers, in any State of the United States or the District of Columbia, and (ii) unless the failure to do so would not reasonably be expected to have a Material Adverse Effect, take all reasonable action to maintain or obtain all Governmental Approvals and all other rights, privileges and franchises necessary in the normal conduct of its business or necessary for the performance by such Person of its Obligations under any Loan Document; (b) comply with all Contractual Obligations (including with respect to leasehold interests of the Borrowers) and Requirements of Law except to the extent that failure to comply therewith could not, in the aggregate, reasonably be expected to have a Material Adverse Effect; and (c) comply with all Governmental Approvals, and any term, condition, rule, filing or fee obligation, or other requirement related thereto, except to the extent that failure to do so would not reasonably be expected to have a Material Adverse Effect. Without limiting the generality of the foregoing, the Parent shall, and shall cause each of its ERISA Affiliates to: (1) maintain each Pension Plan in compliance in all material respects with the applicable provisions of ERISA, the Code or other Federal or state law; (2) cause each Pension Plan to maintain its qualified status under Section 401(a) of the Code; (3) make all required contributions to any Pension Plan; (4) not become a party to any Multiemployer Plan; (5) to the extent applicable with respect to any Pension Plan, ensure that all liabilities under such Pension Plan are either (x) funded to at least the minimum level required by law or, if higher, to the level required by the terms governing such Pension Plan; (y) insured with a reputable insurance company; or (z) provided for or recognized in the financial statements most recently delivered to the Administrative Agent and the Lenders pursuant hereto; and (6) ensure that the contributions or premium payments to or in respect of each Pension Plan are and continue to be promptly paid at no less than the rates required under the rules of such Pension Plan and in accordance with the most recent actuarial advice received in relation to such Pension Plan and applicable law.

**6.6 Maintenance of Property; Insurance.** (a) Keep all property useful and necessary in its business in good working order and condition, ordinary wear and tear excepted and (b) maintain with financially sound and reputable insurance companies insurance on all its property in at least such amounts and against at least such risks as is customary for companies engaged in the same or a similar business. All property policies shall have a lender's loss payable endorsement showing the Administrative Agent as an additional loss payee. All liability policies shall show, or have endorsements showing, the Administrative Agent as an additional insured. All proceeds payable under any property policy shall, at the option of the Administrative Agent, be payable to the Administrative Agent on account of the Obligations; provided, however, that the Borrowers shall be entitled to retain and apply insurance proceeds of up to \$100,000 per occurrence to the repair or replacement of any property that is the subject of a claim under such policy.

**6.7 Inspection of Property; Books and Records; Discussions.** (a) Keep proper books of records and account in which full, true and correct entries shall be made in order to enable its financial statements to be prepared in conformity with GAAP and all Requirements of Law shall be made of all dealings and transactions in relation to its business and activities and (b) at reasonable times on three (3) Business Days' notice (provided no notice is required if an Event of Default has occurred and is continuing), permit the Administrative Agent, its agents and representatives and independent contractors of the Administrative Agent to visit and inspect any of its properties and examine and make abstracts from any of

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its books and records and to discuss the business, operations, properties and financial and other condition of the Group Members with officers, directors and employees of the Group Members and with their independent certified public accountants; provided that such inspections shall not be undertaken more frequently once every twelve (12) months, unless an Event of Default has occurred and is continuing, in which case such inspections and audits shall occur as often as the Administrative Agent shall reasonably determine is necessary.

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

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

(b) any (i) default or event of default under any Contractual Obligation of any Group Member that, if not cured would reasonably be expected to have a Material Adverse Effect; and (ii) litigation, investigation or proceeding that may exist at any time between any Group Member and any Governmental Authority that, if adversely determined, would reasonably be expected to have a Material Adverse Effect;

(c) any litigation or proceeding to which a Group Member is a party (i) in which the amount involved is \$1,000,000 or more and not covered by insurance, (ii) in which injunctive or similar relief is sought against any Group Member, or (iii) which relates to any Loan Document;

(d) (i) the occurrence of any of the following events affecting such Borrower or any of its respective ERISA Affiliates (but in no event more than ten days after such event), the occurrence of any of the following events, and shall provide the Administrative Agent with a copy of any notice with respect to such event that may be required to be filed with a Governmental Authority and any notice delivered by a Governmental Authority to such Borrower or any of its ERISA Affiliates with respect to such event, if such event would reasonably be expected to result in liability in excess of \$250,000 to such Borrower or any of its respective ERISA Affiliates: (A) an ERISA Event, (B) the adoption of any new Pension Plan by such Borrower or any of its ERISA Affiliates, (C) the adoption of any amendment to a Pension Plan, if such amendment will result in a material increase in benefits or unfunded benefit liabilities (as defined in Section 4001(a)(18) of ERISA), or (D) the commencement of contributions by such Borrower or any of its ERISA Affiliate to any Pension Plan that is subject to Title IV of ERISA or Section 412 of the Code; and

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

(iii) all notices from a Multiemployer Plan sponsor concerning an ERISA Event that would reasonably be expected to result in a liability in excess of \$250,000 to such Borrower or any of its ERISA Affiliates;

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

(f) any development or event that has had or would reasonably be expected to have a Material Adverse Effect; and

(g) any changes to the beneficial ownership information set forth in the Collateral Information Certificate. The Loan Parties understand and acknowledge that the Secured Parties rely on

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such true, accurate and up-to-date beneficial ownership information to meet their regulatory obligations to obtain, verify and record information about the beneficial owners of their legal entity customers;

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

#### **6.9 Environmental Laws.**

(a) Comply with all applicable Environmental Laws, and obtain and comply with and maintain, any and all licenses, approvals, notifications, registrations or permits required by applicable Environmental Laws, except those the failure to obtain, comply with and maintain would not reasonably be expected to have a Material Adverse Effect.

(b) Conduct and complete all investigations, studies, sampling and testing, and all remedial, removal and other actions required of the Borrowers under Environmental Laws and promptly comply in all material respects with all lawful orders and directives of all Governmental Authorities regarding Environmental Laws, subject to the Borrowers' right to challenge the applicability of any such orders and directives in good faith.

**6.10 Operating Accounts.** Maintain its and its Subsidiaries' primary depository and operating accounts and securities accounts with SVB or with SVB's Affiliates; provided that a portion of the operating accounts and securities accounts of the Borrowers and their respective Subsidiaries' may be maintained with one or more of the Lenders or their Affiliates and the accounts listed on [Schedule 6.10](#) may be maintained with NBSC, subject in each case to a Control Agreement.

#### **6.11 [Reserved].**

#### **6.12 Additional Collateral, Etc.**

(a) With respect to any property (to the extent included in the definition of Collateral) acquired after the Closing Date by any Loan Party (other than (x) any property described in paragraph (b), (c) or (d) below, and (y) any property subject to a Lien expressly permitted by [Section 7.3\(g\)](#)) as to which the Administrative Agent, for the ratable benefit of the Secured Parties, does not have a perfected Lien, promptly (and in any event within five (5) Business Days, or such longer period as the Administrative Agent may agree in its sole discretion) (i) execute and deliver to the Administrative Agent such amendments to the Guarantee and Collateral Agreement or such other documents as the Administrative Agent may reasonably deem necessary or advisable to evidence that such Loan Party is a Guarantor and to grant to the Administrative Agent, for the ratable benefit of the Secured Parties, a security interest in such property and (ii) take all actions necessary or advisable in the opinion of the Administrative Agent to grant to the Administrative Agent, for the ratable benefit of the Secured Parties, a perfected first priority (except as expressly permitted by [Section 7.3](#)) security interest and Lien in such property, including the filing of Uniform Commercial Code financing statements in such jurisdictions as may be required by the Guarantee and Collateral Agreement or by law or as may be requested by the Administrative Agent.

(b) With respect to any fee interest in any real property having a value (together with improvements thereof) of at least \$1,000,000 acquired after the Closing Date by any Loan Party (other than any such real property subject to a Lien expressly permitted by [Section 7.3\(g\)](#)), promptly (and in any event within forty-five (45) days (or such longer period as the Administrative Agent may agree in its sole discretion) of such request), to the extent requested by the Administrative Agent, (i) execute and deliver a first priority (except for any Liens permitted by [Section 7.3\(g\)](#)) Mortgage, in favor of the Administrative

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Agent, for the ratable benefit of the Secured Parties, covering such real property, (ii) if requested by the Administrative Agent, provide the Lenders with (x) title and extended coverage insurance covering such real property in an amount at least equal to the purchase price of such real property (or such other amount as shall be reasonably specified by the Administrative Agent, not to exceed the fair market value of the real property) as well as a current ALTA survey thereof, together with a surveyor's certificate, and (y) any consents or estoppels reasonably deemed reasonably necessary by the Administrative Agent in connection with such Mortgage, each of the foregoing in form and substance reasonably satisfactory to the Administrative Agent and (iii) if requested by the Administrative Agent, deliver to the Administrative Agent legal opinions relating to the matters described above, which opinions shall be in form and substance, and from counsel, reasonably satisfactory to the Administrative Agent. In connection with the foregoing, no later than three (3) Business Days prior to the date on which a Mortgage is executed and delivered pursuant to this [Section 6.12](#), in order to comply with the Flood Laws, the Administrative Agent shall have received the following documents (collectively, the "**Flood Documents**"): (A) a completed standard "life of loan" flood hazard determination form (a "**Flood Determination Form**"), (B) if the improvement(s) to the applicable improved real property is located in a special flood hazard area, a notification to the applicable Loan Party ("**Loan Party Notice**") and (if applicable) notification to the applicable Loan Party that flood insurance coverage under the National Flood Insurance Program ("**NFIP**") is not available because the community does not participate in the NFIP, (C) documentation evidencing the applicable Loan Party's receipt of the Loan Party Notice (e.g., countersigned Loan Party Notice, return receipt of certified U.S. Mail, or overnight delivery), and (D) if the Loan Party Notice is required to be given and, to the extent flood insurance is required by any applicable Requirement of Law or any Lenders' written regulatory or compliance procedures and flood insurance is available in the community in which the property is located, a copy of one of the following: the flood insurance policy, the applicable Loan Party's application for a flood insurance policy plus proof of premium payment, a declaration page confirming that flood insurance has been issued, or such other evidence of flood insurance reasonably satisfactory to the Administrative Agent (any of the foregoing being "**Evidence of Flood Insurance**").

(c) With respect to any new direct or indirect Subsidiary (other than an Excluded Foreign Subsidiary) created or acquired after the Closing Date by any Loan Party (including pursuant to a Permitted Acquisition), promptly (and in any event within ten (10) Business Days) (i) execute and deliver to the Administrative Agent such amendments to the Guarantee and Collateral Agreement as the Administrative Agent deems necessary or advisable to grant to the Administrative Agent, for the ratable benefit of the Secured Parties, a perfected first priority security interest and Lien in the Capital Stock of such new Subsidiary that is owned directly or indirectly by such Loan Party, (ii) deliver to the Administrative Agent such documents and instruments as may be reasonably required to grant, perfect, protect and ensure the priority of such security interest, including but not limited to, the certificates representing such Capital Stock, together with undated stock powers, in blank, executed and delivered by a duly authorized officer of the relevant Loan Party, (iii) cause such new Subsidiary (A) to become a party to the Guarantee and Collateral Agreement, (B) to take such actions as are necessary or advisable in the opinion of the Administrative Agent to grant to the Administrative Agent for the ratable benefit of the Secured Parties a perfected first priority security interest and Lien in the Collateral described in the Guarantee and Collateral Agreement, with respect to such Subsidiary, including the filing of Uniform Commercial Code financing statements in such jurisdictions as may be required by the Guarantee and Collateral Agreement or by law or as may be reasonably requested by the Administrative Agent and (C) to deliver to the Administrative Agent a certificate of such Subsidiary, in a form reasonably satisfactory to the Administrative Agent, with appropriate insertions and attachments, and (iv) if requested by the Administrative Agent, deliver to the Administrative Agent legal opinions relating to the matters described above, which opinions shall be in form and substance, and from counsel, reasonably satisfactory to the Administrative Agent.

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(d) With respect to any new Excluded Foreign Subsidiary created or acquired after the Closing Date by any Loan Party, promptly (and in any event within ten (10) Business Days) (i) execute and deliver to the Administrative Agent such amendments to the Guarantee and Collateral Agreement, as the Administrative Agent deems necessary or advisable to grant to the Administrative Agent, for the ratable benefit of the Secured Parties, a perfected first priority security interest and Lien in the Capital Stock of such new Excluded Foreign Subsidiary that is owned by any such Loan Party (provided that in no event shall more than 66% of the total outstanding voting Capital Stock of any such new Excluded Foreign Subsidiary be required to be so pledged), (ii) deliver to the Administrative Agent the certificates representing such Capital Stock, together with undated stock powers, in blank, executed and delivered by a duly authorized officer of the relevant Loan Party, and take such other action as may be necessary or, in the opinion of the Administrative Agent, desirable to perfect the Administrative Agent's security interest therein, and (iii) if reasonably requested by the Administrative Agent, deliver to the Administrative Agent legal opinions relating to the matters described above, which opinions shall be in form and substance, and from counsel, reasonably satisfactory to the Administrative Agent.

(e) Each Loan Party shall use commercially reasonable efforts to obtain a landlord's agreement or bailee letter, as applicable, from the lessor of its headquarters location, from the lessor of each data center of the Loan Parties, and from the lessor of or the bailee related to any other location where in excess of \$100,000 of Collateral is stored or located, which agreement or letter, in any such case, shall contain a waiver or subordination of all Liens or claims that the landlord or bailee may assert against the Collateral at that location, and shall otherwise be reasonably satisfactory in form and substance to the Administrative Agent. After the Closing Date, no Collateral having a book value in excess of \$100,000 shall be stored at any new location without the prior written consent of the Administrative Agent or unless and until a reasonably satisfactory landlord agreement or bailee letter, as appropriate, shall first have been obtained with respect to such location. Each Loan Party shall pay and perform its material obligations under all leases and other agreements with respect to each leased location or public warehouse where any Collateral is or may be located.

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

**6.14 Licensee Consent.** Prior to entering into or becoming bound by any inbound Intellectual Property license or agreement (other than over-the-counter software that is commercially available to the public), the breach or termination of which would reasonably be expected to cause a Material Adverse Effect, the applicable Loan Party shall: (a) provide written notice to the Administrative Agent of the material terms of such license or agreement; and (b) to the extent reasonably requested by the Administrative Agent, obtain the consent of, or waiver by, any person whose consent or waiver is necessary for (i) the applicable Loan Party's interest in such license or agreement to be deemed Collateral and for the Administrative Agent to have a security interest in it that might otherwise be restricted by the terms of the applicable license or agreement, and (ii) the Administrative Agent to have the ability in the event of a liquidation of any Collateral to dispose of such Collateral in accordance with the Administrative Agent's rights and remedies under this Agreement and the other Loan Documents.

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

**6.16 Anti-Corruption Laws.** Conduct its business in compliance with all applicable anti-corruption laws and maintain policies and procedures designated to promote and achieve compliance with such laws.

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

## SECTION 7 NEGATIVE COVENANTS

Each Borrower hereby jointly and severally agrees that, at all times prior to the Discharge of Obligations, no Borrower shall, nor shall any Borrower permit any of its Subsidiaries to, directly or indirectly:

### 7.1 Financial Condition Covenants.

(a) Minimum Consolidated Adjusted Quick Ratio. Permit the Consolidated Adjusted Quick Ratio as of the last day of any fiscal quarter to be less than 1.25:1.00.

(b) Minimum Consolidated EBITDA. During any Consolidated Adjusted EBITDA Testing Period, permit Consolidated EBITDA for any fiscal quarter, as calculated on a trailing twelve (12) months basis, to be less than \$1.00:

### 7.2 Indebtedness.

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

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

(b) Indebtedness of (i) any Loan Party owing to any other Loan Party, and (ii) any Group Member (which is not a Loan Party) to any other Group Member (which is not a Loan Party);

(c) Guarantee Obligations (i) of any Loan Party of the Indebtedness of any other Loan Party; (ii) of any Group Member (which is not a Loan Party) of the Indebtedness of any Loan Party, or (iii) by any Group Member (which is not a Loan Party) of the Indebtedness of any other Group Member (which is not a Loan Party), provided that, in any case (i), (ii) or (iii), the Indebtedness so guaranteed is otherwise permitted by the terms hereof;

(d) Indebtedness outstanding on the date hereof and listed on Schedule 7.2(d) and any Permitted Refinancing Indebtedness in respect thereof;

(e) Indebtedness (including, without limitation, Capital Lease Obligations, including any incurred in addition to those permitted pursuant to clause (d) above) secured by Liens permitted by Section 7.3(g) in an aggregate principal amount not to exceed \$20,000,000 at any one time outstanding and any Permitted Refinancing Indebtedness in respect thereof);

(f) Subordinated Indebtedness;

(g) unsecured Indebtedness to trade creditors incurred in the ordinary course of business;

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

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(i) unsecured Indebtedness of a type not described above of the Loan Parties and their respective Subsidiaries in an aggregate principal amount, for all such Indebtedness taken together, not to exceed \$250,000 at any one time outstanding;

(j) obligations (contingent or otherwise) of the Loan Parties and their respective Subsidiaries existing or arising under any Specified Swap Agreement, provided that such obligations are (or were) entered into by such Person in accordance with Section 7.13 and not for purposes of speculation;

(k) to the extent constituting Indebtedness, building lease obligations, whether or not reflected on the balance sheet of the Borrowers, provided that the aggregate outstanding amount of such obligations does not exceed \$180,000,000; and

(l) Indebtedness of a Person (other than a Loan Party or one of their respective Subsidiaries which constituted a Subsidiary prior to the consummation of the applicable merger referenced below) existing at the time such Person is merged with or into a Loan Party or a Subsidiary or becomes a Subsidiary; provided that (i) such Indebtedness was not, in any case, incurred by such other Person in connection with, or in contemplation of, such merger or acquisition, (ii) such merger or acquisition constitutes a Permitted Acquisition, (iii) with respect to any such Person who becomes a Subsidiary, (A) such Subsidiary is the only obligor in respect of such Indebtedness, and (B) to the extent such Indebtedness is permitted to be secured hereunder, only the assets of such Subsidiary secure such Indebtedness, and (iv) the aggregate amount of all such Indebtedness at any one time outstanding shall not exceed \$5,000,000;

(m) obligations incurred in the ordinary course of business in respect of bids, tenders, trade contracts, governmental contracts, statutory obligations, surety bonds, performance and return of money bonds, performance and completion guarantees and other obligations of a like nature;

(n) up to \$240,000,000 aggregate principal amount of Permitted Convertible Indebtedness; and

(o) any Permitted Bond Hedge Transaction.

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

(a) Liens for Taxes not yet due or that are being contested in good faith by appropriate proceedings; provided that adequate reserves with respect thereto are maintained on the books of the applicable Group Member in conformity with GAAP;

(b) carriers', warehousemen's, landlord's, mechanics', materialmen's, repairmen's or other like Liens arising in the ordinary course of business that are not overdue for a period of more than 30 days or that are being contested in good faith by appropriate proceedings;

(c) pledges or deposits in connection with workers' compensation, unemployment insurance and other social security legislation;

(d) deposits to secure the performance of bids, trade contracts (other than for borrowed money), leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business (other than for indebtedness or any Liens arising under ERISA);

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- (e) easements, rights-of-way, restrictions and other similar encumbrances incurred in the ordinary course of business that, in the aggregate, are not substantial in amount and that do not in any case materially detract from the value of the property subject thereto or materially interfere with the ordinary conduct of the business of the applicable Group Member;
- (f) Liens in existence on the date hereof listed on Schedule 7.3(f); provided that (i) no such Lien is spread to cover any additional property after the Closing Date, (ii) the amount of Indebtedness secured or benefitted thereby is not increased, (iii) the direct or any contingent obligor with respect thereto is not changed, and (iv) any renewal or extension of the obligations secured thereby is permitted by Section 7.2(d);
- (g) Liens securing Indebtedness incurred pursuant to Section 7.2(e) to finance the acquisition, improvement or construction of fixed or capital assets; provided that (i) such Liens shall be created substantially simultaneously with the acquisition, improvement or construction of such fixed or capital assets, (ii) such Liens do not at any time encumber any property other than the property financed by such Indebtedness, and (iii) the amount of Indebtedness secured thereby is not increased;
- (h) Liens created pursuant to the Security Documents;
- (i) any interest or title of a lessor or licensor under any lease or license entered into by a Group Member in the ordinary course of its business and covering only the assets so leased or licensed;
- (j) judgment Liens that do not constitute a Default or an Event of Default under Section 8.1(h) of this Agreement;
- (k) bankers' Liens, rights of setoff and other similar Liens existing solely with respect to cash, Cash Equivalents, securities, commodities and other funds on deposit in one or more accounts maintained by a Group Member, in each case arising in the ordinary course of business in favor of banks, other depository institutions, securities or commodities intermediaries or brokerages with which such accounts are maintained securing amounts owing to such banks or financial institutions with respect to cash management and operating account management or are arising under Section 4-208 or 4-210 of the UCC on items in the course of collection;
- (l) Liens on property of a Person existing at the time such Person is acquired by, merged into or consolidated with a Loan Party or becomes a Subsidiary of a Loan Party or acquired by a Loan Party; provided that (i) such Liens were not created in contemplation of such acquisition, merger, consolidation or Investment, (ii) such Liens do not extend to any assets other than those of such Person, and (iii) the applicable Indebtedness secured by such Lien is permitted under Section 7.2;
- (m) the replacement, extension or renewal of any Lien permitted by clause (l) above upon or in the same property theretofore subject thereto or the replacement, extension or renewal (without increase in the amount or change in any direct or contingent obligor) of the Indebtedness secured thereby;
- (n) non-exclusive licenses of Intellectual Property granted to third parties in the ordinary course of business and licenses of Intellectual Property that could not result in a legal transfer of title of the licensed property that may be exclusive in respects other than territory and that may be exclusive as to territory only as to discreet geographical areas outside the United States; and
- (o) Liens arising from precautionary UCC financing statements filed under any lease solely covering such leased items.
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**7.4 Fundamental Changes.** Enter into any merger, consolidation or amalgamation, division of or by a limited company, or an allocation of assets to a series of a limited liability company (or the unwinding of such division of allocation), or liquidate, wind up or dissolve itself (or suffer any liquidation or dissolution), or Dispose of all or substantially all of its property or business, except that:

- (a) any Subsidiary of a Loan Party may be merged or consolidated with or into a Loan Party (provided that such Loan Party shall be the continuing or surviving Person);
- (b) any Subsidiary of the Parent may Dispose of any or all of its assets (i) pursuant to any liquidation or other transaction that results in the assets of such Subsidiary being transferred to a Borrower or any other Loan Party, or (ii) pursuant to a Disposition permitted by Section 7.5; and
- (c) any Investment expressly permitted by Section 7.8 may be structured as a merger, consolidation or amalgamation.

**7.5 Disposition of Property.** Dispose of any of its property, whether now owned or hereafter acquired, except:

- (a) Dispositions of obsolete or worn out property in the ordinary course of business;
  - (b) Dispositions of Inventory in the ordinary course of business;
  - (c) Dispositions permitted by clause (i) of Section 7.4(b);
  - (d) the sale or issuance of the Capital Stock of any Subsidiary of the Parent (i) to a Borrower or any other Loan Party, or (ii) in connection with any transaction that does not result in a Change of Control;
  - (e) the use or transfer of money, cash or Cash Equivalents in a manner that is not prohibited by the terms of this Agreement or the other Loan Documents;
  - (f) the licensing of Intellectual Property as permitted in Section 7.3(n);
  - (g) the Disposition of property (i) by any Loan Party to any other Loan Party, and (ii) by any Group Member (which is not a Loan Party) to any other Group Member;
  - (h) Dispositions of property subject to a Casualty Event;
  - (i) leases or subleases of Real Property;
  - (j) source code escrow arrangements in the ordinary course of business;
  - (k) the sale or discount without recourse of accounts receivable arising in the ordinary course of business in connection with the compromise or collection thereof; provided that any such sale or discount is undertaken in accordance with Section 6.3(b);
  - (l) any abandonment, cancellation, non-renewal or discontinuance of use or maintenance of Intellectual Property (or rights relating thereto) of any Group Member that the Borrowers determine in good faith is desirable in the conduct of its business and not materially disadvantageous to the interests of the Lenders;
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(m) Dispositions of other property having a fair market value not to exceed \$1,000,000 in the aggregate for any fiscal year of the Parent, provided that at the time of any such Disposition, no Event of Default shall have occurred and be continuing or would result from such Disposition;

(n) payments permitted under Section 7.6, Investments permitted under Section 7.7, and Liens permitted under Section 7.3; and

(o) the unwinding of any Permitted Bond Hedge Transaction.

provided, however, that any Disposition made pursuant to this Section 7.5 shall be made in good faith on an arm's length basis and, other than with respect to Dispositions permitted under clauses (a), (c), (g), (h) and (l) above, for fair value.

**7.6 Restricted Payments.** Make any payment or prepayment of principal of, premium, if any, or interest on, or redemption, purchase, retirement, defeasance (including in-substance or legal defeasance), sinking fund, settlement, conversion or similar payment with respect to, any Permitted Convertible Indebtedness, Permitted Bond Hedge Transaction, earn-out payment, seller debt or deferred purchase payments, declare or pay any dividend (other than dividends payable solely in common stock of the Person making such dividend) on, or make any payment on account of, or set apart assets for a sinking or other analogous fund for, the purchase, redemption, defeasance, retirement or other acquisition of, any Capital Stock of any Group Member, whether now or hereafter outstanding, or make any other distribution in respect thereof, either directly or indirectly, whether in cash or property or in obligations of any Group Member (collectively, "**Restricted Payments**"), except that, so long as no Event of Default shall have occurred and be continuing at the time of any action described below or would result therefrom:

(a) any Group Member may (i) make Restricted Payments to any Borrower and (ii) declare and make dividends which are payable solely in the common Capital Stock of such Group Member;

(b) each Loan Party may purchase common Capital Stock or common Capital Stock options from present or former officers, employees or consultants of any Group Member pursuant to stock repurchase agreements; provided that no Default or Event of Default then exists or would result therefrom and the aggregate amount of payments made under this clause (b) shall not exceed \$750,000 during the term of this Agreement;

(c) the Loan Parties may make earn-out payments, payments on account of seller debt and deferred purchase payments so long as both before and after giving effect to such payments, no Event of Default has occurred and is continuing, and the Loan Parties are in pro forma compliance with the financial covenants set forth in Section 7.1 hereof;

(d) Parent may (A) convert or exchange any Permitted Convertible Indebtedness in accordance with its terms into common stock of Parent and make a payment of cash in lieu of fractional shares of common stock deliverable upon any such conversion or exchange, (B) make regularly scheduled interest payments in respect of Permitted Convertible Indebtedness, (C) deliver cash in connection with any conversion or exchange of Permitted Convertible Indebtedness in an aggregate amount since the date of the indenture governing such Permitted Convertible Indebtedness not to exceed the sum of (i) the principal amount of such Permitted Convertible Indebtedness plus (ii) any payments received by Parent pursuant to the exercise, settlement or termination of any related Permitted Bond Hedge Transaction; provided that after giving *pro forma* effect to such Restricted Payment, (1) the Borrower shall be in compliance with the then applicable financial covenants set forth in Section 7.1 hereof as of the end of the most recently ended quarter for which financial statements are required to be delivered prior to such Restricted Payment, and the Borrower shall have delivered to the Administrative Agent a certificate in form and substance

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reasonably satisfactory to the Administrative Agent evidencing compliance with the requirements of this clause (C), and (2) immediately before and after giving effect to such Restricted Payment, the Loan Parties shall have Liquidity of at least \$50,000,000, (D) make any required payments of cash upon the required repurchase (including a required repurchase in connection with the redemption of Permitted Convertible Indebtedness upon satisfaction of a condition related to the stock price of Parent's common stock) or required repayment of Permitted Convertible Indebtedness, in each case, in an amount that does not exceed the principal amount thereof plus accrued interest; provided that after giving *pro forma* effect to such Restricted Payment, (1) the Borrower shall be in compliance with the then applicable financial covenants set forth in Section 7.1 hereof as of the end of the most recently ended quarter for which financial statements are required to be delivered prior to such Restricted Payment, and the Borrower shall have delivered to the Administrative Agent a certificate in form and substance reasonably satisfactory to the Administrative Agent evidencing compliance with the requirements of this clause (D), and (2) immediately before and after giving effect to such Restricted Payment, the Loan Parties shall have Liquidity of at least \$50,000,000, and (E) make any repurchases or exchanges of Permitted Convertible Indebtedness for cash, shares of Parent's common stock or any combination of cash and shares of Parent's common stock that are not required pursuant to the terms of such Permitted Convertible Indebtedness where the aggregate amount of such cash does not exceed the principal amount thereof plus accrued interest plus cash in lieu of fractional shares of common stock; provided that after giving *pro forma* effect to such Restricted Payment, (1) the Borrower shall be in compliance with the then applicable financial covenants set forth in Section 7.1 hereof as of the end of the most recently ended quarter for which financial statements are required to be delivered prior to such Restricted Payment and the Borrower shall have delivered to the Administrative Agent a certificate in form and substance reasonably satisfactory to the Administrative Agent evidencing compliance with the requirements of this clause (E), and (2) immediately before and after giving effect to such Restricted Payment, Liquidity shall not be less than \$50,000,000;

(e) Parent may (x) make any payments in connection with the entry into a Permitted Bond Hedge Transaction on the closing date of any Permitted Convertible Indebtedness with the proceeds of such Permitted Convertible Indebtedness and (y) acquire common stock of Parent upon exercise and settlement or termination of any Permitted Bond Hedge Transaction, in each case, in accordance with the terms of the agreement governing such Permitted Bond Hedge Transaction; and

(f) Parent may repurchase shares of its common Capital Stock in the open market or in privately negotiated transactions for an aggregate price not to exceed \$20,000,000 in accordance with the stock repurchase program approved by Parent's board of directors on December 19, 2019.

**7.7 Consolidated Capital Expenditures.** Make or commit to make any Consolidated Capital Expenditure, except Consolidated Capital Expenditures made by the Group Members in the ordinary course of business and not exceeding during any fiscal year, for all such Consolidated Capital Expenditures of all of the Group Members taken together, the amount set forth below opposite such fiscal year:

<u>Fiscal Year</u>	<u>Consolidated Capital Expenditures</u>
2020 and thereafter	\$27,500,000

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

- (a) extensions of trade credit in the ordinary course of business;
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(b) (i) Investments in cash and Cash Equivalents and (ii) Investments permitted by the Parent's board-approved investment policy, a copy of which has been provided to the Administrative Agent (as the same may be amended from time to time, so long as (x) such amendment is approved by the Parent's board of directors; and (y) promptly, and in any event within five (5) Business Days after approval, a copy of such amendment is provided to the Administrative Agent);

(c) Guarantee Obligations permitted by Section 7.2;

(d) (i) travel advances and employee relocation loans and other employee loans and advances in the ordinary course of business in an aggregate amount not to exceed \$250,000 at any time, and (ii) loans to employees, officers or directors relating to the purchase of equity securities of the Parent or its Subsidiaries pursuant to employee stock purchase plans or agreements approved by the Parent's board of directors in an aggregate amount not to exceed \$500,000 in any fiscal year;

(e) intercompany Investments by any Group Member in a Loan Party;

(f) Investments in the ordinary course of business consisting of endorsements of negotiable instruments for collection or deposit;

(g) Investments received in the ordinary course of business in connection with credit extensions to customers or in settlement of amounts due to any Group Member effected in the ordinary course of business or owing to such Group Member as a result of Insolvency Proceedings involving an Account Debtor or upon the foreclosure or enforcement of any Lien in favor of such Group Member;

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

(i) in addition to Investments otherwise expressly permitted by this Section, Investments by the Group Members the aggregate amount of all of which Investments (valued at cost) does not exceed \$200,000 outstanding at any time;

(j) deposits made to secure the performance of leases, licenses or contracts in the ordinary course of business, and other deposits made in connection with the incurrence of Liens permitted under Section 7.3;

(k) promissory notes and other non-cash consideration received in connection with Dispositions permitted by Section 7.5; and

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

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

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Requirements of Law;

- (ii) all transactions related to such purchase or acquisition shall be consummated in all material respects in accordance with all
  - (iii) no Loan Party shall, as a result of or in connection with any such purchase or acquisition, assume or incur any direct or contingent liabilities (whether relating to environmental, tax, litigation or other matters) that, as of the date of such purchase or acquisition, would reasonably be expected to result in a Material Adverse Effect;
  - (iv) the Borrowers shall give the Administrative Agent at least ten (10) Business Days' prior written notice of any such purchase or acquisition;
  - (v) the Borrowers shall provide to the Administrative Agent as soon as available but in any event not later than five (5) Business Days after the execution thereof, a copy of any executed purchase agreement or similar agreement with respect to any such purchase or acquisition;
  - (vi) any such newly-created or acquired Subsidiary, or the Loan Party that is the acquirer of assets in connection with an asset acquisition, shall comply with the requirements of Section 6.12, except to the extent compliance with Section 6.12 is prohibited by pre-existing Contractual Obligations or Requirements of Law binding on such Subsidiary or its properties;
  - (vii) [reserved].
  - (viii) (x) immediately before and immediately after giving effect to any such purchase or other acquisition, no Default or Event of Default shall have occurred and be continuing and (y) immediately before and immediately after giving effect to such purchase or other acquisition, the Borrowers shall be in compliance with each of the covenants set forth in Section 7.1, based upon financial statements delivered to the Administrative Agent which give effect, on a *pro forma* basis, to such acquisition or other purchase;
  - (ix) the Borrowers shall not, based upon the knowledge of the Borrowers as of the date any such acquisition or other purchase is consummated, reasonably expect such acquisition or other purchase to result in an Event of Default under Section 8.1(c), at any time during the term of this Agreement, as a result of a breach of any of the financial covenants set forth in Section 7.1;
  - (x) no Indebtedness is assumed or incurred in connection with any such purchase or acquisition other than Indebtedness permitted by the terms of Section 7.2(k);
  - (xi) such purchase or acquisition shall not constitute an Unfriendly Acquisition;
  - (xii) Liquidity shall equal or exceed \$50,000,000 as of the date the definitive agreements relating to any such acquisition or other purchase are executed (after giving effect, on a *pro forma* basis, to the consummation of such acquisition or other purchase);
  - (xiii) each such Permitted Acquisition is of a Person organized under the laws of the United States and engaged in business activities primarily conducted within the United States and in which the Borrowers are permitted to engage pursuant to Section 7.17; and
  - (xiv) the Borrowers shall have delivered to the Administrative Agent, at least five Business Days prior to the date on which any such purchase or other acquisition is to be consummated (or such later date as is agreed by the Administrative Agent in its sole discretion), a certificate of a Responsible Officer of the Parent, in form and substance reasonably satisfactory to the Administrative
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Agent, certifying that all of the requirements set forth in this Section 7.8(l) have been satisfied or will be satisfied on or prior to the consummation of such purchase or other acquisition;

Closing Date; and (m) Investments existing on the date hereof and listed on Schedule 7.8(m), but excluding any increases in the amounts thereof following the

thereunder. (n) the purchase of any Permitted Bond Hedge Transaction by Parent and, subject to Section 7.6, the performance of its obligations

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

#### **7.10 Optional Payments and Modifications of Certain Preferred Stock and Debt Instruments.**

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

**7.11 Transactions with Affiliates.** Enter into any transaction, including any purchase, sale, lease or exchange of property, the rendering of any service or the payment of any management, advisory or similar fees, with any Affiliate (other than any other Loan Party) unless such transaction is (a) otherwise permitted under this Agreement, (b) in the ordinary course of business of the relevant Group Member, and (c) upon fair and reasonable terms no less favorable to the relevant Group Member than it would obtain in a comparable arm's length transaction with a Person that is not an Affiliate.

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

**7.13 Swap Agreements.** Enter into any Swap Agreement, except Specified Swap Agreements which are (a) entered into by a Group Member to (1) hedge or mitigate risks to which such Group Member has actual exposure (other than those in respect of Capital Stock), or (2) effectively cap, collar or exchange interest rates (from fixed to floating

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rates or vice versa, from one floating rate to another floating rate or otherwise) with respect to any interest-bearing liability or investment of such Group Member, or

(b) a Permitted Bond Hedge Transaction.

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

**7.15 Negative Pledge Clauses.** Enter into or suffer to exist or become effective any agreement that prohibits or limits the ability of any Loan Party to create, incur, assume or suffer to exist any Lien upon any of its property or revenues, whether now owned or hereafter acquired, to secure its Obligations under the Loan Documents to which it is a party, other than (a) this Agreement and the other Loan Documents, (b) any agreements governing any purchase money Liens or Capital Lease Obligations otherwise permitted hereby (in which case, any prohibition or limitation shall only be effective against the assets financed thereby), (c) customary restrictions on the assignment of leases, licenses and other agreements, and (d) any agreement in effect at the time any Subsidiary becomes a Subsidiary of a Loan Party, so long as such agreement was not entered into solely in contemplation of such Person becoming a Subsidiary or, in any such case, that is set forth in any agreement evidencing any amendments, restatements, supplements, modifications, extensions, renewals and replacements of the foregoing, so long as such amendment, restatement, supplement, modification, extension, renewal or replacement applies only to such Subsidiary and does not otherwise expand in any material respect the scope of any restriction or condition contained therein.

**7.16 Clauses Restricting Subsidiary Distributions.** Enter into or suffer to exist or become effective any consensual encumbrance or restriction on the ability of any Loan Party and any of their respective Subsidiaries to (a) make Restricted Payments in respect of any Capital Stock of such Subsidiary held by, or to pay any Indebtedness owed to, any other Group Member, (b) make loans or advances to, or other Investments in, any other Group Member, or (c) transfer any of its assets to any other Group Member, except for such encumbrances or restrictions existing under or by reason of (i) any restrictions existing under the Loan Documents, (ii) any restrictions with respect to a Subsidiary imposed pursuant to an agreement that has been entered into in connection with a Disposition permitted hereby of all or substantially all of the Capital Stock or assets of such Subsidiary, (iii) customary restrictions on the assignment of leases, licenses and other agreements, (iv) restrictions of the nature referred to in Section 7.15(b) above under agreements governing purchase money liens or Capital Lease Obligations otherwise permitted hereby which restrictions are only effective against the assets financed thereby or (v) any agreement in effect at the time any Subsidiary becomes a Subsidiary of a Borrower, so long as such agreement applies only to such Subsidiary, was not entered into solely in contemplation of such Person becoming a Subsidiary or in each case that is set forth in any agreement evidencing any amendments, restatements, supplements, modifications, extensions, renewals and replacements of the foregoing, so long as such amendment, restatement, supplement, modification, extension, renewal or replacement does not expand in any material respect the scope of any restriction or condition contained therein.

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

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

**7.19 Certification of Certain Capital Stock.** Take any action to certificate any Capital Stock having been pledged to the Administrative Agent (for the ratable benefit of the Secured Parties) which was

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

**7.20 Amendments to Organizational Agreements and Material Contracts.** (a) Amend or permit any amendments to any Loan Party's organizational documents; or (b) amend or permit any amendments to, or terminate or waive any provision of, any material Contractual Obligation, in each such case if such amendment, termination, or waiver would be adverse to Administrative Agent or the Lenders in any material respect.

**7.21 Use of Proceeds.** Use the proceeds of any Loan or extension of credit hereunder, whether directly or indirectly, and whether immediately, incidentally or ultimately, (a) to purchase or carry margin stock (within the meaning of Regulation U of the Board) or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund Indebtedness originally incurred for such purpose, in each case in violation of, or for a purpose which violates, or would be inconsistent with, Regulation T, U or X of the Board; (b) to finance an Unfriendly Acquisition; (c) to fund any activities of or business with any individual or entity, or in any Designated Jurisdiction, that, at the time of such funding, is the subject of Sanctions, or in any other manner that will result in a violation by any individual or entity (including any individual or entity participating in the transaction, whether as Lender, Arranger, Administrative Agent, L/C Issuer, Swingline Lender, or otherwise) of Sanctions (or lend, contribute or otherwise make available such proceeds to any Subsidiary, joint venture partner or other individual or entity in violation of the foregoing); or (d) for any purpose which would breach the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010, or other similar legislation in other jurisdictions.

**7.22 Subordinated Indebtedness.**

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

(b) Payments. Make any payment or prepayment of principal of, premium, if any, or interest on, or redemption, purchase, retirement, defeasance (including in-substance or legal defeasance), sinking fund or similar payment with respect to, any Subordinated Indebtedness, except as permitted by the subordination provisions in the applicable Subordinated Debt Documents and any subordination agreement with respect thereto in favor of the Administrative Agent and the Lenders.

**7.23 Anti-Terrorism Laws.**

Conduct, deal in or engage in or permit any Affiliate or agent of any Loan Party within its control to conduct, deal in or engage in any of the following activities: (a) conduct any business or engage in any transaction or dealing with any person blocked pursuant to Executive Order No. 13224 ("**Blocked Person**"), including the making or receiving any contribution of funds, goods or services to or for the benefit of any Blocked Person; (b) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to Executive Order No. 13224; or (c) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in Executive Order No. 13224 or the Patriot Act. The Borrowers shall deliver to the Administrative Agent and the Lenders any certification or other

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evidence reasonably requested from time to time by the Administrative Agent or any Lender confirming the Borrower's compliance with this [Section 7.23](#).

## SECTION 8 EVENTS OF DEFAULT

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

(a) the Borrowers shall fail to pay any amount of principal or interest on any Loan when due in accordance with the terms hereof (including [Section 2.8](#)); or the Borrowers shall fail to pay fees or any other amount payable hereunder or under any other Loan Document (other than those relating to Bank Services), within three (3) Business Days after any such amount becomes due in accordance with the terms hereof, or the Borrowers shall fail to pay any Obligations relating to Bank Services within ten (10) days after such Obligations become due in accordance with the terms thereof; or

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

(c) (i) any Loan Party shall default in the observance or performance of any agreement contained in [Section 2.8](#), [Section 5.3](#), [Section 6.1](#) (other than clause (c) thereof), [Section 6.2](#), clause (i) or (ii) of [Section 6.5\(a\)](#), [Section 6.6\(b\)](#), [Section 6.8\(a\)](#), [Section 6.10](#), or [Section 7](#) of this Agreement, (ii) any Loan Party shall default in the observance or performance of any agreement contained in [Section 6.1\(c\)](#) and such default shall continue unremedied for a period of five (5) Business Days thereafter, or (iii) an "Event of Default" under and as defined in any Security Document shall have occurred and be continuing; or

(d) any Loan Party shall default in the observance or performance of any other agreement contained in this Agreement or any other Loan Document to which it is party (other than as provided in paragraphs (a) through (c) of this Section), and such default shall continue unremedied for a period of 10 days thereafter; provided, however, that if the default cannot by its nature be cured within the ten (10) day period or cannot after diligent attempts by the Borrowers be cured within such ten (10) day period, and such default is likely to be cured within a reasonable time, then the Borrowers shall have an additional period (which shall not in any case exceed thirty (30) days) to attempt to cure such default, and within such reasonable time period the failure to cure the default shall not be deemed an Event of Default (but no Revolving Credit Extensions shall be made during such cure period); or

(e) (1) any Group Member shall (i) default in making any payment of any principal of any Indebtedness (including any Guarantee Obligation, but excluding the Loans) on the scheduled or original due date with respect thereto; or (ii) default in making any payment of any interest on any such Indebtedness beyond the period of grace, if any, provided in the instrument or agreement under which such Indebtedness was created; (iii) default in making any payment or delivery under any such Indebtedness constituting a Swap Agreement beyond the period of grace, if any, provided in such Swap Agreement; or (iv) default in the observance or performance of any other agreement or condition relating to any such Indebtedness or contained in any instrument or agreement evidencing, securing or relating thereto which such default is not cured within any applicable cure period, or any other event shall occur or condition exist, the effect of which default or other event or condition is to (x) cause, or to permit the holder or beneficiary of, or, in the case of any such Indebtedness constituting a Swap Agreement, counterparty under, such

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Indebtedness (or a trustee or agent on behalf of such holder, beneficiary, or counterparty) to cause, with the giving of notice if required, such Indebtedness to become due prior to its stated maturity or (in the case of any such Indebtedness constituting a Guarantee Obligation) to become payable or (in the case of any such Indebtedness constituting a Swap Agreement) to be terminated, or (y) to cause, with the giving of notice if required, any Group Member to purchase or redeem or make an offer to purchase or redeem such Indebtedness prior to its stated maturity; provided that, unless such Indebtedness constitutes a Specified Swap Agreement, a default, event or condition described in clause (i), (ii), (iii), or (iv) of this paragraph (e) shall not at any time constitute an Event of Default unless, at such time, one or more defaults, events or conditions of the type described in clauses (i), (ii), (iii), and (iv) of this paragraph (e) shall have occurred with respect to Indebtedness the outstanding principal amount (and, in the case of Swap Agreements, other than Specified Swap Agreements, the Swap Termination Value) of which, individually or in the aggregate of all such Indebtedness, exceeds in the aggregate \$500,000 and the holder(s) of such Indebtedness have not delivered a waiver in writing to the applicable Group Member with respect to such default, event or condition; *provided, further*, that this clause (e)(1) shall not apply to (x) any early payment requirement or unwinding or termination with respect to any Permitted Bond Hedge Transaction, or satisfaction of any condition giving rise to or permitting the foregoing, in accordance with the terms thereof, so long as, in any such case, Parent is not the “defaulting party” (or substantially equivalent term) under the terms of such Permitted Bond Hedge Transaction, (y) any event that permits conversion or exchange of Permitted Convertible Indebtedness (whether into cash, shares of common stock in Parent or any combination thereof) that is not the result of a breach or default by a Group Member of the terms of an agreement governing such Permitted Convertible Indebtedness or (z) any conversion or exchange of Permitted Convertible Indebtedness (whether into cash, shares of common stock in Parent or any combination thereof) that is not the result of a breach or default by a Group Member of the terms of an agreement governing such Permitted Convertible Indebtedness; or (2) any default or event of default (however designated) shall occur with respect to any Subordinated Indebtedness of any Group Member and such default or event of default has not been waived in writing by the holder thereof; or

(f) (i) any Group Member shall commence any case, proceeding or other action (a) under any Debtor Relief Law seeking to have an order for relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts, or (b) seeking appointment of a receiver, trustee, custodian, conservator, judicial manager or other similar official for it or for all or any substantial part of its assets, or any Group Member shall make a general assignment for the benefit of its creditors; or (ii) there shall be commenced against any Group Member any case, proceeding or other action of a nature referred to in clause (i) above that (a) results in the entry of an order for relief or any such adjudication or appointment, or (b) remains undismissed, undischarged or unbonded for a period of 60 days (provided that, during such 60 day period, no Loans shall be advanced or Letters of Credit issued hereunder); or (iii) there shall be commenced against any Group Member any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its assets that results in the entry of an order for any such relief that shall not have been vacated, discharged, or stayed or bonded pending appeal within 60 days from the entry thereof (provided that, during such 60 day period, no Loans shall be advanced or Letters of Credit issued hereunder); or (iv) any Group Member shall take any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in clause (i), (ii), or (iii) above; or (v) any Group Member shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts as they become due; or

(g) There shall occur one or more ERISA Events which individually or in the aggregate results in or otherwise is associated with liability of any Loan Party or any ERISA Affiliate thereof in excess of \$250,000 during the term of this Agreement; or there exists an amount of unfunded benefit liabilities (as defined in Section 4001(a)(18) of ERISA), individually or in the aggregate for all Pension Plans (excluding

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for purposes of such computation any Pension Plans with respect to which assets exceed benefit liabilities) which exceeds \$250,000; or

(h) There is entered against any Group Member (i) one or more final judgments or orders for the payment of money or fines or penalties issued by any Governmental Authority involving in the aggregate a liability (not paid or fully covered by insurance as to which the relevant insurance company has acknowledged coverage) of \$500,000 or more, or (ii) one or more non-monetary final judgments that have, or would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and, in either case (i) or (ii), (A) enforcement proceedings are commenced by any creditor or any such Governmental Authority, as applicable, upon such judgment, order, penalty or fine, as applicable, or (B) such judgment, order, penalty or fine, as applicable, shall not have been vacated, discharged, stayed or bonded, as applicable, pending appeal within 45 days from the entry or issuance thereof; or

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

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

(j) the guarantee contained in Section 2 of the Guarantee and Collateral Agreement shall cease, for any reason, to be in full force and effect or any Loan Party shall so assert; or

(k) a Change of Control shall occur; or

(l) any of the Governmental Approvals shall have been (i) revoked, rescinded, suspended, modified in an adverse manner or not renewed in the ordinary course for a full term or (ii) subject to any decision by a Governmental Authority that designates a hearing with respect to any applications for renewal of any of the Governmental Approvals or that could result in the Governmental Authority taking any of the actions described in clause (i) above, and such decision or such revocation, rescission, suspension, modification or nonrenewal (A) has, or would reasonably be expected to have, a Material Adverse Effect, or (B) materially adversely affects the legal qualifications of any Group Member to hold any material Governmental Approval in any applicable jurisdiction and such revocation, rescission, suspension, modification or nonrenewal could reasonably be expected to materially adversely affect the status of or legal qualifications of any Group Member to hold any material Governmental Approval in any other jurisdiction; or

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

(n) a Material Adverse Effect shall occur.

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

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

(b) if such event is any other Event of Default, any of the following actions may be taken: (i) with the consent of the Required Lenders, the Administrative Agent may, or upon the request of the Required Lenders, the Administrative Agent shall, by notice to the Borrowers state that no further extensions of credit shall be funded by the Lenders hereunder, and/or declare the Revolving Commitments, the Swingline Commitments and the L/C Commitments to be terminated forthwith, whereupon the Revolving Commitments, the Swingline Commitments and the L/C Commitments shall immediately terminate; (ii) with the consent of the Required Lenders, the Administrative Agent may, or upon the request of the Required Lenders, the Administrative Agent shall, by notice to the Borrowers, declare the Loans (with accrued interest thereon) and all other amounts owing under this Agreement and the other Loan Documents to be due and payable forthwith, whereupon the same shall immediately become due and payable; (iii) any Qualified Counterparty or Bank Services Provider may terminate any Specified Swap Agreement or other Bank Services Agreement then outstanding; and (iv) the Administrative Agent may exercise on behalf of itself, the Lenders and the Issuing Lender all rights and remedies available to it, the Lenders and the Issuing Lender under the Loan Documents. With respect to all Letters of Credit with respect to which presentment for honor shall not have occurred at the time of an acceleration pursuant to this paragraph, the Borrowers shall Cash Collateralize an amount equal to 105% (110% in the case of any L/C Exposure in respect of any Letter of Credit denominated in a Foreign Currency) of the aggregate then undrawn and unexpired amount of such Letters of Credit. Amounts so Cash Collateralized shall be applied by the Administrative Agent to the payment of drafts drawn under such Letters of Credit, and the unused portion thereof after all such Letters of Credit shall have expired or been fully drawn upon, if any, shall be applied to repay other Obligations of the Borrowers hereunder and under the other Loan Documents in accordance with Section 8.3. In addition, (x) the Borrowers shall also Cash Collateralize the full amount of any Swingline Loans then outstanding, and (y) to the extent elected by the applicable Bank Services Provider, the Borrowers shall also Cash Collateralize the amount of any Obligations in respect of Bank Services then outstanding. After all such Letters of Credit and Bank Services Agreements shall have been terminated, expired or fully drawn upon, as applicable, and all amounts drawn under any such Letters of Credit shall have been reimbursed in full and all other Obligations of the Borrowers and the other Loan Parties (including any such Obligations arising in connection with Bank Services) shall have been paid in full, the balance, if any, of the funds having been so Cash Collateralized shall be returned to the Borrowers (or such other Person as may be lawfully entitled thereto). Except as expressly provided above in this Section, presentment, demand, protest and all other notices of any kind are hereby expressly waived by the Borrowers.

**8.3 Application of Funds.** After the exercise of remedies provided for in Section 8.2, any amounts received by the Administrative Agent on account of the Obligations shall be applied by the Administrative Agent in the following order:

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

Second, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal, interest and Letter of Credit Fees) payable to the Lenders and the Issuing Lender (including any Letter of Credit Fronting Fees, Issuing Lender Fees and the reasonable fees,

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charges and disbursements of counsel to the respective Lenders and the Issuing Lender and amounts payable under Sections 2.19 and 2.20), in each case, ratably among them in proportion to the respective amounts described in this clause Second payable to them;

Third, to payment of that portion of the Obligations constituting accrued and unpaid Letter of Credit Fees and interest on the Loans and L/C Disbursements which have not yet been converted into Swingline Loans or Revolving Loans, in each case, ratably among them in proportion to the respective amounts described in this clause Third payable to them;

Fourth, to payment of that portion of the Obligations constituting unpaid principal of the Loans and L/C Disbursements which have not yet been converted into Revolving Loans, in each case, ratably among them in proportion to the respective amounts described in this clause Fourth held by them;

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

Sixth, if so elected by the applicable Bank Services Provider or applicable Qualified Counterparty, to the Administrative Agent for the ratable account of each Bank Services Provider and Qualified Counterparty, to repay or Cash Collateralize Obligations arising in connection with Bank Services and Specified Swap Agreements that are then due and payable;

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

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

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

Notwithstanding the foregoing, no Excluded Swap Obligation of any Guarantor shall be paid with amounts received from such Guarantor or from any Collateral in which such Guarantor has granted to the Administrative Agent a Lien (for the benefit of the Secured Parties) pursuant to the Guarantee and Collateral Agreement; provided, however, that each party to this Agreement hereby acknowledges and agrees that appropriate adjustments shall be made by the Administrative Agent (which adjustments shall be controlling in the absence of manifest error) with respect to payments received from other Loan Parties to preserve the allocation of such payments to the satisfaction of the Obligations in the order otherwise contemplated in this Section 8.3.

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**SECTION 9**  
**THE ADMINISTRATIVE AGENT**

**9.1 Appointment and Authority.**

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

(b) The provisions of Section 9 are solely for the benefit of the Administrative Agent, the Lenders and the Issuing Lender, and neither the Borrowers nor any other Loan Party shall have rights as a third party beneficiary of any of such provisions. The Administrative Agent shall not have any duties or responsibilities to any Lender or any other Person, except those expressly set forth herein and in the other Loan Documents, or any fiduciary relationship with any Lender, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against the Administrative Agent. It is understood and agreed that the use of the term “agent” herein or in any other Loan Documents (or any other similar term) with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

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

**9.2 Delegation of Duties.** The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Section shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent. 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 or monitoring of such sub-agents.

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

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

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

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

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

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

**9.4 Reliance by Administrative Agent.** The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, or the issuance, extension, renewal or increase of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender, the Administrative Agent may presume that such condition is satisfactory to such Lender unless the Administrative Agent shall have received notice to the contrary from such Lender prior to the making of such Loan or the issuance of such Letter of Credit. The Administrative Agent may consult with legal counsel (who may be counsel for any of the Loan Parties), independent accountants and

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other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts. The Administrative Agent may deem and treat the payee of any Note as the owner thereof for all purposes unless a written notice of assignment, negotiation or transfer thereof shall have been filed with the Administrative Agent. The Administrative Agent shall be fully justified in failing or refusing to take any action under this Agreement or any other Loan Document unless it shall first receive such advice or concurrence of the Required Lenders (or such other number or percentage of Lenders as shall be provided for herein or in the other Loan Documents) as it deems appropriate or it shall first be indemnified to its satisfaction by the Lenders against any and all liability and expense that may be incurred by it by reason of taking or continuing to take any such action. The Administrative Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement and the other Loan Documents in accordance with a request of the Required Lenders (or such other number or percentage of Lenders as shall be provided for herein or in the other Loan Documents), and such request and any action taken or failure to act pursuant thereto shall be binding upon the Lenders and all future holders of the Loans.

**9.5 Notice of Default.** The Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default unless the Administrative Agent has received notice in writing from a Lender or the Borrowers referring to this Agreement, describing such Default or Event of Default and stating that such notice is a "notice of default." In the event that the Administrative Agent receives such a notice, the Administrative Agent shall promptly give notice thereof to the Lenders. The Administrative Agent shall take such action with respect to such Default or Event of Default as shall be directed by the Required Lenders (or, if so specified by this Agreement, all Lenders); provided that unless and until the Administrative Agent shall have received such directions, the Administrative Agent may (but shall not be obligated to) take such action or refrain from taking such action with respect to such Default or Event of Default as it shall deem advisable in the best interests of the Lenders.

**9.6 Non-Reliance on Administrative Agent and Other Lenders.** Each Lender expressly acknowledges that neither the Administrative Agent nor any of its officers, directors, employees, agents, attorneys in fact or affiliates has made any representations or warranties to it and that no act by the Administrative Agent hereafter taken, including any review of the affairs of a Group Member or any affiliate of a Group Member, shall be deemed to constitute any representation or warranty by the Administrative Agent to any Lender. Each Lender represents to the Administrative Agent that it has, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties, and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, operations, property, financial and other condition and creditworthiness of the Group Members and their affiliates and made its own credit analysis and decision to make its Loans hereunder and enter into this Agreement. Each Lender also agrees that it will, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under or based upon this Agreement, the other Loan Documents or any related agreement or any document furnished hereunder or thereunder, and to make such investigation as it deems necessary to inform itself as to the business, operations, property, financial and other condition and creditworthiness of the Group Members and their affiliates. Except for notices, reports and other documents expressly required to be furnished to the Lenders by the Administrative Agent hereunder, the Administrative Agent shall have no duty or responsibility to provide any Lender with any credit or other information concerning the business, operations, property, condition (financial or otherwise), prospects or creditworthiness of any Group Member or any Affiliate of a Group Member that may come into the possession of the Administrative Agent or any of its officers, directors, employees, agents, attorneys in fact or affiliates.

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**9.7 Indemnification.** Each of the Lenders agrees to indemnify each of the Administrative Agent, the Issuing Lender and the Swingline Lender and each of its Related Parties in its capacity as such (to the extent not reimbursed by the Borrowers or any other Loan Party pursuant to any Loan Document and without limiting the obligation of the Borrowers or any other Loan Party to do so) according to its Revolving Percentage in effect on the date on which indemnification is sought under this Section 9.7 (or, if indemnification is sought after the date upon which the Revolving Commitments shall have terminated and the Loans shall have been paid in full, in accordance with its Revolving Percentage immediately prior to such date), from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind whatsoever that may at any time (whether before or after the payment of the Loans) be imposed on, incurred by or asserted against the Administrative Agent or such other Person in any way relating to or arising out of, the Revolving Commitments, this Agreement, any of the other Loan Documents or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby or any action taken or omitted by the Administrative Agent or such other Person under or in connection with any of the foregoing and any other amounts not reimbursed by the Borrowers or such other Loan Party; provided that no Lender shall be liable for the payment of any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements to the extent found by a final and nonappealable decision of a court of competent jurisdiction to have resulted from the Administrative Agent's or such other Person's gross negligence or willful misconduct, and that with respect to such unpaid amounts owed to any Issuing Lender or Swingline Lender solely in its capacity as such, only the Revolving Lenders shall be required to pay such unpaid amounts, such payment to be made severally among them based on such Revolving Lenders' Revolving Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought). The agreements in this Section 9.7 shall survive the payment of the Loans and all other amounts payable hereunder.

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

**9.9 Successor Administrative Agent.**

(a) The Administrative Agent may at any time give notice of its resignation to the Lenders and the Borrowers. If the Administrative Agent at any time shall resign or if the office of the Administrative Agent shall become vacant for any other reason, the Required Lenders, with the consent of the Borrowers (which consent shall not be unreasonably withheld or delayed and shall not be required at any time that an Event of Default is continuing under Section 8.1(a) or (f)) shall, by written instrument, appoint a successor Administrative Agent. Such successor Administrative Agent shall thereupon become the Administrative Agent hereunder, as applicable, and the Administrative Agent shall deliver or cause to be delivered to any successor Administrative Agent such documents of transfer and assignment as such successor Administrative Agent may reasonably request. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation (or such earlier day as shall be agreed by the Required Lenders) (the "**Resignation Effective Date**"), then the retiring Administrative Agent may (but shall not be obligated to), on behalf of the Lenders, appoint a successor Administrative Agent that is a Lender at such time or that meets the qualifications for an Eligible Assignee hereunder. Whether or not a successor has

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been appointed, such resignation shall become effective in accordance with such notice on the Resignation Effective Date. Any resignation by SVB as Administrative Agent pursuant to this Section 9.9 shall also constitute its resignation as the Issuing Lender and Swingline Lender. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, (i) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring Issuing Lender and Swingline Lender, (ii) the retiring Issuing Lender and Swingline Lender shall be discharged from all of their respective duties and obligations hereunder and under the other Loan Documents, and (iii) the successor Issuing Lender shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to the retiring Issuing Lender to effectively assume the obligations of the retiring Issuing Lender with respect to such Letters of Credit.

(b) If the Person serving as Administrative Agent is a Defaulting Lender pursuant to clause (d) of the definition thereof, the Required Lenders may, to the extent permitted by applicable law, by notice in writing to the Borrowers and such Person remove such Person as Administrative Agent and, with the consent of the Borrowers (which consent shall not be unreasonably withheld or delayed and shall not be required at any time that an Event of Default is continuing under Section 8.1(a) or (f)), appoint a successor. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days (or such earlier day as shall be agreed by the Required Lenders) (the "**Removal Effective Date**"), then such removal shall nonetheless become effective in accordance with such notice on the Removal Effective Date.

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

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

(a) to release any Lien on any Collateral or other property granted to or held by the Administrative Agent under any Loan Document (i) upon the Discharge of Obligations, (ii) that is sold or otherwise disposed of or to be sold or otherwise disposed of as part of or in connection with any sale or

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other disposition permitted hereunder or under any other Loan Document, or (iii) subject to Section 10.1, if approved, authorized or ratified in writing by the Required Lenders;

(b) to subordinate any Lien on any Collateral or other 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 Sections 7.3(g) and (i); and

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

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

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

(f) Notwithstanding anything contained in any Loan Document, no Secured Party shall have any right individually to realize upon any of the Collateral or to enforce any guaranty of the Obligations (including any such guaranty provided by the Guarantors pursuant to the Guarantee and Collateral Agreement), 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; provided that, for the avoidance of doubt, in no event shall a Secured Party be restricted hereunder from filing a proof of claim on its own behalf during the pendency of a proceeding relative to any Loan Party under any Debtor Relief Law or any other judicial proceeding. 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 Secured Party 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 such Secured Party (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 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. Each Secured Party, whether or not a party hereto, will be deemed, by its acceptance of the benefits of the Collateral and of the guarantees of the Obligations provided by the Loan Parties under the Guarantee and Collateral Agreement, to have agreed to the foregoing provisions. In furtherance of the foregoing, and not in limitation thereof, no Specified Swap Agreement and no Bank Services Agreement, the Obligations under which constitute 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 any Loan Document except as expressly provided herein or in the Guarantee and Collateral Agreement. By accepting the benefits of the Collateral and of the guarantees of the Obligations provided by the Loan Parties under the Guarantee and Collateral Agreement, any Secured Party that is a Bank Services Provider or a Qualified Counterparty shall be deemed to have appointed the Administrative Agent to serve as administrative agent and collateral agent under the Loan Documents and to have agreed to be bound by the Loan Documents as a Secured Party thereunder, subject to the limitations set forth in this paragraph.

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**9.11 Administrative Agent May File Proofs of Claim.** In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan or Obligation in respect of any Letter of Credit shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrowers) shall be entitled and empowered (but not obligated), by intervention in such proceeding or otherwise:

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

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

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

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender to authorize the Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

**9.12 Reports and Financial Statements.** Each Bank Services Provider agrees to furnish to the Administrative Agent at such frequency as the Administrative Agent may reasonably request with a summary of all Obligations in respect of Bank Services due or to become due to such Bank Services Provider. In connection with any distributions to be made hereunder, the Administrative Agent shall be entitled to assume that no amounts are due to any Bank Services Provider unless the Administrative Agent has received written notice thereof from such Bank Services Provider and if such notice is received, the Administrative Agent shall be entitled to assume that the only amounts due to such Bank Services Provider on account of Bank Services is the amount set forth in such notice.

To the extent that a notice, report or other written communication delivered or made available pursuant to any Loan Document is delivered or made available solely to the Administrative Agent, then the Administrative Agent shall promptly deliver or make available to the Lenders, in the manner prescribed in Section 10.2(b), all such notices, reports, and other written communications.

**9.13 No Other Duties, Etc.** Anything herein to the contrary notwithstanding, any titles listed on the cover page hereof shall have no powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity as a Lender hereunder.

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**SECTION 10**  
**MISCELLANEOUS**

**10.1 Amendments and Waivers.**

(a) Neither this Agreement, nor any other Loan Document (other than any L/C Related Document, any Specified Swap Agreement and any Bank Services Agreement), nor any terms hereof or thereof may be amended, supplemented or modified except in accordance with the provisions of this Section 10.1. The Required Lenders and each Loan Party that is party to the relevant Loan Document may, or, with the written consent of the Required Lenders, the Administrative Agent and each Loan Party that is party to the relevant Loan Document may, from time to time, (i) enter into written amendments, supplements or modifications hereto and to the other Loan Documents for the purpose of adding any provisions to this Agreement or the other Loan Documents or changing in any manner the rights of the Lenders or of the Loan Parties hereunder or thereunder or (ii) waive, on such terms and conditions as the Required Lenders or the Administrative Agent, as the case may be, may specify in such instrument, any of the requirements of this Agreement or the other Loan Documents or any Default or Event of Default and its consequences; provided that no such waiver and no such amendment, supplement or modification shall (A) forgive the principal amount or extend the final scheduled date of maturity of any Loan, reduce the stated rate of any interest or fee payable hereunder (except that any amendment or modification of defined terms used in the financial covenants in this Agreement shall not constitute a reduction in the rate of interest or fees for purposes of this clause (A)) or waive, postpone or extend the scheduled date of any payment thereof, or alter the amount or expiration date of any Lender's Revolving Commitment, in each case without the written consent of each Lender directly affected thereby; (B) eliminate or reduce the voting rights of any Lender under this Section 10.1 without the written consent of such Lender; (C) amend the definition of Required Lenders, consent to the assignment or transfer by the Borrowers of any of their respective rights and obligations under this Agreement and the other Loan Documents, except as provided in Sections 9.10 and 10.16 release all or substantially all of the Collateral or release any of the Guarantors from their obligations under the Guarantee and Collateral Agreement, in each case without the written consent of all Lenders; (D) amend, modify or waive the pro rata requirements of Section 2.18 in a manner that adversely affects Revolving Lenders without the written consent of each Revolving Lender or amend, modify or waive the pro rata requirements of Section 2.18 in a manner that adversely affects the L/C Lenders without the written consent of each L/C Lender; (E) amend, modify or waive any provision of Section 9 without the written consent of the Administrative Agent; (F) amend, modify or waive any provision of Section 2.6 or 2.7 without the written consent of the Swingline Lender; (G) amend, modify or waive any provision of Section 3 without the written consent of the Issuing Lender; or (H)(i) amend or modify the application of payments set forth in Section 8.3 in a manner that adversely affects Revolving Lenders without the written consent of the Revolving Lenders, (ii) amend or modify the application of payments set forth in Section 8.3 in a manner that adversely affects the L/C Lenders without the written consent of the L/C Lenders, or (iii) amend or modify the application of payments provisions set forth in Section 8.3 in a manner that adversely affects the Issuing Lender, any Bank Services Provider or any Qualified Counterparty, as applicable, without the written consent of the Issuing Lender, Bank Services Provider or each such Qualified Counterparty, as applicable. Any such waiver and any such amendment, supplement or modification shall apply equally to each of the Lenders and shall be binding upon the Loan Parties, the Lenders, the Administrative Agent, the Issuing Lender, each Bank Services Provider, each Qualified Counterparty, and all future holders of the Loans. In the case of any waiver, the Loan Parties, the Lenders and the Administrative Agent shall be restored to their former position and rights hereunder and under the other Loan Documents, and any Default or Event of Default waived shall be deemed to be cured during the period such waiver is effective; but no such waiver shall extend to any subsequent or other Default or Event of Default, or impair any right consequent thereon. Notwithstanding the foregoing, the Issuing Lender may

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amend any of the L/C Documents without the consent of the Administrative Agent or any other Lender. Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that (x) the Revolving Commitment of any Defaulting Lender may not be increased or extended without the consent of such Lender and (y) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that by its terms affects any Defaulting Lender disproportionately adversely relative to other affected Lenders shall require the consent of such Defaulting Lender.

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

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

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

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

(c) Notwithstanding any provision herein to the contrary but subject to the proviso in Section 10.1(a), this Agreement may be amended (or amended and restated) with the written consent of the Required Lenders, the Administrative Agent and the Borrowers (i) to add one or more additional credit or term loan facilities to this Agreement and to permit all such additional extensions of credit and all related obligations and liabilities arising in connection therewith and from time to time outstanding thereunder to share ratably (or on a basis subordinated to the existing facilities hereunder) in the benefits of this Agreement and the other Loan Documents with the obligations and liabilities from time to time outstanding in respect of the existing facilities hereunder, and (ii) in connection with the foregoing, to permit, as deemed appropriate by the Administrative Agent and approved by the Required Lenders, the Lenders providing such additional credit facilities to participate in any required vote or action required to be approved by the Required Lenders. For the avoidance of doubt, no Lender shall be required to participate in any such additional credit or term loan facility or be deemed a Defaulting Lender in the event that such Lender does not approve any such additional credit or term loan facility.

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

(a) Notwithstanding any provision herein or in any other Loan Document to the contrary, no Bank Services Provider and no Qualified Counterparty shall have any voting or approval rights hereunder (or be deemed a Lender) solely by virtue of its status as the provider or holder of Bank Services

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or Specified Swap Agreements or Obligations owing thereunder, nor shall the consent of any such Bank Services Provider or Qualified Counterparty, as applicable, be required for any matter, other than in their capacities as Lenders, to the extent applicable.

(e) The Administrative Agent may, with the consent of the Borrower only, amend, modify or supplement this Agreement or any of the Loan Documents to cure any omission, mistake or defect.

## 10.2 Notices.

(a) All notices, requests and demands to or upon the respective parties hereto to be effective shall be in writing (including by facsimile or electronic mail), and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when delivered, or three (3) Business Days after being deposited in the mail, postage prepaid, or sent via reputable overnight courier, or, in the case of facsimile or electronic mail notice, when received, addressed as follows in the case of the Borrowers and the Administrative Agent, and as set forth in an administrative questionnaire delivered to the Administrative Agent in the case of the Lenders, or to such other address as may be hereafter notified by the respective parties hereto:

Borrowers:

Benefitfocus, Inc.  
100 Benefitfocus Way  
Charleston, South Carolina 29492  
Attention: Stephen Swad, Chief Financial Officer and Paris Cavic,  
General Counsel  
Facsimile No.: 843-849-6062  
Telephone No.: 843-284-1052 (Stephen Swad)  
Telephone No.: 843-856-2301 (Paris Cavic)  
E-Mail: [steve.swad@benefitfocus.com](mailto:steve.swad@benefitfocus.com)  
E-Mail: [paris.cavic@benefitfocus.com](mailto:paris.cavic@benefitfocus.com)  
Website address: [www.benefitfocus.com](http://www.benefitfocus.com)

with a copy to:

Wyrick Robbins Yates & Ponton LLP  
4101 Lake Boone Trail, Suite 300  
Raleigh, NC 27607  
Attention: Carolyn Minshall  
Facsimile No.: 919-781-4865  
Telephone No: 919;781-4000  
E-Mail: [cminshall@wyrick.com](mailto:cminshall@wyrick.com)

Administrative Agent:

Silicon Valley Bank  
1000 Wilson Boulevard, Suite 2110, Arlington, VA 22209  
Attention: Will Deevy  
E-Mail: [wdeevy@svb.com](mailto:wdeevy@svb.com)

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with a copy to:

Morrison & Foerster, LLP  
200 Clarendon Street  
Boston, MA 02116  
Attn.: Charles W. Stavros, Esq.  
E-mail: cstavros@mofo.com

(b) Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communications (including email and Internet websites) pursuant to procedures approved by the Administrative Agent and each Lender; provided that the foregoing shall not apply to notices to any Lender pursuant to Section 2 unless otherwise agreed by the Administrative Agent and the applicable Lender. The Administrative Agent or the Borrowers may, in their discretion, agree to accept notices and other communications to them hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications. Unless the Administrative Agent otherwise prescribes, (a) notices and other communications sent to an email address shall be deemed received upon the sender's receipt of an acknowledgment from the intended recipient (such as by the "return receipt requested" function, as available, return email or other written acknowledgment); and (b) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its email address as described in the foregoing clause (a) of notification that such notice or communication is available and identifying the website address therefor; provided that, for both clauses (a) and (b), if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient.

(c) Any party hereto may change its address or facsimile number for notices and other communications hereunder by notice to the other parties hereto.

(d) (i) Each Loan Party agrees that the Administrative Agent may, but shall not be obligated to, make the Communications (as defined below) available to the Issuing Lender and the other Lenders by posting the Communications on Debt Domain, Intralinks, Syndtrak or a substantially similar electronic transmission system (the "**Platform**").

(ii) the Platform is provided "as is" and "as available." The Agent Parties (as defined below) do not warrant the adequacy of the Platform and expressly disclaim liability for errors or omissions in the Communications. No warranty of any kind, express, implied or statutory, including, without limitation, any warranty of merchantability, fitness for a particular purpose, non-infringement of third-party rights or freedom from viruses or other code defects, is made by any Agent Party in connection with the Communications or the Platform. In no event shall the Administrative Agent or any of its Related Parties (collectively, the "**Agent Parties**") have any liability to the Borrowers or the other Loan Parties, any Lender or any other Person or entity for damages of any kind, including, without limitation, direct or indirect, special, incidental or consequential damages, losses or expenses (whether in tort, contract or otherwise) arising out of any Borrower's, any Loan Party's or the Administrative Agent's transmission of communications through the Platform. "**Communications**" means, collectively, any notice, demand, communication, information, document or other material provided by or on behalf of any Loan Party pursuant to any Loan Document or the transactions contemplated therein which is distributed to the Administrative Agent, any Lender or the Issuing Lender by means of electronic communications pursuant to this Section, including through the Platform.

**10.3 No Waiver; Cumulative Remedies.** No failure to exercise and no delay in exercising, on the part of the Administrative Agent or any Lender, any right, remedy, power or privilege hereunder or

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under the other Loan Documents shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. NONE OF THE ADMINISTRATIVE AGENT OR ANY LENDER SHALL BE DEEMED TO HAVE WAIVED ANY OF ITS RESPECTIVE RIGHTS UNDER THIS AGREEMENT OR UNDER ANY OTHER LOAN DOCUMENT UNLESS SUCH WAIVER IS EXPRESSED IN WRITING AND SIGNED BY THE ADMINISTRATIVE AGENT, THE REQUIRED LENDERS, OR ALL LENDERS, AS APPLICABLE. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

**10.4 Survival of Representations and Warranties.** All representations and warranties made hereunder, in the other Loan Documents and in any document, certificate or statement delivered pursuant hereto or in connection herewith shall survive the execution and delivery of this Agreement and the making of the Loans and other extensions of credit hereunder.

**10.5 Expenses; Indemnity; Damage Waiver.**

(a) Costs and Expenses. The Borrowers shall pay (i) all reasonable out-of-pocket expenses incurred by the Administrative Agent and its Affiliates (including the reasonable fees, charges and disbursements of counsel for the Administrative Agent), in connection with the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents, or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated but subject to the limitations set forth in the Engagement Letter), (ii) all reasonable out-of-pocket expenses incurred by the Issuing Lender in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder, and (iii) all out-of-pocket expenses incurred by the Administrative Agent or any Lender (including the reasonable fees, charges and disbursements of one primary counsel for the Administrative Agent and the Lenders (and additional counsel in the case of any conflict among the Administrative Agent and the Lenders)) in connection with the enforcement or protection of their rights (A) in connection with this Agreement and the other Loan Documents, including their rights under this Section, or (B) in connection with the Loans made or Letters of Credit issued or participated in hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit.

(b) Indemnification by the Borrowers. The Borrowers shall indemnify the Administrative Agent (and any sub-agent thereof), each Lender (including the Issuing Lender), and each Related Party of any of the foregoing Persons (each such Person being called an “**Indemnitee**”) against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related reasonable and documented or invoiced (in reasonable detail) out-of-pocket expenses (including the reasonable fees, charges and disbursements of any counsel for any Indemnitee) incurred by any Indemnitee or asserted against any Indemnitee by any Person (including the Borrowers or any other Loan Party) other than such Indemnitee and its Related Parties arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, (ii) any Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by the Issuing Lender to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or release of Materials of Environmental Concern on or from any property owned or operated by the Borrowers or any of their Subsidiaries, or any Environmental Liability related in any way to the Borrowers or any of their Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation

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or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by a Borrower or any other Loan Party, and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence, willful misconduct or violation of law of or by such Indemnitee or (y) result from a claim brought by a Borrower or any other Loan Party against an Indemnitee for breach in bad faith of such Indemnitee's obligations hereunder or under any other Loan Document, if such Borrower or such Loan Party has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction. This Section 10.5(b) shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

(c) Reimbursement by Lenders. To the extent that the Borrowers or any other Loan Party pursuant to any other Loan Document for any reason fail indefeasibly to pay any amount required under paragraph (a) or (b) of this Section to be paid by them to the Administrative Agent (or any sub-agent thereof), the Issuing Lender, the Swingline Lender or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent), the Issuing Lender, the Swingline Lender or such Related Party, as the case may be, such Lender's *pro rata* share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought based on each Lender's share of the Total Credit Exposure at such time) of such unpaid amount (including any such unpaid amount in respect of a claim asserted by such Lender); provided that with respect to such unpaid amounts owed to the Issuing Lender or the Swingline Lender solely in its capacity as such, only the Revolving Lenders shall be required to pay such unpaid amounts, such payment to be made severally among them based on such Revolving Lenders' Revolving Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) and provided further, that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such sub-agent), the Issuing Lender or the Swingline Lender in its capacity as such, or against any Related Party of any of the foregoing acting for the Administrative Agent (or any such sub-agent), the Issuing Lender or the Swingline Lender in connection with such capacity. The obligations of the Lenders under this paragraph (c) are subject to the provisions of Sections 2.4 and 2.20(e).

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable law, no Borrower shall assert, and each such Person hereby waives, any claim of such Person against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or Letter of Credit, or the use of the proceeds thereof. No Indemnitee referred to in paragraph (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby.

(e) Payments. All amounts due under this Section shall be payable promptly after demand therefor.

(f) Survival. Each party's obligations under this Section shall survive the resignation of the Administrative Agent, the Issuing Lender and the Swingline Lender, the replacement of any Lender, the termination of the Loan Documents, the termination of the Revolving Commitments and the Discharge of Obligations.

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## 10.6 Successors and Assigns; Participations and Assignments.

(a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that no Loan Party may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender, and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of paragraph (b) of this Section, (ii) by way of participation in accordance with the provisions of paragraph (d) of this Section, or (iii) by way of pledge or assignment of a security interest subject to the restrictions of paragraph (f) of this Section (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in paragraph (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Revolving Commitments and the Loans at the time owing to it); provided that any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Revolving Commitment and/or the Loans at the time owing to it or contemporaneous assignments to related Approved Funds that equal at least the amount specified in paragraph (b)(i)(B) of this Section in the aggregate or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and

(B) in any case not described in paragraph (b)(i)(A) of this Section, the aggregate amount of the Revolving Commitments (which for this purpose includes Loans outstanding thereunder) or, if the Revolving Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if "**Trade Date**" is specified in the Assignment and Assumption, as of the Trade Date) shall not be less than \$5,000,000, unless each of the Administrative Agent and, so long as no Default or Event of Default has occurred and is continuing, the Borrowers otherwise consent (each such consent not to be unreasonably withheld or delayed).

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loans and/or the Revolving Commitments assigned.

(iii) Required Consents. No consent shall be required for any assignment by a Lender except to the extent required by paragraph (b)(i)(B) of this Section and, in addition:

(A) the consent of the Borrowers (such consent not to be unreasonably withheld or delayed) shall be required unless (x) a Default or an Event of Default has occurred and is continuing at the time of such assignment, or (y) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund; provided that the Borrowers shall be deemed to have consented to any such

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assignment unless they shall object thereto by written notice to the Administrative Agent within five Business Days after having received notice thereof; and

(B) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required for assignments if such assignment is to a Person that is not a Lender, an Affiliate of such Lender or an Approved Fund with respect to such Lender.

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of \$3,500; provided that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it is not a Lender, shall deliver to the Administrative Agent any such administrative questionnaire as the Administrative Agent may request.

(v) No Assignment to Certain Persons. No such assignment shall be made to (A) a Loan Party or any of a Loan Party's Affiliates or Subsidiaries or (B) to any Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (B).

(vi) No Assignment to Disqualified Institutions. So long as no Event of Default has occurred and is continuing, no such assignment shall be made to any Disqualified Institution.

(vii) No Assignment to Natural Persons. No such assignment shall be made to a natural Person.

(viii) Certain Additional Payments. In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Borrowers and the Administrative Agent, the applicable pro rata share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent, the Issuing Lender, the Swingline Lender and each other Lender hereunder (and interest accrued thereon), and (y) acquire (and fund as appropriate) its full pro rata share of all Loans and participations in Letters of Credit and Swingline Loans in accordance with its Revolving Percentage. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to paragraph (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 2.19, 2.20 and 10.5 with respect to facts and circumstances occurring prior to the effective date of such assignment; provided, that

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except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this paragraph shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (d) of this Section.

(c) Register. The Administrative Agent, acting solely for this purpose as an agent of the Borrowers, shall maintain at one of its offices in California a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Revolving Commitments of, and principal amounts (and stated interest) of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "**Register**"). The entries in the Register shall be conclusive absent manifest error, and the Borrowers, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Borrowers and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, the Borrowers or the Administrative Agent, sell participations to any Person (other than a natural Person or any Loan Party or any of any Loan Party's Affiliates or Subsidiaries) (each, a "**Participant**") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Revolving Commitments and/or the Loans owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, and (iii) the Borrowers, the Administrative Agent, the Issuing Lender and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. For the avoidance of doubt, each Lender shall be responsible for the indemnities under Sections 2.20(e) and 9.7 with respect to any payments made by such Lender to its Participant(s).

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver which affects such Participant and for which the consent of such Lender is required (as described in Section 10.1). Each Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.19 and 2.20 (subject to the requirements and limitations therein, including the requirements under Section 2.20(f) (it being understood that the documentation required under Section 2.20(f) shall be delivered to such Participant)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section; provided that such Participant (A) agrees to be subject to the provisions of Section 2.23 as if it were an assignee under paragraph (b) of this Section; and (B) shall not be entitled to receive any greater payment under Sections 2.19 or 2.20, with respect to any participation, than its participating Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a change in any Requirement of Law that occurs after the Participant acquired the applicable participation. Each Lender that sells a participation agrees, at the Borrowers' request and expense, to use reasonable efforts to cooperate with the Borrowers to effectuate the provisions of Section 2.23 with respect to any Participant. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 10.7 as though it were a Lender; provided that such Participant agrees to be subject to Section 2.18(j) as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as an agent of the Borrowers, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "**Participant Register**"); provided that no

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Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(e) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(f) Notes. The Borrowers, upon receipt by the Borrowers of written notice from the relevant Lender, agrees to issue Notes to any Lender requiring Notes to facilitate transactions of the type described in Section 10.6.

(g) Representations and Warranties of Lenders. Each Lender, upon execution and delivery hereof or upon succeeding to an interest in the Revolving Commitments or Loans, as the case may be, represents and warrants as of the Closing Date or as of the effective date of the applicable Assignment and Assumption that (i) it is an Eligible Assignee; (ii) it has experience and expertise in the making of or investing in commitments, loans or investments such as the Revolving Commitments and Loans; and (iii) it will make or invest in its Revolving Commitments and Loans for its own account in the ordinary course of its business and without a view to distribution of such Revolving Commitments and Loans within the meaning of the Securities Act or the Exchange Act, or other federal securities laws (it being understood that, subject to the provisions of this Section 10.6, the disposition of such Revolving Commitments and Loans or any interests therein shall at all times remain within its exclusive control).

#### **10.7 Adjustments; Set-off.**

(a) Except to the extent that this Agreement expressly provides for payments to be allocated to a particular Lender, if any Lender (a "**Benefitted Lender**") shall, at any time after the Loans and other amounts payable hereunder shall immediately become due and payable pursuant to Section 8.2, receive any payment of all or part of the Obligations owing to it, or receive any Collateral in respect thereof (whether voluntarily or involuntarily, by set-off, pursuant to events or proceedings of the nature referred to in Section 8.1(f), or otherwise), in a greater proportion than any such payment to or Collateral received by any other Lender, if any, in respect of the Obligations owing to such other Lender, such Benefitted Lender shall purchase for cash from the other Lenders a participating interest in such portion of the Obligations owing to each such other Lender, or shall provide such other Lenders with the benefits of any such Collateral, as shall be necessary to cause such Benefitted Lender to share the excess payment or benefits of such Collateral ratably with each of the Lenders; provided that if all or any portion of such excess payment or benefits is thereafter recovered from such Benefitted Lender, such purchase shall be rescinded, and the purchase price and benefits returned, to the extent of such recovery, but without interest.

(b) Upon (i) the occurrence and during the continuance of any Event of Default and (ii) obtaining the prior written consent of the Administrative Agent or the Required Lenders, each Lender and each of its Affiliates is hereby authorized at any time and from time to time, without prior notice to the

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Borrowers or any other Loan Party, any such notice being expressly waived by each Borrower and each other Loan Party, to the fullest extent permitted by applicable law, to set off and apply any and all deposits (general or special, time or demand, provisional or final), in any currency, at any time held or owing, and any other credits, indebtedness, claims or obligations, in any currency, in each case whether direct or indirect, absolute or contingent, matured or unmatured, at any time held or owing by such Lender, its Affiliates or any branch or agency thereof to or for the credit or the account of any Borrower or any other Loan Party, as the case may be, against any and all of the obligations of the Borrowers or such other Loan Party now or hereafter existing under this Agreement or any other Loan Document to such Lender or its Affiliates, irrespective of whether or not such Lender or Affiliate shall have made any demand under this Agreement or any other Loan Document and although such obligations of the Borrowers or such other Loan Party may be contingent or unmatured or are owed to a branch, office or Affiliate of such Lender different from the branch, office or Affiliate holding such deposit or obligated on such indebtedness; provided, that in the event that any Defaulting Lender or any of its Affiliates shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.23 and, pending such payment, shall be segregated by such Defaulting Lender or Affiliate thereof from its other funds and deemed held in trust for the benefit of the Administrative Agent and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender or Affiliate thereof as to which it exercised such right of setoff. Each Lender agrees to notify the Borrowers and the Administrative Agent promptly after any such setoff and application made by such Lender or any of its Affiliates; provided that the failure to give such notice shall not affect the validity of such setoff and application. The rights of each Lender and its Affiliates under this Section 10.7 are in addition to other rights and remedies (including other rights of set-off) which such Lender or its Affiliates may have.

**10.8 Payments Set Aside.** To the extent that any payment or transfer by or on behalf of the Borrowers is made to the Administrative Agent or any Lender, or the Administrative Agent or any Lender exercises its right of setoff, and such payment or transfer or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any Insolvency Proceeding or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender severally agrees to pay to the Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Effective Rate from time to time in effect. This Section 10.8 shall survive the Discharge of Obligations.

**10.9 Interest Rate Limitation.** Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable law (the "Maximum Rate"). If the Administrative Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrowers. In determining whether the interest contracted for, charged, or received by the Administrative Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

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#### **10.10 Counterparts; Electronic Execution of Assignments.**

(a) This Agreement may be executed by one or more of the parties to this Agreement on any number of separate counterparts, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. Delivery of an executed signature page of this Agreement by facsimile or other electronic mail transmission shall be effective as delivery of a manually executed counterpart hereof. A set of the copies of this Agreement signed by all the parties shall be lodged with the Borrowers and the Administrative Agent.

(b) The words “execution,” “signed,” “signature,” and words of like import in any Assignment and Assumption shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

**10.11 Severability.** Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Without limiting the foregoing provisions of this Section 10.11, if and to the extent that the enforceability of any provisions in this Agreement relating to Defaulting Lenders shall be limited under or in connection with any Insolvency Proceeding, as determined in good faith by the Administrative Agent or the Issuing Lender, as applicable, then such provisions shall be deemed to be in effect only to the extent not so limited.

**10.12 Integration.** This Agreement and the other Loan Documents represent the entire agreement of the Borrowers, the other Loan Parties, the Administrative Agent and the Lenders with respect to the subject matter hereof and thereof, and there are no promises, undertakings, representations or warranties by the Administrative Agent or any Lender relative to the subject matter hereof not expressly set forth or referred to herein or in the other Loan Documents.

**10.13 GOVERNING LAW. GOVERNING LAW. THIS AGREEMENT, THE OTHER LOAN DOCUMENTS, AND ANY CLAIM, CONTROVERSY, DISPUTE, CAUSE OF ACTION, OR PROCEEDING (WHETHER BASED IN CONTRACT, TORT, OR OTHERWISE) BASED UPON, ARISING OUT OF, CONNECTED WITH, OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT (EXCEPT, AS TO ANY OTHER LOAN DOCUMENT, AS EXPRESSLY SET FORTH THEREIN) AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY, AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HERETO AND THERETO, SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE INTERNAL LAWS (AND NOT THE CONFLICT OF LAW RULES) OF THE STATE OF NEW YORK. This Section 10.13 shall survive the Discharge of Obligations.**

**10.14 Submission to Jurisdiction; Waivers.** Each Borrower hereby irrevocably and unconditionally:

(a) submits to the exclusive jurisdiction of the State and Federal courts in the Southern District of the State of New York; provided that nothing in this Agreement shall be deemed to operate to preclude the Administrative Agent or any Lender from bringing suit or taking other legal action in any other

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jurisdiction to realize on the Collateral or any other security for the Obligations, or to enforce a judgment or other court order in favor of Administrative Agent or such Lender. Borrower expressly submits and consents in advance to such jurisdiction in any action or suit commenced in any such court, and each Borrower hereby waives any objection that it may have based upon lack of personal jurisdiction, improper venue, or forum non conveniens and hereby consents to the granting of such legal or equitable relief as is deemed appropriate by such court. Each Borrower hereby waives personal service of the summons, complaints, and other process issued in such action or suit and agrees that service of such summons, complaints, and other process may be made by registered or certified mail addressed to the Borrowers at the addresses set forth in Section 10.2 of this Agreement and that service so made shall be deemed completed upon the earlier to occur of the Borrowers' actual receipt thereof or three (3) Business Days after deposit in the U.S. mails, proper postage prepaid;

(b) **WAIVES, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ITS RIGHT TO A JURY TRIAL OF ANY CLAIM, CAUSE OF ACTION, OR PROCEEDING (WHETHER BASED IN CONTRACT, TORT, OR OTHERWISE) BASED UPON, ARISING OUT OF, CONNECTED WITH, OR RELATING TO THIS AGREEMENT, ANY OTHER LOAN DOCUMENT, OR ANY TRANSACTION CONTEMPLATED HEREBY AND THEREBY, AMONG ANY OF THE PARTIES HERETO AND THERETO. THIS WAIVER IS A MATERIAL INDUCEMENT FOR THE PARTIES HERETO TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS. THE BORROWER HAS REVIEWED THIS WAIVER WITH ITS COUNSEL; and**

(c) waives, to the maximum extent not prohibited by law, any right it may have to claim or recover in any legal action or proceeding referred to in this Section any special, exemplary, punitive or consequential damages.

This Section 10.14 shall survive the Discharge of Obligations.

**10.15 Acknowledgements.** Each Borrower hereby acknowledges that:

(a) it has been advised by counsel in the negotiation, execution and delivery of this Agreement and the other Loan Documents;

(b) none of the Administrative Agent nor any Lender has any fiduciary relationship with or duty to the Borrowers arising out of or in connection with this Agreement or any of the other Loan Documents, and the relationship between the Administrative Agent and Lenders, on one hand, and the Borrowers, on the other hand, in connection herewith or therewith is solely that of debtor and creditor; and

(c) no joint venture is created hereby or by the other Loan Documents or otherwise exists by virtue of the transactions contemplated hereby among the Lenders or among the Borrowers and the Lenders.

**10.16 Releases of Guarantees and Liens.**

(a) Notwithstanding anything to the contrary contained herein or in any other Loan Document, the Administrative Agent is hereby irrevocably authorized by each Lender (without requirement of notice to or consent of any Lender except as expressly required by Section 10.1) to take any action requested by the Borrowers having the effect of releasing any Collateral or Guarantee Obligations (1) to the extent necessary to permit consummation of any transaction not prohibited by any Loan Document or that has been consented to in accordance with Section 10.1 or (2) under the circumstances described in Section 10.16(b) below.

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(b) Upon the Discharge of Obligations, the Collateral shall be released from the Liens created by the Security Documents, and the Security Documents and all obligations (other than those expressly stated to survive such termination) of the Administrative Agent and each Loan Party under the Security Documents shall terminate, all without delivery of any instrument or performance of any act by any Person.

**10.17 Treatment of Certain Information; Confidentiality.** Each of the Administrative Agent and each Lender agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates and to its Related Parties (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential and will so agree to comply with such instructions and the requirements of this Section 10.17); (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, upon the request or demand of any Governmental Authority, in response to any order of any court or other Governmental Authority or as may otherwise be required pursuant to any Requirement of Law or if requested or required to do so in connection with any litigation or similar proceeding; (d) to any other party hereto; (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder; (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights and obligations under this Agreement, or (ii) any actual or prospective party (or its Related Parties) to any Swap Agreement under which payments are to be made by reference to the Borrowers and their obligations, this Agreement or payments hereunder; (g) on a confidential basis to (i) any rating agency in connection with rating the Borrowers or their Subsidiaries or the Revolving Facility or (ii) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers with respect to the Revolving Facility; (h) with the consent of the Borrowers; or (i) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section, or (y) becomes available to the Administrative Agent, any Lender or any of their respective Affiliates on a non-confidential basis from a source other than the Borrowers.

In the event that the Administrative Agent or any Lender is required or receives a demand to disclose under subparagraph (b) (excluding regulatory audits of the Lenders' loan portfolios in the ordinary course of business that do not subject the Borrowers to requests for disclosure under the Freedom of Information Act or the Physician Payments Sunshine Act or otherwise require the public disclosure of confidential Information) or (c) of the preceding paragraph, it will use reasonable efforts to promptly notify the Borrowers thereof, to the extent permitted under applicable law, in order to enable the Borrowers to seek a protective order or other appropriate remedy. In the event that no such protective order or other remedy is obtained, the Administrative Agent or such Lender agrees that it shall furnish only that portion of the Information that it is advised by counsel is required by law. The Administrative Agent and each Lender shall comply with the restrictions imposed by the United States securities laws on the purchase or sale of securities by any person who has received material, non-public information from the issuer of such.

Notwithstanding anything herein to the contrary, any party to this Agreement (and any employee, representative, or other agent of any party to this Agreement) may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the transactions contemplated by this Agreement and all materials of any kind (including opinions or other tax analyses) that are provided to it relating to such tax treatment and tax structure. However, any such information relating to the tax treatment or tax structure is required to be kept confidential to the extent necessary to comply with any applicable federal or state securities laws.

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For purposes of this Section, “**Information**” means all information received from the Borrowers or any of their Subsidiaries relating to the Borrowers or any of their Subsidiaries or any of their respective businesses, other than any such information that is available to the Administrative Agent or any Lender on a non-confidential basis prior to disclosure by the Borrowers or any of their Subsidiaries; provided that, in the case of information received from the Borrowers or any of their Subsidiaries after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

**10.18 Automatic Debits.** With respect to any principal, interest, fee, or any other cost or expense (including reasonable attorney costs of one primary counsel to the Administrative Agent and the Lenders payable by the Borrowers hereunder) due and payable to the Administrative Agent or any Lender under the Loan Documents, the Borrowers hereby irrevocably authorize the Administrative Agent to debit any deposit account of the Borrowers maintained with the Administrative Agent (and the Administrative Agent agrees to provide the Borrowers an invoice or loan statement, as applicable, with respect to such amount; provided that any such invoice with respect to an amount to be debited outside the ordinary course (including audit fees and legal fees and expenses) shall be provided prior to such debit) in an amount such that the aggregate amount debited from all such deposit accounts does not exceed such principal, interest, fee or other cost or expense. If there are insufficient funds in such deposit accounts to cover the amount then due, such debits will be reversed (in whole or in part, in the Administrative Agent’s sole discretion) and such amount not debited shall be deemed to be unpaid. No such debit under this Section 10.18 shall be deemed a set-off.

**10.19 Judgment Currency.** If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due hereunder or any other Loan Document in one currency into another currency, the rate of exchange used shall be that at which in accordance with normal banking procedures the Administrative Agent could purchase the first currency with such other currency on the Business Day preceding that on which final judgment is given. The obligation of each Borrower and each other Loan Party in respect of any such sum due from it to the Administrative Agent or any Lender hereunder or under any other Loan Document shall, notwithstanding any judgment in a currency (the “**Judgment Currency**”) other than that in which such sum is denominated in accordance with the applicable provisions of this Agreement (the “**Agreement Currency**”), be discharged only to the extent that on the Business Day following receipt by the Administrative Agent or such Lender, as the case may be, of any sum adjudged to be so due in the Judgment Currency, the Administrative Agent or such Lender, as the case may be, may in accordance with normal banking procedures purchase the Agreement Currency with the Judgment Currency. If the amount of the Agreement Currency so purchased is less than the sum originally due to the Administrative Agent or any Lender from any Borrower or any other Loan Party in the Agreement Currency, such Borrower and each other Loan Party agrees, as a separate obligation and notwithstanding any such judgment, to indemnify the Administrative Agent or such Lender, as the case may be, against such loss. If the amount of the Agreement Currency so purchased is greater than the sum originally due to the Administrative Agent or any Lender in such currency, the Administrative Agent or such Lender, as the case may be, agrees to return the amount of any excess to such Borrower or other Loan Party, as applicable (or to any other Person who may be entitled thereto under applicable law).

**10.20 Patriot Act.** Each Lender and the Administrative Agent (for itself and not on behalf of any other party) hereby notifies the Borrowers that, pursuant to the requirements of the Patriot Act, it is required to obtain, verify and record information that identifies each Borrower, which information includes the names and addresses and other information that will allow such Lender or the Administrative Agent, as applicable, to identify each Borrower in accordance with the Patriot Act. Each Borrower will, and will cause each of its respective Subsidiaries to, provide, to the extent commercially reasonable or required by

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any Requirement of Law, such information and take such actions as are reasonably requested by the Administrative Agent or any Lender to assist the Administrative Agent and the Lenders in maintaining compliance with the Patriot Act.

**10.21 Acknowledgement and Consent to Bail-In of EEA Financial Institutions.** Notwithstanding anything to the contrary in this Agreement or in any other Loan Document, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution;

(b) a conversion of all, or a portion of, such liability into Capital Stock in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such Capital Stock will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(c) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any EEA Resolution Authority.

**10.22 Termination.** This Agreement (other than Sections 2.19, 2.20, 9, 10.5, 10.8, 10.13 and 10.14) shall terminate upon the occurrence of the Discharge of Obligations.

*[Remainder of page left blank intentionally]*

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**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed and delivered by their proper and duly authorized officers as of the day and year first above written.

**BORROWERS:**

**BENEFITFOCUS, INC.**  
as a Borrower

By: /s/ Stephen M. Swad

Name: Stephen M. Swad

Title: Chief Financial Officer

**BENEFITFOCUS.COM, INC.**  
as a Borrower

By: /s/ Stephen M. Swad

Name: Stephen M. Swad

Title: Chief Financial Officer

**BENEFITSTORE, INC.**  
as a Borrower

By: /s/ Stephen M. Swad

Name: Stephen M. Swad

Title: Chief Financial Officer

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**ADMINISTRATIVE AGENT:**

**SILICON VALLEY BANK,**  
as the Administrative Agent

By: /s/ Will Deevy

Name: Will Deevy

Title: Director

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**LENDERS:**

**SILICON VALLEY BANK,**

as Issuing Lender, Swingline Lender and as a Lender

By: /s/ Will Deevy

Name: Will Deevy

Title: Director

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**SCHEDULE 1.1A**

**REVOLVING COMMITMENTS**

Lender	Revolving Commitment	Revolving Percentage
Silicon Valley Bank	\$50,000,000.00	100.000000000%
Total	\$50,000,000.00	100.000000000%

**L/C COMMITMENTS**

(which is a sublimit of, and not in addition to, the Revolving Commitments)

Lender	L/C Commitments	L/C Percentage
Silicon Valley Bank	\$5,000,000	100.000000000%
Total	\$5,000,000	100.000000000%

**SWINGLINE COMMITMENT**

(which is a sublimit of, and not in addition to, the Revolving Commitments)

Lender	Swingline Commitment	Exposure Percentage
Silicon Valley Bank	\$5,000,000	100.000000000%
Total	\$5,000,000	100.000000000%

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**SCHEDULE 4.15**

**SUBSIDIARIES**

Parent:

Benefitfocus, Inc., a Delaware corporation

Subsidiaries of the Parent:

Benefitfocus.com, Inc., a South Carolina corporation

BenefitStore, Inc., a South Carolina corporation

Percentage of Capital Stock owned by Loan Parties:

<b>Loan Party</b>	<b>Subsidiary</b>	<b>Ownership Percentage</b>
Benefitfocus, Inc.	Benefitfocus.com, Inc.	100%
Benefitfocus.com, Inc.	BenefitStore, Inc.	100%

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**SCHEDULE 4.17**

**ENVIRONMENTAL MATTERS**

None.

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SCHEDULE 4.19(a)

FINANCING STATEMENTS AND OTHER FILINGS

Financing Statements

<b>Loan Party</b>	<b>Filing</b>	<b>Filing Office</b>
Benefitfocus, Inc.	UCC-1 Financing Statement	Delaware Secretary of State
Benefitfocus.com, Inc.	UCC-1 Financing Statement	South Carolina Secretary of State
BenefitStore, Inc.	UCC-1 Financing Statement	South Carolina Secretary of State

Other Filings

Filing of the Intellectual Property Security Agreement with the U.S. Copyright Office and the U.S. Patent and Trademark Office.

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**SCHEDULE 5.3**

**POST-CLOSING MATTERS**

Deposit Account Control Agreements with National Bank of South Carolina

Securities Account Control Agreements with U.S. Bank, N.A.

Landlord Consents:

- a) 100 Benefitfocus Way, Charleston, South Carolina 29492
- b) 125 Fairchild Street, Charleston, South Carolina 29492
- c) 215 Fairchild Street, Charleston, South Carolina 29492
- d) 1016 Woods Crossing Road, Suite B, Greenville, South Carolina 29607
- e) 2488 E. 81st Street, Suite 1700, Tulsa, Oklahoma 74137
- f) 18500 West Corporate Drive, Suite 250, Brookfield Wisconsin 53045

Bailee Waiver:

- a) TierPoint Hosted Solutions LLC
- b) Exhibit Concepts, Inc.
- c) CubeSmart
- d) Digital Realty Trust, Inc.

Insurance Certificates and Endorsements

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SCHEDULE 6.10

NBSC BANK ACCOUNTS

Loan Party	Account No.	Type of Account
Benefitfocus.com, Inc.		Checking
		New Merchant
		Operating
		Money Market Sweep
BenefitStore, Inc.		Checking

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**SCHEDULE 7.2(d)**

**EXISTING INDEBTEDNESS**

Indebtedness incurred pursuant to the following leases:

1. Non-Exclusive Dry Lease, by and between Benefitfocus, Inc. and Pilatus 638 LLC. As of the Closing Date, \$17,580.42 remains outstanding under this lease.
  2. Master Agreement to Lease Equipment No. 6583, dated March 27, 2008, by and between Cisco Systems Capital Corporation and Benefitfocus.com, Inc. (Schedule No. US-78849-0001, dated June 1, 2018). As of the Closing Date, \$383,690.52 remains outstanding under this lease.
  3. Payment Schedule No. 81891, dated May 22, 2016, as amended May 31, 2018, by and between Oracle Credit Corporation and Benefitfocus.com, Inc. (incorporating by reference the Payment Plan Agreement, dated February 23, 2007, by and between Oracle Credit Corporation and Benefitfocus.com, Inc.) entered in conjunction with that certain Ordering Document, effective November 22, 2013, by and between Arrow Enterprise Computing Solutions Inc., CDW Logistics, Inc., Oracle America, Inc. and Benefitfocus.com, Inc. (incorporating by reference the Oracle Master Agreement, US-OMA-68046). As of the Closing Date, \$1,117,067.30 remains outstanding under this lease.
  4. Lease Agreement, executed September 28, 2017, by and between EverBank Commercial Finance, Inc. and Benefitfocus.com, Inc. As of the Closing Date, \$9,652.72 remains outstanding under this lease.
  5. Master Flexible Consumption Agreement, dated August 13, 2018, by and between EMC Corporation and Benefitfocus.com, Inc. As of the Closing Date, \$738,284.36 remains outstanding under this lease.
  6. Master Lease No. 567911-23650, Schedule No. 001-6730032-001, signed March 19, 2018, by and between Dell Financial Services L.L.C. and Benefitfocus.com, Inc. As of the Closing Date, \$381,887.88 remains outstanding under this lease.
  7. Master Lease No. 567911-23650, Schedule No. 001-6730032-002, signed August 8, 2018, by and between Dell Financial Services L.L.C. and Benefitfocus.com, Inc. As of the Closing Date, \$540,239.54 remains outstanding under this lease.
  8. Master Lease No. 567911-23650, Schedule No. 001-6730032-003, signed July 1, 2019, by and between Dell Financial Services L.L.C. and Benefitfocus.com, Inc. As of the Closing Date, \$3,107,099.70 remains outstanding under this lease.
  9. Master Lease No. 567911-23650, Schedule No. 001-6730032-004, signed September 1, 2019, by and between Dell Financial Services L.L.C. and Benefitfocus.com, Inc. As of the Closing Date, \$610,854.31 remains outstanding under this lease.
  10. Master Lease No. 567911-23650, Schedule No. 001-6730032-005, signed October 1, 2019, by and between Dell Financial Services L.L.C. and Benefitfocus.com, Inc. As of the Closing Date, \$798,514.68 remains outstanding under this lease.
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11. Lease Agreement, executed December 23, 2019, by and between Wells Fargo Financial Leasing, Inc. and Benefitfocus.com, Inc. As of the Closing Date, \$225,233.22 remains outstanding under this lease.
  12. Lease Agreement, dated May 31, 2005, by and between Daniel Island Executive Center, LLC and Benefitfocus.com, Inc., as amended. As of the Closing Date, \$33,721,750.14 remains outstanding under this lease.
  13. Lease Agreement, dated January 1, 2009, by and between Daniel Island Executive Center, LLC and Benefitfocus.com, Inc., as amended. As of the Closing Date, \$39,820,313.88 remains outstanding under this lease.
  14. Lease Agreement, dated December 13, 2013, by and between DIEC II, LLC and Benefitfocus.com, Inc., as amended. As of the Closing Date, \$70,813,184.22 remains outstanding under this lease.
  15. Lease Agreement, dated June 27, 2008, by and between Woods Crossing Three, LLC and Benefitfocus.com, Inc. As of the Closing Date, \$432,504.16 remains outstanding under this lease.
  16. Lease Agreement, dated July 15, 2018, by and between Oral Roberts University and Benefitfocus.com, Inc., as amended. As of the Closing Date, \$846,759.60 remains outstanding under this lease.
  17. Lease Agreement, dated May 10, 2012, by and between CORE Brookfield Lakes Owner, LLC and Benefitfocus.com, Inc. (as assignee of Connecture, Inc.), as amended. As of the Closing Date, \$1,273,071.63 remains outstanding under this lease.
  18. Agreement, dated June 18, 2019, by and between Digital Realty Trust, Inc. and Benefitfocus.com, Inc. As of the Closing Date, \$703,296 remains outstanding under this lease.
  19. Schedule Number 7000000109 v. 10.0 For Managed Services Governed by the Master Agreement for U.S. Availability Services, dated February 1, 2007, by and between Sungard Availability Services, LP and Benefitfocus.com, Inc., terminating March 31, 2020. As of the Closing Date, \$89,161.14 remains outstanding under this lease.
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**SCHEDULE 7.3(f)**

**EXISTING LIENS**

Benefitfocus.com, Inc.:

1. Lien in favor of Cisco Systems Capital Corporation on computer hardware and software, reflected in UCC-1 Financing Statement #080416-1044253, filed with the South Carolina Secretary of State (UCC-3 Financing Statement Amendment (Continuation) #130328-1208035, filed with the South Carolina Secretary of State; UCC-3 Financing Statement Amendment (Continuation) #180412-1358181, filed with the South Carolina Secretary of State)
  2. Lien in favor of Dell Financial Services L.L.C. on equipment and software, reflected in UCC-1 Financing Statement #161205-1434003, filed with the South Carolina Secretary of State
  3. Lien in favor of Wells Fargo Financial Leasing, Inc. on equipment and software, reflected in UCC-1 Financing Statement #191230-1351165, filed with the South Carolina Secretary of State
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**SCHEDULE 7.8(m)**  
**EXISTING INVESTMENTS**

None.

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FORM OF GUARANTEE AND COLLATERAL AGREEMENT

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## FORM OF COMPLIANCE CERTIFICATE

BENEFITFOCUS, INC.  
 BENEFITFOCUS.COM, INC.  
 BENEFITSTORE, INC.

Date: \_\_\_\_\_, 20\_\_

This Compliance Certificate is delivered pursuant to Section 6.2(a) of that certain Credit Agreement, dated as of March 3, 2020, by and among **BENEFITFOCUS, INC.**, a Delaware corporation ("**Parent**"), **BENEFITFOCUS.COM, INC.**, a South Carolina corporation ("**Benefitfocus.com**"), and **BENEFITSTORE, INC.**, a South Carolina corporation ("**BenefitStore**"), and together with Parent and Benefitfocus.com, each individually, a "**Borrower**", and collectively, and jointly and severally, the "**Borrowers**", the several banks and other financial institutions or entities from time to time party thereto (each a "**Lender**" and, collectively, the "**Lenders**"), **SILICON VALLEY BANK ("SVB")**, as the Issuing Lender and the Swingline Lender and **SVB**, as administrative agent and collateral agent for the Lenders (in such capacities, the "**Administrative Agent**") (as amended, restated, amended and restated, supplemented, restructured or otherwise modified from time to time, the "**Credit Agreement**"). Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

The undersigned, a duly authorized and acting Responsible Officer of Parent, hereby certifies, in his/her capacity as an officer of Parent, and not in any personal capacity, as follows:

I have reviewed and am familiar with the contents of this Compliance Certificate.

I have reviewed the terms of the Credit Agreement and the other Loan Documents and have made, or caused to be made under my supervision, a review in reasonable detail of the transactions and condition of Parent and its Subsidiaries during the accounting period covered by the financial statements attached hereto as Attachment 1 (the "**Financial Statements**"). Except as set forth on Attachment 2, such review did not disclose the existence during or at the end of the accounting period covered by the Financial Statements, and I have no knowledge of the existence as of the date of this Compliance Certificate, of any condition or event which constitutes a Default or an Event of Default.

Attached hereto as Attachment 3 are the computations showing compliance with the covenants set forth in Section 7.1 of the Credit Agreement.

[To the extent not previously disclosed to the Administrative Agent, a description of any change in the jurisdiction of organization of any Loan Party.]

[To the extent not previously disclosed to the Administrative Agent, a list of any material patents, registered trademarks or registered copyrights issued to or acquired by any Loan Party since [the Closing Date] [the date of the most recent report delivered].]

[To the extent not previously disclosed to the Administrative Agent, any changes to the beneficial ownership information set forth in the Collateral Information Certificate.]

*[Remainder of page intentionally left blank; signature page follows]*

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IN WITNESS WHEREOF, I have executed this Compliance Certificate as of the date first written above.

**PARENT**, for itself and on behalf of each other Borrower:

**BENEFITFOCUS, INC.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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[Attach Financial Statements]

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Except as set forth below, no Default or Event of Default has occurred. [If a Default or Event of Default has occurred, the following describes the nature of the Default or Event of Default in reasonable detail and the steps, if any, being taken or contemplated by the Borrowers to be taken on account thereof.]

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Preliminary Note to Compliance Certificate Calculations

The information described herein is as of [\_\_\_\_], [\_\_\_\_] (the "**Statement Date**"), and pertains to the subject period described below.

(a) Minimum Consolidated Adjusted Quick Ratio.

Required: Not permit the Consolidated Adjusted Quick Ratio, as tested on the last day of any fiscal quarter, to be less than 1.25:1.00.

Actual:

A.	the aggregate amount of unrestricted cash and Cash Equivalents (including short term marketable securities) held by the Borrowers and the Guarantors in Deposit Accounts or Securities Accounts maintained with SVB or SVB's Affiliates or another Lender or an Affiliate thereof, or with National Bank of South Carolina ("NBSC"), provided that the aggregate amounts held in deposit accounts with NBSC shall not exceed \$6,500,000 at any time), and in each case subject to a first priority lien in favor of the Administrative Agent, including, without limitation, pursuant to a Deposit Account Control Agreement with respect to each such Deposit Account or Securities Account Control Agreement with respect to each such Securities Account	\$ _____
B.	net billed accounts receivable, determined in accordance with GAAP	\$ _____
C.	CONSOLIDATED QUICK ASSETS (line A plus line B)	\$ _____
D.	Consolidated Current Liabilities	\$ _____
E.	The current portion of Deferred Revenue	\$ _____
F.	line D minus line E	\$ _____
G.	MINIMUM CONSOLIDATED ADJUSTED QUICK RATIO (the ratio of line C to line F)	_____

Is line G equal to or greater than 1.25?

\_\_\_\_\_ No, not in Compliance                      \_\_\_\_\_ Yes, in Compliance

(b) Minimum Consolidated EBITDA.

Required: Not permit Consolidated EBITDA, during any Consolidated Adjusted EBITDA Testing Period, for any fiscal quarter, as calculated on a trailing twelve (12) months basis, to be less than \$1.00:

Actual: All amounts measured on a trailing twelve month basis:

A.	Consolidated Net Income	\$ _____
B.	Consolidated Interest Expense	\$ _____
C.	Provisions for taxes based on income	\$ _____
D.	Total depreciation	\$ _____
E.	Total amortization expense	\$ _____
F.	Non-cash compensation expense	\$ _____
G.	The fees, costs and expenses incurred in connection with the Credit Agreement and the other Loan Documents and the transactions thereunder	\$ _____
H.	Reasonable one-time fees, costs and expenses incurred in connection with a Permitted Acquisition or a successful offering or issuance of Capital Stock, in each case to the extent approved in writing by the Administrative Agent as an 'add-back' to Consolidated EBITDA	\$ _____
I.	Other non-cash items reducing Consolidated Net Income (excluding any such non-cash item to the extent that it represents an accrual or reserve for potential cash items in any future period or amortization of a prepaid cash item that was paid in a prior period) approved by the Administrative Agent in writing as an 'add back' to Consolidated EBITDA	\$ _____
J.	any extraordinary or non-recurring losses, expenses or charges in connection with the transition to ASC 606 or otherwise not to exceed \$2,000,000 in the aggregate for such trailing twelve month period (or such higher amounts as may be approved by the Required Lenders as an 'add-back' to Consolidated EBITDA)	\$ _____
K.	The Sum of lines A through J	\$ _____
L.	Other non-cash items increasing Consolidated Net Income for such period (excluding any such non-cash item to the extent it represents the reversal of an accrual or reserve for potential cash item in any prior period)	\$ _____
M.	Interest Income	\$ _____

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N. The Sum of lines L and M \$ \_\_\_\_\_  
O. CONSOLIDATED EBITDA (line K minus line N) \$ \_\_\_\_\_

Is Line O equal to or greater than \$1.00?

\_\_\_\_\_ No, not in Compliance

\_\_\_\_\_ Yes, in Compliance

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## FORM OF SECRETARY'S CERTIFICATE

[NAME OF APPLICABLE LOAN PARTY]

This Certificate is delivered pursuant to Section 5.1(d) of that certain Credit Agreement, dated as of March 3, 2020, by and among **BENEFITFOCUS, INC.**, a Delaware corporation ("**Parent**"), **BENEFITFOCUS.COM, INC.**, a South Carolina corporation ("**Benefitfocus.com**"), and **BENEFITSTORE, INC.**, a South Carolina corporation ("**BenefitStore**"), and together with Parent and Benefitfocus.com, each individually, a "**Borrower**", and collectively, and jointly and severally, the "**Borrowers**", the several banks and other financial institutions or entities from time to time party thereto (each a "**Lender**" and, collectively, the "**Lenders**"), **SILICON VALLEY BANK ("SVB")**, as the Issuing Lender and the Swingline Lender and **SVB**, as administrative agent and collateral agent for the Lenders (in such capacities, the "**Administrative Agent**") (as amended, restated, amended and restated, supplemented, restructured or otherwise modified from time to time, the "**Credit Agreement**"). Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement. The undersigned [Secretary] of [*insert the name of the certifying Loan Party*, a [\_\_\_\_\_] corporation, the "**Certifying Loan Party**") hereby certifies, solely in such capacity and not in any individual capacity, as follows:

1. The representations and warranties of the Certifying Loan Party set forth in each of the Loan Documents to which it is a party or which are contained in any certificate furnished by or on behalf of the Certifying Loan Party pursuant to any of the Loan Documents to which it is a party are, (i) to the extent qualified by materiality, true and correct, and (ii) to the extent not qualified by materiality, true and correct in all material respects, in each case, on and as of the date hereof with the same effect as if made on the date hereof, except to the extent such representations and warranties expressly relate to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects as of such earlier date.

2. I am the duly elected and qualified [Secretary] of the Certifying Loan Party.

3. Attached hereto as Annex 1 is a true and complete copy of the resolutions duly adopted by the Board of Directors of the Certifying Loan Party authorizing the execution, delivery and performance of the Loan Documents to which the Certifying Loan Party is a party and all other agreements, documents and instruments to be executed, delivered and performed in connection therewith. Such resolutions have not in any way been amended, modified, revoked or rescinded, and have been in full force and effect since their adoption up to and including the date hereof and are now in full force and effect.

4. Attached hereto as Annex 2 is a true and complete copy of the By-Laws of the Certifying Loan Party as in effect on the date hereof.

5. Attached hereto as Annex 3 is a true and complete copy of the Certificate of Incorporation of the Certifying Loan Party as in effect on the date hereof certified by the jurisdiction of its organization, along with a good-standing certificate for the Certifying Loan Party from the jurisdiction of its organization.

6. The following persons are now duly elected and qualified officers of the Certifying Loan Party holding the offices indicated next to their respective names below, and the signatures appearing opposite their respective names below are the true and genuine signatures of such officers, and each of such officers, acting alone, is duly authorized to execute and deliver on behalf of the Certifying Loan

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Party each of the Loan Documents to which it is a party and any certificate or other document to be delivered by the Certifying Loan Party pursuant to the Loan Documents to which it is a party:

Name  
[ \_\_\_\_\_ ]  
[ \_\_\_\_\_ ]  
[ \_\_\_\_\_ ]  
[ \_\_\_\_\_ ]

Office  
[ \_\_\_\_\_ ]  
[ \_\_\_\_\_ ]  
[ \_\_\_\_\_ ]  
[ \_\_\_\_\_ ]

Signature  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*[Signature page follows]*

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IN WITNESS WHEREOF, I have hereunto set my hand as of the date set forth below.

\_\_\_\_\_  
Name: \_\_\_\_\_

Title: [Secretary]

I, \_\_\_\_\_, in my capacity as the \_\_\_\_\_ of the Certifying Loan Party, do hereby certify in the name and on behalf of the Certifying Loan Party that \_\_\_\_\_ is the duly elected and qualified [Secretary] of the Certifying Loan Party and that the signature appearing above is [her] [his] genuine signature.

Date: \_\_\_\_\_

\_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_

**RESOLUTIONS**

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[BY-LAWS]

---

[CERTIFICATE OF INCORPORATION]

AND

GOOD-STANDING CERTIFICATE

---

## FORM OF SOLVENCY CERTIFICATE

BENEFITFOCUS, INC.  
BENEFITFOCUS.COM, INC.  
BENEFITSTORE, INC.

Date: March 3, 2020

To the Administrative Agent,  
and each of the Lenders party  
to the Credit Agreement referred to below:

This SOLVENCY CERTIFICATE (this "*Certificate*") is delivered pursuant to Section 5.1(o) of that certain Credit Agreement, dated as of March 3, 2020, by and among BENEFITFOCUS, INC., a Delaware corporation ("*Parent*"), BENEFITFOCUS.COM, INC., a South Carolina corporation ("*Benefitfocus.com*"), and BENEFITSTORE, INC., a South Carolina corporation ("*BenefitStore*"), and together with Parent and Benefitfocus.com, each individually, a "*Borrower*", and collectively, and jointly and severally, the "*Borrowers*", the several banks and other financial institutions or entities from time to time party thereto (each a "*Lender*" and, collectively, the "*Lenders*"), SILICON VALLEY BANK ("*SVB*"), as the Issuing Lender and the Swingline Lender and SVB, as administrative agent and collateral agent for the Lenders (in such capacities, the "*Administrative Agent*") (as amended, restated, amended and restated, supplemented, restructured or otherwise modified from time to time, the "*Credit Agreement*"). Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

The undersigned Chief Financial Officer of Parent, in such capacity only and not in her/his individual capacity, does hereby certify on behalf of each Loan Party as of the date hereof that each Loan Party is, and after giving effect to the incurrence of all Indebtedness and Obligations being incurred in connection with the Credit Agreement, is Solvent. No transfer of property is being made by any Loan Party and no obligation is being incurred by any Loan Party in connection with the transactions contemplated by the Credit Agreement or the other Loan Documents with the intent to hinder, delay, or defraud either present or future creditors of such Loan Party.

*(Signature page follows)*

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I represent the foregoing information to be, to the best of my knowledge and belief, true and correct and execute this Certificate as of the date first written above.

**PARENT**, for itself and on behalf of each other Loan Party:

**BENEFITFOCUS, INC.**

By: \_\_\_\_\_

Name: Stephen Swad

Title: Chief Financial Officer

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## FORM OF ASSIGNMENT AND ASSUMPTION

**BENEFITFOCUS, INC.**  
**BENEFITFOCUS.COM, INC.**  
**BENEFITSTORE, INC.**

This Assignment and Assumption Agreement (the “**Assignment Agreement**”) is dated as of the Assignment Effective Date set forth below and is entered into by and between the Assignor identified in item 1 below (the “**Assignor**”) and the Assignee identified in item 2 below (the “**Assignee**”). Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement identified below (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the “**Credit Agreement**”), receipt of a copy of which is hereby acknowledged by the Assignee. The Standard Terms and Conditions set forth in Annex 1 attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment Agreement as if set forth herein in full.

For an agreed consideration, the Assignor hereby irrevocably sells and assigns to the Assignee, and the Assignee hereby irrevocably purchases and assumes from the Assignor, subject to and in accordance with the Standard Terms and Conditions and the Credit Agreement, as of the Assignment Effective Date inserted by the Administrative Agent as contemplated below (i) all of the Assignor’s rights and obligations in its capacity as a Lender under the Credit Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of the Assignor under the Revolving Facility (including without limitation any letter of credit deposits, guarantees, and swingline loans included in such facility) and (ii) to the extent permitted to be assigned under applicable law, all claims, suits, causes of action and any other right of the Assignor (in its capacity as a Lender) against any Person, whether known or unknown, arising under or in connection with the Credit Agreement, any other documents or instruments delivered pursuant thereto or the loan transactions governed thereby or in any way based on or related to any of the foregoing, including, but not limited to, contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (i) above (the rights and obligations sold and assigned by the Assignor to the Assignee pursuant to clauses (i) and (ii) above being referred to herein collectively as the “**Assigned Interest**”). Each such sale and assignment is without recourse to the Assignor and, except as expressly provided in this Assignment Agreement, without representation or warranty by the Assignor.

1. Assignor: \_\_\_\_\_  
 \_\_\_\_\_
2. Assignee: \_\_\_\_\_  
 \_\_\_\_\_  
 [for Assignee, if applicable, indicate [Affiliate] [Approved Fund] of [identify Lender]]
3. Borrowers: **BENEFITFOCUS, INC.**, a Delaware corporation  
**BENEFITFOCUS.COM, INC.**, a South Carolina corporation  
**BENEFITSTORE, INC.**, a South Carolina corporation
4. Administrative Agent: SILICON VALLEY BANK
-

5. Credit Agreement: Credit Agreement, dated as of March 3, 2020, among the Borrowers, the Lenders party thereto, Silicon Valley Bank, as the Issuing Lender and Swingline Lender and Silicon Valley Bank, as Administrative Agent

6. Assigned Interest[s]:

Assignor	Assignee	Aggregate Amount of Revolving Commitments / Loans for all Lenders <sup>1</sup>	Amount of Revolving Commitment / Loans Assigned <sup>2</sup>	Percentage Assigned of Revolving Commitment / Loans <sup>3</sup>	CUSIP Number
		\$	\$	%	
		\$	\$	%	
		\$	\$	%	

[7. Trade Date: \_\_\_\_\_]4

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

[Signature pages follow]

<sup>1</sup> Amount to be adjusted by the counterparties to take into account any payments or prepayments made between the Trade Date and the Assignment Effective Date.

<sup>2</sup> Amount to be adjusted by the counterparties to take into account any payments or prepayments made between the Trade Date and the Assignment Effective Date.

<sup>3</sup> Set forth, to at least 9 decimals, as a percentage of the applicable Commitment/Loans of all Lenders thereunder.

<sup>4</sup> To be completed if the Assignor(s) and the Assignee(s) intend that the minimum assignment amount is to be determined as of the Trade Date.

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

ASSIGNOR<sup>5</sup>  
[NAME OF ASSIGNOR]

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

ASSIGNEE<sup>6</sup>  
[NAME OF ASSIGNEE]

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

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<sup>5</sup> Add additional signature blocks as needed.

<sup>6</sup> Add additional signature blocks as needed.

---

Consented to and Accepted:

SILICON VALLEY BANK,  
as Administrative Agent

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

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

[Consented to:]<sup>7</sup>

[NAME OF RELEVANT PARTY]

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

[NAME OF RELEVANT PARTY]

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

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<sup>7</sup> To be added only if the consent of the Borrowers and/or other parties (e.g. Issuing Lender) is required by the terms of the Credit Agreement.

STANDARD TERMS AND CONDITIONS FOR  
ASSIGNMENT AND ASSUMPTION1. Representations and Warranties.

1.1 Assignor. The Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of the Assigned Interest, (ii) the Assigned Interest is free and clear of any lien, encumbrance or other adverse claim and (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment Agreement and to consummate the transactions contemplated hereby; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Credit Agreement or any other Loan Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Documents or any collateral thereunder, (iii) the financial condition of any Loan Party, any of their respective Subsidiaries or Affiliates or any other Person obligated in respect of any Loan Document or (iv) the performance or observance by any Loan Party, any of their respective Subsidiaries or Affiliates or any other Person of any of their respective obligations under any Loan Document or any other instrument or document furnished pursuant hereto or thereto.

1.2 Assignee. The Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment Agreement and to consummate the transactions contemplated hereby and to become a Lender under the Credit Agreement, (ii) it meets all the requirements to be an Assignee under Section 10.6(b) of the Credit Agreement (subject to such consents, if any, as may be required under Section 10.6(b)(iii) of the Credit Agreement), (iii) from and after the Assignment Effective Date, it shall be bound by the provisions of the Credit Agreement as a Lender thereunder and, to the extent of the Assigned Interest, shall have the obligations of a Lender thereunder, (iv) it is sophisticated with respect to decisions to acquire assets of the type represented by the Assigned Interest and either it, or the person exercising discretion in making its decision to acquire the Assigned Interest, is experienced in acquiring assets of such type, (v) it has received a copy of the Credit Agreement, and has received or has been accorded the opportunity to receive copies of the most recent financial statements delivered pursuant to Section 6.1 thereof, as applicable, and such other documents and information as it deems appropriate to make its own credit analysis and decision to enter into this Assignment Agreement and to purchase the Assigned Interest, (vi) it has, independently and without reliance upon the Administrative Agent or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Assignment Agreement and to purchase the Assigned Interest, and (vii) if it is a Non-U.S. Lender, attached to the Assignment Agreement is any documentation required to be delivered by it pursuant to the terms of the Credit Agreement, duly completed and executed by the Assignee; and (b) agrees that (i) it will, independently and without reliance on any of the Administrative Agent, the Assignor or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan Documents and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender.

2. Payments. From and after the Assignment Effective Date, the Administrative Agent shall make all payments in respect of the Assigned Interest (including payments of principal, interest, fees and other amounts) to the Assignor for amounts which have accrued to but excluding the Assignment Effective Date and to the Assignee for amounts which have accrued from and after the Assignment Effective Date.

3. General Provisions. This Assignment Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment Agreement may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment Agreement by telecopy (or other electronic method of transmission) shall be effective as delivery of a manually executed counterpart of this Assignment

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Agreement. This Assignment Agreement shall be governed by, and construed and interpreted in accordance with, the internal laws (and not the conflict of law rules) of the State of New York.

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**FORM OF U.S. TAX COMPLIANCE CERTIFICATE**  
**(For Foreign Lenders That Are Not Partnerships for U.S. Federal Income Tax Purposes)**

[Date]

Reference is made to that certain Credit Agreement, dated as of March 3, 2020, by and among **BENEFITFOCUS, INC.**, a Delaware corporation ("**Parent**"), **BENEFITFOCUS.COM, INC.**, a South Carolina corporation ("**Benefitfocus.com**"), and **BENEFITSTORE, INC.**, a South Carolina corporation ("**BenefitStore**", and together with Parent and Benefitfocus.com, each individually, a "**Borrower**", and collectively, and jointly and severally, the "**Borrowers**"), the several banks and other financial institutions or entities from time to time party thereto (each a "**Lender**" and, collectively, the "**Lenders**"), **SILICON VALLEY BANK ("SVB")**, as the Issuing Lender and the Swingline Lender and **SVB**, as administrative agent and collateral agent for the Lenders (in such capacities, the "**Administrative Agent**") (as amended, restated, amended and restated, supplemented, restructured or otherwise modified from time to time, the "**Credit Agreement**").

Pursuant to the provisions of Section 2.20 of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the Loan(s) (as well as any Note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (ii) it is not a bank within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not a ten percent shareholder of any of the Borrowers within the meaning of Section 871(h)(3)(B) of the Code and (iv) it is not a controlled foreign corporation related to any of the Borrowers as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished the Administrative Agent and the Borrower with a certificate of its non-U.S. Person status on IRS Form W-8BEN. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform the Borrower and the Administrative Agent, and (2) the undersigned shall have at all times furnished the Borrower and the Administrative Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

IN WITNESS WHEREOF, the undersigned has caused this certificate to be duly executed and delivered by its proper and duly authorized signatory as of the day and year first written above.

[Name of Lender]

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

**FORM OF U.S. TAX COMPLIANCE CERTIFICATE**  
**(For Foreign Participants That Are Not Partnerships for U.S. Federal Income Tax Purposes)**

[Date]

Reference is made to that certain Credit Agreement, dated as of March 3, 2020, by and among **BENEFITFOCUS, INC.**, a Delaware corporation ("**Parent**"), **BENEFITFOCUS.COM, INC.**, a South Carolina corporation ("**Benefitfocus.com**"), and **BENEFITSTORE, INC.**, a South Carolina corporation ("**BenefitStore**"), and together with Parent and Benefitfocus.com, each individually, a "**Borrower**", and collectively, and jointly and severally, the "**Borrowers**", the several banks and other financial institutions or entities from time to time party thereto (each a "**Lender**" and, collectively, the "**Lenders**"), **SILICON VALLEY BANK ("SVB")**, as the Issuing Lender and the Swingline Lender and **SVB**, as administrative agent and collateral agent for the Lenders (in such capacities, the "**Administrative Agent**") (as amended, restated, amended and restated, supplemented, restructured or otherwise modified from time to time, the "**Credit Agreement**").

Pursuant to the provisions of Section 2.20 of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the participation in respect of which it is providing this certificate, (ii) it is not a bank within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not a ten percent shareholder of any of the Borrowers within the meaning of Section 871(h)(3)(B) of the Code, and (iv) it is not a controlled foreign corporation related to any of the Borrowers as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with a certificate of its non-U. S. Person status on IRS Form W-8BEN. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender in writing, and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

IN WITNESS WHEREOF, the undersigned has caused this certificate to be duly executed and delivered by its proper and duly authorized signatory as of the day and year first written above.

[Name of Participant]

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

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**FORM OF U.S. TAX COMPLIANCE CERTIFICATE**  
**(For Foreign Participants That Are Partnerships for U.S. Federal Income Tax Purposes)**

[Date]

Reference is made to that certain Credit Agreement, dated as of March 3, 2020, by and among **BENEFITFOCUS, INC.**, a Delaware corporation ("**Parent**"), **BENEFITFOCUS.COM, INC.**, a South Carolina corporation ("**Benefitfocus.com**"), and **BENEFITSTORE, INC.**, a South Carolina corporation ("**BenefitStore**", and together with Parent and Benefitfocus.com, each individually, a "**Borrower**", and collectively, and jointly and severally, the "**Borrowers**"), the several banks and other financial institutions or entities from time to time party thereto (each a "**Lender**" and, collectively, the "**Lenders**"), **SILICON VALLEY BANK ("SVB")**, as the Issuing Lender and the Swingline Lender and **SVB**, as administrative agent and collateral agent for the Lenders (in such capacities, the "**Administrative Agent**") (as amended, restated, amended and restated, supplemented, restructured or otherwise modified from time to time, the "**Credit Agreement**").

Pursuant to the provisions of Section 2.20 of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the participation in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such participation, (iii) with respect such participation, neither the undersigned nor any of its direct or indirect partners/members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (iv) none of its direct or indirect partners/members is a ten percent shareholder of any of the Borrowers within the meaning of Section 871(h)(3)(B) of the Code and (v) none of its direct or indirect partners/members is a controlled foreign corporation related to any of the Borrowers as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN from each of such partner's/member's beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

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IN WITNESS WHEREOF, the undersigned has caused this certificate to be duly executed and delivered by its proper and duly authorized signatory as of the day and year first written above.

[Name of Participant]

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

---

**FORM OF U.S. TAX COMPLIANCE CERTIFICATE**  
**(For Foreign Lenders That Are Partnerships for U.S. Federal Income Tax Purposes)**

[Date]

Reference is made to that certain Credit Agreement, dated as of March 3, 2020, by and among **BENEFITFOCUS, INC.**, a Delaware corporation ("**Parent**"), **BENEFITFOCUS.COM, INC.**, a South Carolina corporation ("**Benefitfocus.com**"), and **BENEFITSTORE, INC.**, a South Carolina corporation ("**BenefitStore**"), and together with Parent and Benefitfocus.com, each individually, a "**Borrower**", and collectively, and jointly and severally, the "**Borrowers**", the several banks and other financial institutions or entities from time to time party thereto (each a "**Lender**" and, collectively, the "**Lenders**"), **SILICON VALLEY BANK ("SVB")**, as the Issuing Lender and the Swingline Lender and **SVB**, as administrative agent and collateral agent for the Lenders (in such capacities, the "**Administrative Agent**") (as amended, restated, amended and restated, supplemented, restructured or otherwise modified from time to time, the "**Credit Agreement**").

Pursuant to the provisions of Section 2.20 of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the Loan(s) (as well as any Note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such Loan(s) (as well as any Note(s) evidencing such Loan(s)), (iii) with respect to the extension of credit pursuant to this Credit Agreement or any other Loan Document, neither the undersigned nor any of its direct or indirect partners/members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (iv) none of its direct or indirect partners/members is a ten percent shareholder of any of the Borrowers within the meaning of Section 871(h)(3)(B) of the Code and (v) none of its direct or indirect partners/members is a controlled foreign corporation related to any of the Borrowers as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished the Administrative Agent and the Borrowers with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN from each of such partner's/member's beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform the Borrowers and the Administrative Agent, and (2) the undersigned shall have at all times furnished the Borrowers and the Administrative Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

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IN WITNESS WHEREOF, the undersigned has caused this certificate to be duly executed and delivered by its proper and duly authorized signatory as of the day and year first written above.

[Name of Lender]

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

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## FORM OF REVOLVING LOAN NOTE

BENEFITFOCUS, INC.  
 BENEFITFOCUS.COM, INC.  
 BENEFITSTORE, INC.

THIS REVOLVING LOAN NOTE AND THE OBLIGATIONS REPRESENTED HEREBY MAY NOT BE TRANSFERRED EXCEPT IN COMPLIANCE WITH THE TERMS AND PROVISIONS OF THE CREDIT AGREEMENT REFERRED TO BELOW. TRANSFERS OF THIS REVOLVING LOAN NOTE AND THE OBLIGATIONS REPRESENTED HEREBY MUST BE RECORDED IN THE REVOLVING LOAN REGISTER MAINTAINED BY THE ADMINISTRATIVE AGENT PURSUANT TO THE TERMS OF SUCH CREDIT AGREEMENT.

\$[\_\_\_\_\_]

Santa Clara, California

March 3, 2020

FOR VALUE RECEIVED, the undersigned, **BENEFITFOCUS, INC.**, a Delaware corporation ("**Parent**"), **BENEFITFOCUS.COM, INC.**, a South Carolina corporation ("**Benefitfocus.com**"), and **BENEFITSTORE, INC.**, a South Carolina corporation ("**BenefitStore**"), and together with Parent and Benefitfocus.com, each individually, a "**Borrower**", and collectively, the "**Borrowers**", hereby unconditionally promises to pay to [\_\_\_\_\_] (the "**Lender**") or its permitted registered assigns at the Revolving Loan Funding Office specified in the Credit Agreement (as hereinafter defined) in Dollars and in immediately available funds, on the Revolving Termination Date the principal amount of (a) [\_\_\_\_\_] DOLLARS (\$[\_\_\_\_\_] ), or, if less, (b) the aggregate unpaid principal amount of all Revolving Loans made by the Lender to the Borrower pursuant to Section 2.4 of the Credit Agreement referred to below. The Borrower further agrees to pay interest in like money at such office on the unpaid principal amount hereof from time to time outstanding at the rates and on the dates specified in the Credit Agreement.

The holder of this Revolving Loan Note (this "**Note**") is authorized to indorse on the schedules annexed hereto and made a part hereof or on a continuation thereof which shall be attached hereto and made a part hereof the date and amount of each Revolving Loan made pursuant to the Credit Agreement and the date and amount of each payment or prepayment of principal thereof. Each such indorsement shall constitute prima facie evidence of the accuracy of the information indorsed. The failure to make any such indorsement or any error in any such indorsement shall not affect the obligations of the Borrower in respect of any Revolving Loan.

This Note (a) is one of the Revolving Loan Notes referred to in the Credit Agreement, dated as of March 3, 2020, among the Borrower, the Lenders party thereto, and Silicon Valley Bank, as Administrative (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "**Credit Agreement**"), (b) is subject to the provisions of the Credit Agreement and (c) is subject to optional and mandatory prepayment in whole or in part as provided in the Credit Agreement. This Note is secured and guaranteed as provided in the Loan Documents. Reference is hereby made to the Loan Documents for a description of the properties and assets in which a security interest has been granted, the nature and extent of the security and the guarantees, the terms and conditions upon which the security interests and each guarantee were granted and the rights of the holder of this Note in respect thereof.

Upon the occurrence and during the continuance of any one or more Events of Default, all principal and all accrued interest then remaining unpaid on this Note shall become, or may be declared to be, immediately due and payable, all as provided in the Credit Agreement. All parties now and hereafter liable with respect to this

Note, whether maker, principal, surety, guarantor, indorser or otherwise, hereby waive presentment, demand, protest and all other notices of any kind.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

**NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN OR IN THE CREDIT AGREEMENT, THIS NOTE MAY NOT BE TRANSFERRED EXCEPT PURSUANT TO AND IN ACCORDANCE WITH THE REGISTRATION AND OTHER PROVISIONS OF SECTION 10.6 OF THE CREDIT AGREEMENT.**

**THIS NOTE SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE INTERNAL LAWS (AND NOT THE CONFLICT OF LAW RULES) OF THE STATE OF NEW YORK.**

**BORROWER:**

**BENEFITFOCUS, INC.**

**BENEFITFOCUS.COM, INC.**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

**BENEFITSTORE, INC.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_



## FORM OF SWINGLINE LOAN NOTE

BENEFITFOCUS, INC.  
BENEFITFOCUS.COM, INC.  
BENEFITSTORE, INC.

THIS SWINGLINE LOAN NOTE AND THE OBLIGATIONS REPRESENTED HEREBY MAY NOT BE TRANSFERRED EXCEPT IN COMPLIANCE WITH THE TERMS AND PROVISIONS OF THE CREDIT AGREEMENT REFERRED TO BELOW. TRANSFERS OF THIS SWINGLINE LOAN NOTE AND THE OBLIGATIONS REPRESENTED HEREBY MUST BE RECORDED IN THE REVOLVING LOAN REGISTER MAINTAINED BY THE ADMINISTRATIVE AGENT PURSUANT TO THE TERMS OF SUCH CREDIT AGREEMENT.

\$5,000,000.00  
3, 2020

Santa Clara, California

March

FOR VALUE RECEIVED, the undersigned, **BENEFITFOCUS, INC.**, a Delaware corporation ("**Parent**"), **BENEFITFOCUS.COM, INC.**, a South Carolina corporation ("**Benefitfocus.com**"), and **BENEFITSTORE, INC.**, a South Carolina corporation ("**BenefitStore**", and together with Parent and Benefitfocus.com, each individually, a "**Borrower**", and collectively, the "**Borrowers**"), hereby unconditionally promises to pay to **SILICON VALLEY BANK** (the "**Lender**") or its permitted registered assigns at the Revolving Loan Funding Office specified in the Credit Agreement (as hereinafter defined) in Dollars and in immediately available funds, on the Revolving Termination Date, the principal amount of (a) FIVE MILLION DOLLARS (\$5,000,000.00), or, if less, (b) the aggregate unpaid principal amount of all Swingline Loans made by the Lender to the Borrower pursuant to Section 2.6 of the Credit Agreement referred to below. The Borrower further agrees to pay interest in like money at such office on the unpaid principal amount hereof from time to time outstanding at the rates and on the dates specified in the Credit Agreement.

The holder of this Swingline Loan Note (this "**Note**") is authorized to indorse on the schedules annexed hereto and made a part hereof or on a continuation thereof which shall be attached hereto and made a part hereof the date and amount of each Swingline Loan made pursuant to the Credit Agreement and the date and amount of each payment or prepayment of principal thereof. Each such indorsement shall constitute prima facie evidence of the accuracy of the information indorsed. The failure to make any such indorsement or any error in any such indorsement shall not affect the obligations of the Borrower in respect of any Swingline Loan.

This Note (a) is the Swingline Loan Note referred to in the Credit Agreement, dated as of March 3, 2020, among the Borrower, the Lenders party thereto, and Silicon Valley Bank, as Administrative Agent (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "**Credit Agreement**"), (b) is subject to the provisions of the Credit Agreement and (c) is subject to optional and mandatory prepayment in whole or in part as provided in the Credit Agreement. This Note is secured and guaranteed as provided in the Loan Documents. Reference is hereby made to the Loan Documents for a description of the properties and assets in which a security interest has been granted, the nature and extent of the security and the guarantees, the terms and conditions upon which the security interests and each guarantee were granted and the rights of the holder of this Note in respect thereof.

Upon the occurrence and during the continuance of any one or more Events of Default, all principal and all accrued interest then remaining unpaid on this Note shall become, or may be declared to be, immediately due and payable, all as provided in the Credit Agreement.

All parties now and hereafter liable with respect to this Note, whether maker, principal, surety, guarantor, indorser or otherwise, hereby waive presentment, demand, protest and all other notices of any kind.

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Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

**NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN OR IN THE CREDIT AGREEMENT, THIS NOTE MAY NOT BE TRANSFERRED EXCEPT PURSUANT TO AND IN ACCORDANCE WITH THE REGISTRATION AND OTHER PROVISIONS OF SECTION 10.6 OF THE CREDIT AGREEMENT.**

**THIS NOTE SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE INTERNAL LAWS (AND NOT THE CONFLICT OF LAW RULES) OF THE STATE OF NEW YORK.**

**BORROWER:**

**BENEFITFOCUS, INC.**

**BENEFITFOCUS.COM, INC.**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

**BENEFITSTORE, INC.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_



FORM OF COLLATERAL INFORMATION CERTIFICATE

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## FORM OF NOTICE OF BORROWING

BENEFITFOCUS, INC.  
 BENEFITFOCUS.COM, INC.  
 BENEFITSTORE, INC.

Date: \_\_\_\_\_

TO: **SILICON VALLEY BANK**  
 3003 Tasman Drive  
 Santa Clara, CA 95054  
 Attention: Corporate Services Department

RE: Credit Agreement, dated as of March 3, 2020, by and among **BENEFITFOCUS, INC.**, a Delaware corporation ("**Parent**"), **BENEFITFOCUS.COM, INC.**, a South Carolina corporation ("**Benefitfocus.com**"), and **BENEFITSTORE, INC.**, a South Carolina corporation ("**BenefitStore**"), and together with Parent and Benefitfocus.com, each individually, a "**Borrower**", and collectively, and jointly and severally, the "**Borrowers**", the several banks and other financial institutions and entities from time to time party thereto (each a "**Lender**" and, collectively, the "**Lenders**"), **SILICON VALLEY BANK ("SVB")**, as the Issuing Lender and the Swingline Lender and **SVB**, as administrative agent and collateral agent for the Lenders (in such capacities, the "**Administrative Agent**") (as amended, restated, amended and restated, supplemented, restructured or otherwise modified from time to time, the "**Credit Agreement**"). Capitalized terms used but not otherwise defined herein shall have the respective meanings given to such terms in the Credit Agreement.

Ladies and Gentlemen:

The undersigned refers to the Credit Agreement and hereby gives you irrevocable notice, pursuant to Section 2.5 of the Credit Agreement, of the borrowing of a Revolving Loan.

1. The requested Borrowing Date, which shall be a Business Day, is \_\_\_\_\_.
2. The aggregate amount of the requested Loan is \$ \_\_\_\_\_.

3. The undersigned hereby directs the Administrative Agent to disburse the proceeds from the Loan [to be made on the Closing Date, and any other funds described and as set forth in the Flow of Funds Agreement attached hereto as Exhibit A]<sup>8</sup> [Insert instructions for remittance of the proceeds of the applicable Loans to be borrowed]<sup>9</sup>

4. The undersigned, in his/her capacity as a Responsible Officer of the Borrower and not in his/her individual capacity, hereby certifies that the following statements are true on the date hereof, and will be true on the date of the proposed Loan before and immediately after giving effect thereto:

(a) each representation and warranty of each Loan Party contained in or pursuant to any Loan Document (i) to the extent qualified by materiality, is true and correct, and (ii) to the extent not qualified by materiality, is true and correct in all material respects, in each case, on and as of the date hereof as if made on and as of the

<sup>8</sup> To be used for Notice of Borrowing on the Closing Date

<sup>9</sup> To be used for any Notice of Borrowing after the Closing Date.

date hereof, except to the extent such representations and warranties expressly relate to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects as of such earlier date;

- (b) no Default or Event of Default exists or will occur after giving effect to the extensions of credit requested herein; and
- (c) after giving effect to such Revolving Extension of Credit, the availability and borrowing limitations specified in Section 2.4 of the Credit Agreement will be satisfied.

*[Signature page follows]*

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IN WITNESS WHEREOF, the undersigned has caused this notice to be duly executed and delivered by its proper and duly authorized officer as of the day and year first written above.

**BORROWER:**

**BENEFITFOCUS, INC.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**BENEFITFOCUS.COM, INC.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**BENEFITSTORE, INC.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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**GUARANTEE AND COLLATERAL AGREEMENT**  
Dated as of March 3, 2020,

made by

**BENEFITFOCUS, INC.**  
**BENEFITFOCUS.COM, INC.**  
**BENEFITSTORE, INC.**

and the other Grantors that may become party hereto,

in favor of

**SILICON VALLEY BANK,**  
as Administrative Agent

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## GUARANTEE AND COLLATERAL AGREEMENT

This GUARANTEE AND COLLATERAL AGREEMENT (this “**Agreement**”), dated as of March 3, 2020 is made by each of the signatories hereto (together with any other entity that may become a party hereto as provided herein, each a “**Grantor**” and, collectively, the “**Grantors**”), in favor of **SILICON VALLEY BANK**, as administrative agent and collateral agent (together with its successors, in such capacities, the “**Administrative Agent**”) for the banks and other financial institutions or entities (each a “**Lender**” and, collectively, the “**Lenders**”) from time to time party to that certain Credit Agreement, dated as of the date hereof (as amended, amended and restated, supplemented, restructured or otherwise modified, renewed or replaced from time to time, the “**Credit Agreement**”), among **BENEFITFOCUS, INC.**, a Delaware corporation (“**Parent**”), **BENEFITFOCUS.COM, INC.**, a South Carolina corporation (“**Benefitfocus.com**”), and **BENEFITSTORE, INC.**, a South Carolina corporation (“**BenefitStore**”, and together with Parent and Benefitfocus.com, each individually, a “**Borrower**”, and collectively, and jointly and severally, the “**Borrowers**”), the Lenders party thereto, and the Administrative Agent.

### INTRODUCTORY STATEMENTS

WHEREAS, each Borrower is a member of an affiliated group of companies that includes each other Grantor;

WHEREAS, the proceeds of the extensions of credit under the Credit Agreement will be used in part to enable the Borrowers to make valuable transfers to one or more of the other Grantors (if any) in connection with the operation of their respective business;

WHEREAS, certain of the Qualified Counterparties may enter into Specified Swap Agreements with the Borrower;

WHEREAS, the Borrowers and the other Grantors (if any) are engaged in related businesses, and each Grantor derives substantial direct and indirect benefit from the extensions of credit under the Credit Agreement and from the Specified Swap Agreements; and

WHEREAS, it is a condition precedent to closing the transactions under the Credit Agreement that the Grantors shall have executed and delivered this Agreement in favor of the Administrative Agent for the ratable benefit of the Secured Parties.

NOW, THEREFORE, in consideration of the above premises, the parties hereto hereby agree as follows:

#### SECTION 1. **Defined Terms.**

##### 1.1 Definitions.

(a) Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the respective meanings given to such terms in the Credit Agreement, and the following terms are used herein as defined in the UCC: Account, Certificated Security, Chattel Paper, Commercial Tort Claim, Commodity Account, Document, Electronic Chattel Paper, Equipment, Farm Products, Fixtures, General Intangible, Goods, Instrument, Inventory, Letter-of-Credit Rights, Money, Securities Account and Supporting Obligation.

(b) The following terms shall have the following meanings:

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

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

**“Books”**: all books, records and other written, electronic or other documentation in whatever form maintained now or hereafter by or for any Grantor in connection with the ownership of its assets or the conduct of its business or evidencing or containing information relating to the Collateral, including: (a) ledgers; (b) records indicating, summarizing, or evidencing such Grantor’s assets (including Inventory and Rights to Payment), business operations or financial condition; (c) computer programs and software; (d) computer discs, tapes, files, manuals, spreadsheets; (e) computer printouts and output of whatever kind; (f) any other computer prepared or electronically stored, collected or reported information and equipment of any kind; and (g) any and all other rights now or hereafter arising out of any contract or agreement between such Grantor and any service bureau, computer or data processing company or other Person charged with preparing or maintaining any of such Grantor’s books or records or with credit reporting, including with regard to any of such Grantor’s Accounts.

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

**“Collateral”**: as defined in Section 3.1.

**“Collateral Account”**: any collateral account established by the Administrative Agent as provided in Section 6.1 or 6.4.

**“Commodity Exchange Act”**: the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

**“Copyright License”**: any written agreement which (a) names a Grantor as licensor or licensee, and (b) grants any right under any Copyright to such Grantor, including any rights to manufacture, distribute, exploit and sell materials derived from any Copyright (including those listed on Schedule 6).

**“Copyrights”**: (a) all copyrights arising under the laws of the United States, any other country or any political subdivision thereof, together with the underlying works of authorship (including titles), whether registered or unregistered and whether published or unpublished (including those listed on Schedule 6), all computer programs, computer databases, computer program flow diagrams, source codes, object codes and all tangible property embodying or incorporating any copyrights, all registrations and recordings thereof, and all applications in connection therewith, including, without limitation, all registrations, recordings and applications in the U.S. Copyright Office, and (b) the right to obtain any renewals thereof.

**“Deposit Account”**: as defined in the Uniform Commercial Code of any applicable jurisdiction and, in any event, including any demand, time, savings, passbook or like account maintained with a depository institution.

**“Discharge of Obligations”**: as defined in the Credit Agreement.

**“Excluded Assets”**: collectively,

(a) margin stock (within the meaning of Regulation U issued by the Board) to the extent the creation of a security interest therein in favor of the Administrative Agent (for the ratable benefit of the Secured Parties) will result in a violation of Regulation U issued by the Board;

(b) motor vehicles and other equipment covered by certificates of title; and

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(c) capital stock of any Excluded Foreign Subsidiary (other than Capital Stock representing up to 66% of the total outstanding voting Capital Stock of any Excluded Foreign Subsidiary); provided, however, that any Proceeds, substitutions or replacements of any Excluded Assets shall not be Excluded Assets (unless such Proceeds, substitutions or replacements are otherwise, in and of themselves, Excluded Assets).

**“Excluded Swap Obligation”**: with respect to any Grantor, any obligation to pay or perform under any Specified Swap Agreement, if and to the extent that all or a portion of the guarantee of such Grantor of, or the grant by such Grantor of a security interest to secure, such obligations under a Specified Swap Agreement (or any guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Grantor’s failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act and the regulations thereunder at the time the guarantee of such Grantor or the grant of such security interest becomes effective with respect to such obligations under a Specified Swap Agreement or such guarantee. If any obligation to pay or perform under any Specified Swap Agreement arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such obligations under a Specified Swap Agreement that is attributable to swaps for which such guarantee or security interest is or becomes illegal.

**“Fraudulent Transfer Laws”**: as defined in [Section 2.1\(f\)](#).

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

**“Guarantor”**: as defined in [Section 2.1\(a\)](#).

**“Investment Account”**: any of a Securities Account, a Commodity Account or a Deposit Account.

**“Investment Property”**: the collective reference to (a) all “investment property” as such term is defined in Section 9-102(a)(49) of the UCC (other than any voting Capital Stock or other ownership interests of an Excluded Foreign Subsidiary excluded from the definition of “Pledged Stock”), and (b) whether or not constituting “investment property” as so defined, all Pledged Notes and all Pledged Collateral.

**“Issuer”**: with respect to any Investment Property, the issuer of such Investment Property.

**“Patent License”**: any written agreement which (a) names a Grantor as licensor or licensee and (b) grants to such Grantor any right under a Patent, including the right to manufacture, use or sell any invention covered in whole or in part by such Patent, including any such agreements referred to on [Schedule 6](#).

**“Patents”**: (a) all letters patent of the United States, any other country or any political subdivision thereof, all reissues and extensions thereof and all goodwill associated therewith, including, without limitation, any of the foregoing referred to on [Schedule 6](#), (b) all applications for letters patent of the United States or any other country and all divisions, continuations and continuations-in-part thereof, including, without limitation, any of the foregoing referred to on [Schedule 6](#), and (c) all rights to obtain any reissues or extensions of the foregoing.

**“Pledged Collateral”**: (a) any and all Pledged Stock; (b) all other Investment Property of any Grantor; (c) all warrants, options or other rights entitling any Grantor to acquire any interest in Capital Stock or other securities of the direct or indirect Subsidiaries of such Grantor or of any other Person; (d) all Instruments; (e) all securities, property, interest, dividends and other payments and distributions issued as an addition to, in redemption of, in renewal or exchange for, in substitution or upon conversion of, or

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otherwise on account of, any of the foregoing; (f) all certificates and instruments now or hereafter representing or evidencing any of the foregoing; (g) all rights, interests and claims with respect to the foregoing, including under any and all related agreements, instruments and other documents; and (h) all cash and non-cash proceeds of any of the foregoing, in each case whether presently existing or owned or hereafter arising or acquired and wherever located, and as from time to time received or receivable by, or otherwise paid or distributed to or acquired by, any Grantor.

**“Pledged Collateral Agreements”**: as defined in Section 5.23.

**“Pledged Notes”**: all promissory notes listed on Schedule 2 and all other promissory notes issued to or held by any Grantor.

**“Pledged Stock”**: all of the issued and outstanding shares of Capital Stock, whether certificated or uncertificated, of any Grantor’s direct Subsidiaries now or hereafter owned by any such Grantor and including the Capital Stock listed on Schedule 2 hereof (as amended or supplemented from time to time); provided that in no event shall Pledged Stock include any Excluded Assets.

**“Proceeds”**: all “proceeds” as such term is defined in Section 9-102(a)(64) of the UCC and, in any event, shall include, without limitation, all dividends or other income from any Investment Property constituting Collateral and all collections thereon or distributions or payments with respect thereto.

**“Receivable”**: any right to payment for goods sold or leased or for services rendered, whether or not such right is evidenced by an Instrument or Chattel Paper and whether or not it has been earned by performance (including any Account).

**“Rights to Payment”**: any and all of any Grantor’s Accounts and any and all of any Grantor’s rights and claims to the payment or receipt of money or other forms of consideration of any kind in, to and under or with respect to its Chattel Paper, Documents, General Intangibles, Instruments, Investment Property, Letter-of-Credit Rights, Proceeds and Supporting Obligations.

**“Secured Obligations”**: collectively, the “Obligations”, as such term is defined in the Credit Agreement; provided, however, that “Secured Obligations” shall not include any Excluded Swap Obligation.

**“Secured Parties”**: as defined in the Credit Agreement.

**“Trademark License”**: any written agreement which (a) names a Grantor as licensor or licensee and (b) grants to such Grantor any right to use any Trademark, including any such agreement referred to on Schedule 6.

**“Trademarks”**: (a) all trademarks, trade names, corporate names, company names, business names, fictitious business names, trade styles, service marks, logos, Internet domain names and other source or business identifiers, and all goodwill associated therewith, now existing or hereafter adopted or acquired, all registrations and recordings thereof, and all applications in connection therewith, whether in the U.S. Patent and Trademark Office or in any similar office or agency of the United States, any State thereof or any other country or any political subdivision thereof, or otherwise, and all common-law rights related thereto, including, without limitation, any of the foregoing referred to on Schedule 6, and (b) the right to obtain all renewals thereof.

1.2 Other Definitional Provisions. The rules of interpretation set forth in Section 1.2 of the Credit Agreement are by this reference incorporated herein, *mutatis mutandis*, as if set forth herein in full.

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SECTION 2. **Guarantee.**

2.1 Guarantee.

(a) Each Borrower, together with each Subsidiary of each Borrower who accedes to this Agreement as a Grantor after the date hereof pursuant to Section 6.12 of the Credit Agreement (each a “**Guarantor**” and, collectively, the “**Guarantors**”), hereby, jointly and severally, unconditionally and irrevocably, guarantees to the Administrative Agent, for the ratable benefit of the Secured Parties and their respective successors, permitted indorsees, permitted transferees and permitted assigns, the prompt and complete payment and performance by the Borrowers and the other Loan Parties when due (whether at the stated maturity, by acceleration or otherwise) of the Secured Obligations. In furtherance of the foregoing, and without limiting the generality thereof, each Guarantor agrees as follows:

(i) each Guarantor’s liability hereunder shall be the immediate, direct, and primary obligation of such Guarantor and shall not be contingent upon the Administrative Agent’s or any Secured Party’s exercise or enforcement of any remedy it or they may have against any Borrower, any other Guarantor, any other Person, or all or any portion of the Collateral; and

(ii) the Administrative Agent may enforce this guaranty notwithstanding the existence of any dispute between any of the Secured Parties and the Borrowers or any other Guarantor with respect to the existence of any Event of Default.

(b) Anything herein or in any other Loan Document to the contrary notwithstanding, the maximum liability of each Guarantor hereunder and under the other Loan Documents shall in no event exceed the amount which can be guaranteed by such Guarantor under applicable federal and state laws relating to the insolvency of debtors (after giving effect to the right of contribution established in Section 2.2).

(c) Each Guarantor agrees that the Secured Obligations may at any time and from time to time exceed the amount of the liability of such Guarantor hereunder without impairing the guarantee contained in this Section 2 or affecting the rights and remedies of the Administrative Agent or any other Secured Party hereunder.

(d) The guarantee contained in this Section 2 shall remain in full force and effect until the Discharge of Obligations, notwithstanding that from time to time during the term of the Credit Agreement the outstanding amount of the Secured Obligations may be zero.

(e) No payment made by the Borrowers, any Guarantor, any other guarantor or any other Person or received or collected by the Administrative Agent or any other Secured Party from the Borrowers, any Guarantor, any other guarantor or any other Person by virtue of any action or proceeding or any setoff or appropriation or application at any time or from time to time in reduction of or in payment of the Secured Obligations shall be deemed to modify, reduce, release or otherwise affect the liability of any Guarantor hereunder which shall, notwithstanding any such payment (other than any payment made by such Guarantor in respect of the Secured Obligations or any payment received or collected from such Guarantor in respect of the Secured Obligations), remain liable for the Secured Obligations up to the maximum liability of such Guarantor hereunder in accordance with Section 2.1(b) above until the Discharge of Obligations.

(f) Any term or provision of this Agreement or any other Loan Document to the contrary notwithstanding, the maximum aggregate amount for which any Guarantor shall be liable hereunder shall not exceed the maximum amount for which such Guarantor can be liable without rendering this Agreement or any other Loan Document, as it relates to such Guarantor, subject to avoidance under

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applicable Requirements of Law relating to fraudulent conveyance or fraudulent transfer (including the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act and Section 548 of Title 11 of the United States Code or any applicable provisions of comparable Requirements of Law) (collectively, "**Fraudulent Transfer Laws**"). Any analysis of the provisions of this Agreement for purposes of Fraudulent Transfer Laws shall take into account the right of contribution established in Section 2.2, and, for purposes of such analysis, give effect to any discharge of intercompany debt as a result of any payment made under the Agreement.

2.2 Right of Contribution. If in connection with any payment made by any Guarantor hereunder any rights of contribution arise in favor of such Guarantor against one or more other Guarantors, such rights of contribution shall be subject to the terms and conditions of Section 2.3. The provisions of this Section 2.2 shall in no respect limit the obligations and liabilities of any Guarantor to the Administrative Agent and the other Secured Parties, and each Guarantor shall remain liable to the Administrative Agent and the other Secured Parties for the full amount guaranteed by such Guarantor hereunder.

2.3 No Subrogation. Notwithstanding any payment made by any Guarantor hereunder or any setoff or application of funds of any Guarantor by the Administrative Agent or any other Secured Party, no Guarantor shall be entitled to be subrogated to any of the rights of the Administrative Agent or any other Secured Party against the Borrowers or any other Guarantor or any Collateral or guarantee or right of offset held by the Administrative Agent or any other Secured Party for the payment of the Secured Obligations, nor shall any Guarantor seek or be entitled to seek any contribution or reimbursement from the Borrowers or any other Guarantor in respect of payments made by such Guarantor hereunder, in each case, until the Discharge of Obligations. If any amount shall be paid to any Guarantor on account of such subrogation rights at any time prior to the Discharge of Obligations, such amount shall be held by such Guarantor in trust for the Administrative Agent and the other Secured Parties, shall be segregated from other funds of such Guarantor, and shall, forthwith upon receipt by such Guarantor, be turned over to the Administrative Agent in the exact form received by such Guarantor (duly indorsed by such Guarantor to the Administrative Agent, if required), to be applied in such order as set forth in Section 6.5 hereof irrespective of the occurrence or the continuance of any Event of Default.

2.4 Amendments, etc. with respect to the Secured Obligations. Each Guarantor shall remain obligated hereunder notwithstanding that, without any reservation of rights against any Guarantor and without notice to or further assent by any Guarantor, any demand for payment of any of the Secured Obligations made by the Administrative Agent or any other Secured Party may be rescinded by the Administrative Agent or such Secured Party and any of the Secured Obligations continued, and the Secured Obligations, or the liability of any other Person upon or for any part thereof, or any collateral security or guarantee therefor or right of offset with respect thereto, may, from time to time, in whole or in part, be renewed, extended, amended, modified, accelerated, compromised, waived, surrendered or released by the Administrative Agent or any other Secured Party, and the Credit Agreement, the other Loan Documents, the Specified Swap Agreements and any other documents executed and delivered in connection therewith may be amended, modified, supplemented or terminated, in whole or in part, as the Administrative Agent (or the Required Lenders or all of the Lenders, as the case may be) may deem advisable from time to time, and any collateral security, guarantee or right of offset at any time held by the Administrative Agent or any other Secured Party for the payment of the Secured Obligations may be sold, exchanged, waived, surrendered or released. Neither the Administrative Agent nor any other Secured Party shall have any obligation to protect, secure, perfect or insure any Lien at any time held by it as security for the Secured Obligations or for the guarantee contained in this Section 2 or any property subject thereto.

2.5 Guarantee Absolute and Unconditional; Guarantor Waivers; Guarantor Consents. Each Guarantor waives any and all notice of the creation, renewal, extension or accrual of any of the Secured Obligations and notice of or proof of reliance by the Administrative Agent or any other Secured Party upon the guarantee contained in this Section 2 or acceptance of the guarantee contained in this Section 2; the

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Secured Obligations, and any of them, shall conclusively be deemed to have been created, contracted or incurred, or renewed, extended, amended or waived, in reliance upon the guarantee contained in this Section 2; and all dealings between any Borrower and any of the Guarantors on the one hand, and the Administrative Agent and the other Secured Parties, on the other hand, likewise shall be conclusively presumed to have been had or consummated in reliance upon the guarantee contained in this Section 2. Each Guarantor further waives:

(a) diligence, presentment, protest, demand for payment and notice of default or nonpayment to or upon the Borrowers or any of the other Guarantors with respect to the Secured Obligations;

(b) any right to require any Secured Party to marshal assets in favor of the Borrowers, such Guarantor, any other Guarantor or any other Person, to proceed against the Borrowers, any other Guarantor or any other Person, to proceed against or exhaust any of the Collateral, to give notice of the terms, time and place of any public or private sale of personal property security constituting the Collateral or other collateral for the Secured Obligations or to comply with any other provisions of Section 9-611 of the UCC (or any equivalent provision of any other applicable law) or to pursue any other right, remedy, power or privilege of any Secured Party whatsoever;

(c) the defense of the statute of limitations in any action hereunder or for the collection or performance of the Secured Obligations;

(d) any defense arising by reason of any lack of corporate or other authority or any other defense of the Borrowers, such Guarantor or any other Person;

(e) any defense based upon the Administrative Agent's or any Secured Party's errors or omissions in the administration of the Secured Obligations;

(f) any rights to set-offs and counterclaims;

(g) any defense based upon an election of remedies (including, if available, an election to proceed by nonjudicial foreclosure) which destroys or impairs the subrogation rights of such Guarantor or the right of such Guarantor to proceed against the Borrowers or any other obligor of the Secured Obligations for reimbursement; and

(h) without limiting the generality of the foregoing, to the fullest extent permitted by law, any defenses or benefits that may be derived from or afforded by applicable law that limit the liability of or exonerate guarantors or sureties, or which may conflict with the terms of this Agreement.

Each Guarantor understands and agrees that the guarantee contained in this Section 2 shall be construed as a continuing, absolute and unconditional guarantee of payment without regard to (i) the validity or enforceability of the Credit Agreement or any other Loan Document, any of the Secured Obligations or any other collateral security therefor or guarantee or right of offset with respect thereto at any time or from time to time held by the Administrative Agent or any other Secured Party, (ii) any defense, setoff or counterclaim (other than a defense of payment or performance) which may at any time be available to or be asserted by the Borrowers or any other Person against the Administrative Agent or any other Secured Party, (iii) any other circumstance whatsoever (with or without notice to or knowledge of the Borrowers or such Guarantor) which constitutes, or might be construed to constitute, an equitable or legal discharge of the Borrowers and the Guarantors for the Secured Obligations, or of such Guarantor under the guarantee contained in this Section 2, in bankruptcy or in any other instance, (iv) any Insolvency Proceeding with respect to the Borrowers, any Guarantor or any other Person, (v) any merger, acquisition, consolidation or change in structure of the Borrowers, any Guarantor or any other Person, or any sale, lease, transfer or

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other disposition of any or all of the assets or Capital Stock of the Borrowers, any Guarantor or any other Person, (vi) any assignment or other transfer, in whole or in part, of any Secured Party's interests in and rights under this Agreement or the other Loan Documents, including any Secured Party's right to receive payment of the Secured Obligations, or any assignment or other transfer, in whole or in part, of any Secured Party's interests in and to any of the Collateral, (vii) any Secured Party's vote, claim, distribution, election, acceptance, action or inaction in any Insolvency Proceeding related to any of the Secured Obligations, and (viii) any other guaranty, whether by such Guarantor or any other Person, of all or any part of the Secured Obligations or any other indebtedness, obligations or liabilities of any Guarantor to any Secured Party.

When making any demand hereunder or otherwise pursuing its rights and remedies hereunder against any Guarantor, the Administrative Agent or any other Secured Party may, but shall be under no obligation to make a similar demand on or otherwise pursue such rights and remedies as it may have against the Borrowers, any other Guarantor or any other Person or against any collateral security or guarantee for the Secured Obligations or any right of offset with respect thereto. Any failure by the Administrative Agent or any other Secured Party to make any such demand, to pursue such other rights or remedies or to collect any payments from the Borrowers, any other Guarantor or any other Person or to realize upon any such collateral security or guarantee or to exercise any such right of offset, or any release of the Borrowers, any other Guarantor or any other Person or any such collateral security, guarantee or right of offset, shall not relieve any Guarantor of any obligation or liability hereunder, and shall not impair or affect the rights and remedies, whether express, implied or available as a matter of law, of the Administrative Agent or any other Secured Party against any Guarantor. For the purposes hereof "demand" shall include the commencement and continuance of any legal proceedings.

Each Guarantor further unconditionally consents and agrees that, without notice to or further assent from any Guarantor: (a) the principal amount of the Secured Obligations may be increased or decreased and additional indebtedness or obligations of the Borrowers or any other Persons under the Loan Documents may be incurred, by one or more amendments, modifications, renewals or extensions of any Loan Document or otherwise; (b) the time, manner, place or terms of any payment under any Loan Document may be extended or changed, including by an increase or decrease in the interest rate on any Secured Obligation or any fee or other amount payable under such Loan Document, by an amendment, modification or renewal of any Loan Document or otherwise; (c) the time for the Borrowers' (or any other Loan Party's) performance of or compliance with any term, covenant or agreement on its part to be performed or observed under any Loan Document may be extended, or such performance or compliance waived, or failure in or departure from such performance or compliance consented to, all in such manner and upon such terms as the Administrative Agent may deem proper; (d) in addition to the Collateral, the Secured Parties may take and hold other security (legal or equitable) of any kind, at any time, as collateral for the Secured Obligations, and may, from time to time, in whole or in part, exchange, sell, surrender, release, subordinate, modify, waive, rescind, compromise or extend such security and may permit or consent to any such action or the result of any such action, and may apply such security and direct the order or manner of sale thereof; (e) any Secured Party may discharge or release, in whole or in part, any other Guarantor or any other Loan Party or other Person liable for the payment and performance of all or any part of the Secured Obligations, and may permit or consent to any such action or any result of such action, and shall not be obligated to demand or enforce payment upon any of the Collateral, nor shall any Secured Party be liable to any Guarantor for any failure to collect or enforce payment or performance of the Secured Obligations from any Person or to realize upon the Collateral, and (f) the Secured Parties may request and accept other guaranties of the Secured Obligations and any other indebtedness, obligations or liabilities of the Borrowers or any other Loan Party to any Secured Party and may, from time to time, in whole or in part, surrender, release, subordinate, modify, waive, rescind, compromise or extend any such guaranty and may permit or consent to any such action or the result of any such action; in each case (a) through (f), as the Secured Parties may deem advisable, and without impairing, abridging, releasing or affecting this Agreement.

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2.6 Reinstatement. The guarantee contained in this Section 2 shall continue to be effective, or be reinstated, as the case may be, if at any time payment, or any part thereof, of any of the Secured Obligations is rescinded or must otherwise be restored or returned by the Administrative Agent or any other Secured Party upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of the Borrowers or any Guarantor, or upon or as a result of the appointment of a receiver, intervenor or conservator of, or trustee or similar officer for, the Borrowers or any such Guarantor or any substantial part of its respective property, or otherwise, all as though such payments had not been made.

2.7 Payments. Each Guarantor hereby guarantees that payments hereunder will be paid to the Administrative Agent without setoff or counterclaim in Dollars at the Revolving Loan Funding Office.

2.8 Keepwell. Each Qualified ECP Guarantor hereby jointly and severally absolutely, unconditionally and irrevocably undertakes to provide such funds or other support as may be needed from time to time by each other Loan Party to honor all of its obligations under this Agreement in respect of Secured Obligations under Specified Swap Agreements (provided that, each Qualified ECP Guarantor shall only be liable under this Section 2.8 for the maximum amount of such liability that can be hereby incurred without rendering its obligations under this Section 2.8 or otherwise under this Agreement, voidable under Requirements of Law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations of each Qualified ECP Guarantor under this Section 2.8 shall remain in full force and effect until the Discharge of Obligations. Each Qualified ECP Guarantor intends that this Section 2.8 constitute, and this Section 2.8 shall be deemed to constitute, a “keepwell, support, or other agreement” for the benefit of each other Loan Party for all purposes of Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.”

### SECTION 3. GRANT OF SECURITY INTEREST

3.1 Grant of Security Interests. Each Grantor hereby grants to the Administrative Agent, for the ratable benefit of the Secured Parties, a security interest in all of the following property now owned or at any time hereafter acquired by such Grantor or in which such Grantor now has or at any time in the future may acquire any right, title or interest and wherever located (collectively, the “Collateral”), as collateral security for the prompt and complete payment and performance when due (whether at the stated maturity, by acceleration or otherwise) of the Secured Obligations (whether now existing or arising hereafter):

- (a) all Accounts;
  - (b) all Chattel Paper;
  - (c) all Commercial Tort Claims;
  - (d) all Deposit Accounts and all Securities Accounts;
  - (e) all Documents;
  - (f) all Equipment;
  - (g) all Fixtures;
  - (h) all General Intangibles;
  - (i) all Goods;
  - (j) all Instruments;
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- (k) all Intellectual Property;
- (l) all Inventory;
- (m) all Investment Property (including all Pledged Collateral);
- (n) all Letter-of-Credit Rights;
- (o) all Money;
- (p) all Books and records pertaining to the Collateral;
- (q) all other property not otherwise described above; and

(r) to the extent not otherwise included, all Proceeds, Supporting Obligations 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; provided, however, that notwithstanding anything to the contrary contained in clauses (a) through (q) above, the security interests created by this Agreement shall not extend to, and the term "Collateral" (including all of the individual items comprising Collateral) shall not include, any Excluded Assets.

Notwithstanding any of the other provisions set forth in this Section 3, this Agreement shall not constitute a grant of a security interest in any property to the extent that such grant of a security interest is prohibited by any Requirement of Law of a Governmental Authority or constitutes a breach or default under or results in the termination of or requires any consent not obtained under, any contract, license, agreement, instrument or other document evidencing or giving rise to such property, except (i) to the extent that the terms in such contract, license, instrument or other document providing for such prohibition, breach, default or termination, or requiring such consent are not permitted under the terms and conditions of the Credit Agreement or (ii) to the extent that such Requirement of Law or the term in such contract, license, agreement, instrument or other document providing for such prohibition, breach, default or termination or requiring such consent is ineffective under Section 9-406, 9-407, 9-408 or 9-409 of the UCC (or any successor provision or provisions) of any relevant jurisdiction or any other applicable law (including the Bankruptcy Code) or principles of equity; provided, however, that such security interest shall attach immediately at such time as such Requirement of Law is not effective or applicable, or such prohibition, breach, default or termination is no longer applicable or is waived, and to the extent severable, shall attach immediately to any portion of the Collateral that does not result in such consequences; and provided, further, that no United States intent-to-use trademark or service mark application shall be included in the Collateral to the extent that, and solely during the period in which, the grant of a security interest therein would impair the validity or enforceability of such intent-to-use trademark or service mark application under Federal law. After such period, each Grantor acknowledges that such interest in such trademark or service mark application shall be subject to a security interest in favor of the Administrative Agent and shall be included in the Collateral.

3.2 Grantors Remains Liable. Anything herein to the contrary notwithstanding, (a) each Grantor shall remain liable under any contracts, agreements and other documents included in the Collateral, to the extent set forth therein, to perform all of its duties and obligations thereunder to the same extent as if this Agreement had not been executed, (b) the exercise by the Administrative Agent of any of the rights granted to the Administrative Agent hereunder shall not release any Grantor from any of its duties or obligations under any such contracts, agreements and other documents included in the Collateral, and (c) neither the Administrative Agent nor any other Secured Party shall have any obligation or liability under any such contracts, agreements and other documents included in the Collateral by reason of this Agreement, nor shall the Administrative Agent or any other Secured Party be obligated to perform any of the obligations or duties

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of any Grantor thereunder or to take any action to collect or enforce any such contract, agreement or other document included in the Collateral hereunder.

### 3.3 Perfection and Priority.

(a) Financing Statements. Pursuant to any applicable law, each Grantor authorizes the Administrative Agent (and its counsel and its agents) to file or record at any time and from time to time any financing statements and other filing or recording documents or instruments with respect to the Collateral and each Grantor shall execute and deliver to the Administrative Agent and each Grantor hereby authorizes the Administrative Agent (and its counsel and its agents) to file (with or without the signature of such Grantor) at any time and from time to time, all amendments to financing statements, continuation financing statements, termination statements, security agreements relating to the Intellectual Property, assignments, fixture filings, affidavits, reports notices and all other documents and instruments, in such form and in such offices as the Administrative Agent or the Required Lenders determine appropriate to perfect and continue perfected, maintain the priority of or provide notice of the Administrative Agent's security interest in the Collateral under and to accomplish the purposes of this Agreement. Each Grantor authorizes the Administrative Agent to use the collateral description "all personal property, whether now owned or hereafter acquired" or any other similar collateral description in any such financing statements.

(b) Filing of Financing Statements. Each Grantor shall deliver to the Administrative Agent, from time to time, such completed UCC-1 financing statements for filing or recording in the appropriate filing offices as may be reasonably requested by the Administrative Agent.

(c) Transfer of Security Interest Other Than by Delivery. If for any reason Pledged Collateral cannot be delivered to or for the account of the Administrative Agent as provided in Section 5.6(b), each applicable Grantor shall promptly take such other steps as may be necessary or as shall be reasonably requested from time to time by the Administrative Agent to effect a transfer of a perfected first priority security interest in and pledge of the Pledged Collateral to the Administrative Agent for itself and on behalf of and for the ratable benefit of the other Secured Parties pursuant to the UCC. To the extent practicable, each such Grantor shall thereafter deliver the Pledged Collateral to or for the account of the Administrative Agent as provided in Section 5.6(b).

(d) Intellectual Property. (i) Each Grantor shall, in addition to executing and delivering this Agreement, take such other action as may be necessary, or as the Administrative Agent may reasonably request, to perfect the Administrative Agent's security interest in the Intellectual Property. (ii) At such time as financial statements are delivered to the Administrative Agent pursuant to Section 6.1 of the Credit Agreement, each Grantor shall notify the Administrative Agent of the creation or other acquisition of any Intellectual Property by such Grantor after the date hereof which is registered or becomes registered or the subject of an application for registration with the U.S. Copyright Office or the U.S. Patent and Trademark Office, and as applicable, such Grantor shall modify this Agreement by amending Schedule 6 to include any such Intellectual Property which becomes part of the Collateral and which was not included on Schedule 6 as of the date hereof and record an amendment to this Agreement with the U.S. Copyright Office or the U.S. Patent and Trademark Office, as applicable, and take such other action as may be necessary, or as the Administrative Agent or the Required Lenders may reasonably request, to perfect the Administrative Agent's security interest in such Intellectual Property.

(e) Bailees. Any Person (other than the Administrative Agent) at any time and from time to time holding all or any portion of the Collateral shall be deemed to, and shall, hold the Collateral as the agent of, and as pledge holder for, the Administrative Agent. At any time and from time to time, the Administrative Agent may give notice to any Person holding Collateral in excess of \$100,000 in fair market value that such Person is holding the Collateral as the agent and bailee of, and as pledge holder for, the Administrative Agent, and obtain such Person's written acknowledgment thereof. Without limiting the

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generality of the foregoing, each Grantor will join with the Administrative Agent in notifying any Person who has possession of any Collateral of the Administrative Agent's security interest therein and shall use commercially reasonable efforts to obtain an acknowledgment from such Person that it is holding the Collateral for the benefit of the Administrative Agent.

(f) **Control.** Each Grantor will cooperate with the Administrative Agent in obtaining control (as defined in the UCC) of Collateral consisting of any Deposit Accounts, Electronic Chattel Paper, Investment Property, Securities Accounts, or Letter-of-Credit Rights, including delivery of control agreements, as the Administrative Agent may reasonably request, to perfect and continue perfected, maintain the priority of or provide notice of the Administrative Agent's security interest in such Collateral.

(g) **Additional Subsidiaries.** In the event that any Grantor acquires rights in any Subsidiary after the date hereof, it shall deliver to the Administrative Agent a completed pledge supplement, substantially in the form of Annex 2 (the "**Pledge Supplement**"), together with all schedules thereto, reflecting the pledge of the Capital Stock of such new Subsidiary (except to the extent such Capital Stock consists of Excluded Assets). Notwithstanding the foregoing, it is understood and agreed that the security interest of the Administrative Agent shall attach to the Pledged Collateral related to such Subsidiary immediately upon any Grantor's acquisition of rights therein and shall not be affected by the failure of any Grantor to deliver a Pledge Supplement.

#### SECTION 4. REPRESENTATIONS AND WARRANTIES

In addition to the representations and warranties of the Grantors set forth in the Credit Agreement, which are incorporated herein by this reference, and to induce the Administrative Agent and the Lenders to enter into the Credit Agreement and to make their respective extensions of credit to the Borrowers thereunder, each Grantor hereby represents and warrants to the Administrative Agent and each other Secured Party that:

4.1 **Title; No Other Liens.** Except for the Liens permitted to exist on the Collateral by Section 7.3 of the Credit Agreement, such Grantor owns each item of the Collateral in which a Lien is granted by it free and clear of any and all Liens. No financing statement, fixture filing or other similar public notice with respect to all or any part of the Collateral is on file or of record or will be filed in any public office, except such as have been filed as permitted by the Credit Agreement. For the avoidance of doubt, it is understood and agreed that each Grantor may, as part of its business, grant licenses to third parties to use Intellectual Property owned or developed by such Grantor. For purposes of this Agreement and the other Loan Documents, such licensing activity shall not constitute a "Lien" on such Intellectual Property. The Administrative Agent and each other Secured Party understands that any such licenses may be exclusive to the applicable licensees, and such exclusivity provisions may limit the ability of the Administrative Agent to utilize, sell, lease or transfer the related Intellectual Property or otherwise realize value from such Intellectual Property pursuant hereto.

4.2 **Perfectured Liens.** The security interests granted to the Administrative Agent pursuant to this Agreement (a) upon completion of the filings and other actions specified on Schedule 3 (which, in the case of all filings and other documents referred to on said Schedule, have been delivered to the Administrative Agent in completed and duly (if applicable) executed form) will constitute valid perfected security interests in all of the Collateral in favor of the Administrative Agent, for the ratable benefit of the Secured Parties, as collateral security for the Secured Obligations, enforceable in accordance with the terms hereof against any creditors of any Grantor and any Persons purporting to purchase any Collateral from any Grantor, and (ii) are prior to all other Liens on the Collateral in existence on the date hereof except for Liens permitted by the Credit Agreement which have priority over the Liens of the Administrative Agent on the Collateral (for the ratable benefit of the Secured Parties) by operation of law, and in the case of Collateral other than Pledged Collateral, Liens permitted by Section 7.3 of the Credit Agreement. Unless an Event of

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Default has occurred and is continuing, each Grantor has the right to remove the Fixtures in which such Grantor has an interest within the meaning of Section 9-334(f)(2) of the UCC.

4.3 Jurisdiction of Organization; Chief Executive Office and Locations of Books. On the date hereof, such Grantor's jurisdiction of organization, identification number from the jurisdiction of organization (if any), and the location of such Grantor's chief executive office or sole place of business, as the case may be, are specified on Schedule 4. All locations where Books pertaining to the Rights to Payment of such Grantor are kept, including all equipment necessary for accessing such Books and the names and addresses of all service bureaus, computer or data processing companies and other Persons keeping any Books or collecting Rights to Payment for such Grantor, are set forth in Schedule 4.

4.4 Inventory and Equipment. On the date hereof (a) the Inventory and (b) the Equipment (other than mobile goods) are kept at the locations listed on Schedule 5.

4.5 Farm Products. None of the Collateral constitutes, or is the Proceeds of, Farm Products.

4.6 Pledged Collateral. (a) All of the Pledged Stock held by such Grantor has been duly and validly issued, and is fully paid and non-assessable, subject in the case of Pledged Stock constituting partnership interests or limited liability company membership interests to future assessments required under applicable law and any applicable partnership or operating agreement, (b) such Grantor is or, in the case of any such additional Pledged Collateral will be, the legal record and beneficial owner thereof, (c) in the case of Pledged Stock of a Subsidiary of such Grantor or Pledged Collateral of such Grantor constituting Instruments issued by a Subsidiary of such Grantor, there are no restrictions on the transferability of such Pledged Collateral or such additional Pledged Collateral to the Administrative Agent or with respect to the foreclosure, transfer or disposition thereof by the Administrative Agent, except as provided under applicable securities or "Blue Sky" laws, (d) the Pledged Stock pledged by such Grantor constitutes all of the issued and outstanding shares of Capital Stock of each Issuer owned by such Grantor (except for Excluded Assets), and such Grantor owns no securities convertible into or exchangeable for any shares of Capital Stock of any such Issuer that do not constitute Pledged Stock hereunder, (e) any and all Pledged Collateral Agreements which affect or relate to the voting or giving of written consents with respect to any of the Pledged Stock pledged by such Grantor have been disclosed to the Administrative Agent, and (f) as to each such Pledged Collateral Agreement relating to the Pledged Stock pledged by such Grantor, (i) to the best knowledge of such Grantor, such Pledged Collateral Agreement contains the entire agreement between the parties thereto with respect to the subject matter thereof and is in full force and effect in accordance with its terms, (ii) to the best knowledge of such Grantor party thereto, there exists no material violation or material default under any such Pledged Collateral Agreement by such Grantor or the other parties thereto, and (iii) such Grantor has not knowingly waived or released any of its material rights under or otherwise consented to a material departure from the terms and provisions of any such Pledged Collateral Agreement.

4.7 Investment Accounts. Schedule 2 sets forth under the headings "Securities Accounts" and "Commodity Accounts", respectively, all of the Securities Accounts and Commodity Accounts in which such Grantor has an interest. Except as disclosed to the Administrative Agent, such Grantor is the sole entitlement holder of each such Securities Account and Commodity Account, and such Grantor has not consented to, and is not otherwise aware of, any Person (other than the Administrative Agent) having "control" (within the meanings of Sections 8-106 and 9-106 of the UCC) over, or any other interest in, any such Securities Account or Commodity Account or any securities or other property credited thereto;

(a) Schedule 2 sets forth under the heading "Deposit Accounts" all of the Deposit Accounts in which such Grantor has an interest and, except as otherwise disclosed to the Administrative Agent, such Grantor is the sole account holder of each such Deposit Account and such Grantor has not consented to, and is not otherwise aware of, any Person (other than the Administrative Agent) having either

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sole dominion and control (within the meaning of common law) or “control” (within the meaning of Section 9-104 of the UCC) over, or any other interest in, any such Deposit Account or any money or other property deposited therein; and

(b) Except as otherwise permitted under Section 5.6 and Section 5.7, such Grantor has taken all actions necessary or desirable to: (i) establish the Administrative Agent’s “control” (within the meanings of Sections 8-106 and 9-106 of the UCC) over any Certificated Securities (as defined in Section 9-102 of the UCC); (ii) establish the Administrative Agent’s “control” (within the meanings of Sections 8-106 and 9-106 of the UCC) over any portion of the Investment Accounts constituting Securities Accounts, Commodity Accounts, Securities Entitlements or Uncertificated Securities (each as defined in Section 9-102 of the UCC); (iii) establish the Administrative Agent’s “control” (within the meaning of Section 9-104 of the UCC) over all Deposit Accounts; and (iv) deliver all Instruments (as defined in Section 9-102 of the UCC) to the Administrative Agent to the extent required hereunder, provided, that the Administrative Agent shall not send a notice of sole control or similar notice unless an Event of Default has occurred and is continuing.

4.8 Receivables. No amount payable to such Grantor under or in connection with any Receivable or other Right to Payment is evidenced by any Instrument (other than checks, drafts or other Instruments that will be promptly deposited in an Investment Account) or Chattel Paper which has not been delivered to the Administrative Agent. None of the account debtors or other obligors in respect of any Receivable in excess of \$100,000 in the aggregate is the government of the United States or any agency or instrumentality thereof.

4.9 Intellectual Property. Schedule 6 lists all registrations and applications for Intellectual Property (including registered Copyrights, Patents, Trademarks and all applications therefor) as well as all Copyright Licenses, Patent Licenses and Trademark Licenses, in each case owned by such Grantor in its own name on the date hereof. Except as set forth in Schedule 6, on the date hereof, none of the Intellectual Property is the subject of any licensing or franchise agreement pursuant to which such Grantor is the licensor or franchisor.

4.10 Instruments. (i) Such Grantor has not previously assigned any interest in any Instruments (including but not limited to the Pledged Notes) held by such Grantor (other than such interests as will be released on or before the date hereof), and (ii) no Person other than such Grantor owns an interest in such Instruments (whether as joint holders, participants or otherwise).

4.11 Letter of Credit Rights. Such Grantor does not have any Letter-of-Credit Rights having a potential value in excess of \$100,000 except as set forth in Schedule 7 or as have been notified to the Administrative Agent in accordance with Section 5.22.

4.12 Commercial Tort Claims. Such Grantor does not have any Commercial Tort Claims having a potential value in excess of \$100,000 except as set forth in Schedule 8 or as have been notified to the Administrative Agent in accordance with Section 5.21.

## SECTION 5. COVENANTS

In addition to the covenants of the Grantors set forth in the Credit Agreement, which are incorporated herein by this reference, each Grantor covenants and agrees with the Administrative Agent and the other Secured Parties that, from and after the date of this Agreement until the Discharge of Obligations:

5.1 Delivery of Instruments, Certificated Securities and Chattel Paper. If any amount payable under or in connection with any of the Collateral shall be or become evidenced by any Instrument (other

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than checks, drafts or other Instruments that will be promptly deposited in an Investment Account), Certificated Security or Chattel Paper evidencing an amount in excess of \$100,000, such Instrument, Certificated Security or Chattel Paper shall be promptly delivered to the Administrative Agent, duly indorsed in a manner reasonably satisfactory to the Administrative Agent, to be held as Collateral pursuant to this Agreement.

5.2 Maintenance of Insurance.

(a) The Grantors shall maintain insurance as required pursuant to Section 6.6 of the Credit Agreement.

(b) All such insurance shall (i) provide that no cancellation, material reduction in amount or material change in coverage thereof shall be effective until at least 20 days after receipt by the Administrative Agent of written notice thereof, (ii) name the Administrative Agent as an additional insured party or loss payee, and (iii) be reasonably satisfactory in all other respects to the Administrative Agent.

(c) The Borrowers shall deliver to the Administrative Agent a report of a reputable insurance broker with respect to such insurance substantially concurrently with each delivery of the Borrowers' audited annual financial statements together with such supplemental reports with respect thereto as the Administrative Agent may reasonably request.

5.3 Maintenance of Perfected Security Interest; Further Documentation.

(a) Such Grantor shall maintain the security interests of the Administrative Agent (for the benefit of the Secured Parties) created by this Agreement as perfected security interests having at least the priority described in Section 4.2 and shall defend such security interests against the claims and demands of all Persons whomsoever, subject to the rights of such Grantor under the Loan Documents to dispose of the Collateral.

(b) Such Grantor will furnish to the Administrative Agent from time to time statements and schedules further identifying and describing the assets and property of such Grantor and such other reports in connection therewith as the Administrative Agent may reasonably request, all in reasonable detail.

(c) At any time and from time to time, upon the written request of the Administrative Agent, and at the sole expense of such Grantor, such Grantor will promptly and duly execute and deliver, and have recorded, such further instruments and documents and take such further actions as the Administrative Agent may reasonably request for the purpose of obtaining or preserving the full benefits of this Agreement and of the rights and powers herein granted, including, without limitation, (i) filing any financing or continuation statements under the Uniform Commercial Code (or other similar laws) in effect in any jurisdiction with respect to the security interests created hereby and (ii) in the case of Investment Property, Investment Accounts, Letter-of-Credit Rights and any other relevant Collateral, taking any actions necessary to enable the Administrative Agent to obtain "control" (within the meaning of the UCC) with respect thereto to the extent required hereunder.

5.4 Changes in Locations, Name, Etc. Such Grantor will not, except upon 15 days' (or 5 days' with respect to subparagraph (ii) below or such shorter period as may be agreed to by the Administrative Agent) prior written notice to the Administrative Agent and delivery to the Administrative Agent of (a) all additional executed financing statements and other documents reasonably requested by the Administrative Agent to maintain the validity, perfection and priority of the security interests provided for herein, and (b) if applicable, a written supplement to Schedule 4 showing the relevant new jurisdiction of organization, location of chief executive office or sole place of business, as appropriate:

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(i) change its jurisdiction of organization, identification number from the jurisdiction of organization (if any) or the location of its chief executive office or sole place of business, as appropriate, from that referred to in Section 4.3;

(ii) change its name; or

(iii) subject to Section 6.12(e) of the Credit Agreement, locate any Collateral in any state or other jurisdiction other than those in which such Grantor operates as of the Closing Date.

5.5 Notices. Such Grantor will advise the Administrative Agent promptly, in reasonable detail, of:

(a) any Lien (other than Liens permitted under Section 7.3 of the Credit Agreement) on any of the Collateral; and

(b) the occurrence of any other event which could reasonably be expected to have a material adverse effect on the aggregate value of the Collateral or on the security interests created hereby.

5.6 Instruments; Investment Property.

(a) Upon the request of the Administrative Agent, such Grantor will (i) promptly deliver to the Administrative Agent, or an agent designated by it, appropriately endorsed or accompanied by appropriate instruments of transfer or assignment, all Instruments, Documents, Chattel Paper and certificated securities with respect to any Investment Property held by such Grantor, all letters of credit of such Grantor, and all other Rights to Payment held by such Grantor at any time evidenced by promissory notes, trade acceptances or other instruments, and (ii) provide such notice, obtain such acknowledgments and take all such other action, with respect to any Chattel Paper, Documents and Letter-of-Credit Rights held by such Grantor, as the Administrative Agent shall reasonably specify.

(b) If such Grantor shall become entitled to receive or shall receive any certificate (including any certificate representing a dividend or a distribution in connection with any reclassification, increase or reduction of capital or any certificate issued in connection with any reorganization), option or rights in respect of the Capital Stock of any Issuer, whether in addition to, in substitution of, as a conversion of, or in exchange for, any Pledged Collateral, or otherwise in respect thereof, such Grantor shall accept the same as the agent of the Administrative Agent and the other Secured Parties, hold the same in trust for the Administrative Agent and the other Secured Parties and deliver the same forthwith to the Administrative Agent in the exact form received, duly indorsed by such Grantor to the Administrative Agent, if required, together with an undated stock power covering such certificate duly executed in blank by such Grantor, unless otherwise permitted by the Credit Agreement, to be held by the Administrative Agent, subject to the terms hereof, as additional collateral security for the Secured Obligations; provided that in no event shall this Section 5.6(b) apply to any Excluded Assets. Any sums paid upon or in respect of the Investment Property upon the liquidation or dissolution of any Issuer shall, unless otherwise subject to a perfected security interest in favor of the Administrative Agent, be paid over to the Administrative Agent to be held by it hereunder as additional collateral security for the Secured Obligations, and in case any distribution of capital shall be made on or in respect of the Investment Property or any property shall be distributed upon or with respect to the Investment Property pursuant to the recapitalization or reclassification of the capital of any Issuer or pursuant to the reorganization thereof, the property so distributed shall, unless otherwise subject to a perfected security interest in favor of the Administrative Agent, be delivered to the Administrative Agent to be held by it hereunder as additional collateral security for the Secured Obligations. If any sums of money or property so paid or distributed in respect of such Investment Property shall be received by such Grantor, such Grantor shall, until such money or property is paid or delivered to the Administrative Agent, unless otherwise subject to a perfected security interest in favor of the Administrative

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Agent, hold such money or property in trust for the Administrative Agent and the other Secured Parties, segregated from other funds of such Grantor, as additional collateral security for the Secured Obligations.

(c) In the case of any Grantor which is an Issuer, such Issuer agrees that (i) it will be bound by the terms of this Agreement relating to the Capital Stock issued by it and will comply with such terms insofar as such terms are applicable to it, (ii) it will notify the Administrative Agent promptly in writing of the occurrence of any of the events described in Section 5.6(a) and (b) with respect to the Pledged Collateral issued by it and (iii) the terms of Sections 6.3(c) and 6.7 shall apply to it, *mutatis mutandis*, with respect to all actions that may be required of it pursuant to Section 6.3(c) or 6.7 with respect to the Capital Stock issued by it.

#### 5.7 Securities Accounts; Deposit Accounts.

(a) With respect to any Securities Account maintained by any Grantor, such Grantor shall cause any applicable securities intermediary maintaining such Securities Account to show on its books that the Administrative Agent is the entitlement holder with respect to such Securities Account, and, if requested by the Administrative Agent, cause such securities intermediary to enter into an agreement in form and substance satisfactory to the Administrative Agent with respect to such Securities Account pursuant to which such securities intermediary shall agree to comply with the Administrative Agent's "entitlement orders" without further consent by such Grantor, as requested by the Administrative Agent; and

(b) with respect to any Deposit Account maintained by any Grantor, other than a Deposit Account exclusively used for payroll, payroll taxes and other employee wage and benefit payments to or for the benefit of such Grantor's employees and identified to the Administrative Agent as such, such Grantor shall enter into and shall cause the depository institution maintaining such account to enter into an agreement in form and substance reasonably satisfactory to the Administrative Agent pursuant to which the Administrative Agent shall be granted "control" (within the meaning of Section 9-104 of the UCC) over such Deposit Account.

(c) The Administrative Agent agrees that it will only communicate "entitlement orders" with respect to the Deposit Accounts and Securities Accounts of the Grantors after the occurrence and during the continuance of an Event of Default.

(d) Such Grantor shall give the Administrative Agent prompt notice of the establishment of any new Deposit Account and of any new Securities Account established by such Grantor with respect to any Investment Property held by such Grantor.

#### 5.8 Intellectual Property.

(a) Such Grantor (either itself or through licensees) will (i) continue to use each material Trademark in order to maintain such material Trademark in full force free from any claim of abandonment for non-use, (ii) maintain as in the past the quality of products and services offered under each such material Trademark, (iii) use each such material Trademark with the appropriate notice of registration and all other notices and legends required by applicable Requirements of Law, (iv) not adopt or use any mark which is confusingly similar or a colorable imitation of any such material Trademark unless the Administrative Agent, for the ratable benefit of the Secured Parties, shall obtain, to the extent available, a perfected security interest in such mark pursuant to this Agreement, and (v) not (and not knowingly permit any licensee or sublicensee thereof to) do any act or knowingly omit to do any act whereby any such material Trademark may become invalidated or impaired in any way.

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(b) Such Grantor (either itself or through licensees) will not do any act, or omit to do any act, whereby any material Patent may become forfeited, abandoned or dedicated to the public.

(c) Such Grantor (either itself or through licensees) will not (and will not permit any licensee or sublicensee thereof to) do any act or knowingly omit to do any act whereby any such material Copyrights may become invalidated or otherwise impaired. Such Grantor will not (either itself or through licensees) do any act whereby any material portion of such Copyrights may fall into the public domain.

(d) Such Grantor (either itself or through licensees) will not do any act that knowingly uses any material Intellectual Property to infringe the intellectual property rights of any other Person.

(e) Such Grantor will notify the Administrative Agent promptly if it knows, or has reason to know, that any application or registration relating to any material Intellectual Property may become forfeited, abandoned or dedicated to the public, or of any material adverse determination or development (including, without limitation, the institution of, or any such determination or development)-in, any proceeding in the United States Patent and Trademark Office, the United States Copyright Office or any court or tribunal in any country regarding such Grantor's ownership of, or the validity of, any material Intellectual Property or such Grantor's right to register the same or to own and maintain the same.

(f) Whenever such Grantor, either by itself or through any agent, employee, licensee or designee, shall file an application for the registration of any Patent or Trademark with the U.S. Patent and Trademark Office or any similar office or agency in any other country or political subdivision thereof, such Grantor shall report (i) the initial application to and (ii) the corresponding grant, if any, of the Patent or Trademark from the U.S. Patent and Trademark Office to the Administrative Agent at such time as financial statements are delivered to the Administrative Agent pursuant to Section 6.1 of the Credit Agreement. Whenever such Grantor, either by itself or through any agent, employee, licensee or designee, shall file an application for the registration of any Copyright with the U.S. Copyright Office, such Grantor shall report the filing of the initial application to the Administrative Agent at such time as financial statements are delivered to the Administrative Agent pursuant to Section 6.1 of the Credit Agreement. Upon request of the Administrative Agent, other than in respect of intent-to-use trademark or service mark applications, such Grantor shall execute and deliver, and have recorded, any and all agreements, instruments, documents, and papers as the Administrative Agent may reasonably request to evidence the Administrative Agent's and the other Secured Parties' security interest in any Copyright, Patent or Trademark and the goodwill and general intangibles of such Grantor relating thereto or represented thereby.

(g) Such Grantor will take all reasonable and necessary steps, including, without limitation, in any proceeding before the U.S. Patent and Trademark Office, the U.S. Copyright Office or any similar office or agency in any other country or any political subdivision thereof, to maintain and pursue each material application (and to obtain the relevant registration) and to maintain each registration of the material Intellectual Property, including filing of applications for renewal, affidavits of use and affidavits of incontestability.

(h) In the event that any material Intellectual Property is infringed, misappropriated or diluted by a third party, such Grantor shall take such actions as such Grantor shall reasonably deem appropriate under the circumstances to protect such Intellectual Property.

(i) Each Grantor shall be permitted to enter into source code escrow arrangements with third parties in the ordinary course of business.

5.9 Receivables. Other than in the ordinary course of business consistent with its past practice, such Grantor will not (a) grant any extension of the time of payment of any Receivable, (b) compromise or settle any Receivable for less than the full amount thereof, (c) release, wholly or partially, any Person liable

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for the payment of any Receivable, (d) allow any credit or discount whatsoever on any Receivable or (e) amend, supplement or modify any Receivable in any manner that would reasonably be expected to adversely affect the value thereof.

5.10 Defense of Collateral. Grantors will appear in and defend any action, suit or proceeding which may affect to a material extent its title to, or right or interest in, or the Administrative Agent's right or interest in, any material portion of the Collateral.

5.11 Preservation of Collateral. Grantors will do and perform all reasonable acts that may be necessary and appropriate to maintain, preserve and protect the Collateral.

5.12 Compliance with Laws, Etc. Such Grantor will comply in all material respects with all laws, regulations and ordinances, and all policies of insurance, relating in a material way to the possession, operation, maintenance and control of the Collateral.

5.13 Location of Books and Chief Executive Office. Such Grantor will: (a) keep all Books pertaining to the Rights to Payment of such Grantor at the locations set forth in Schedule 4; and (b) give at least 15 days' prior written notice to the Administrative Agent of any changes in any location where Books pertaining to the Rights to Payment of such Grantor are kept, including any change of name or address of any service bureau, computer or data processing company or any other Person preparing or maintaining any such Books or collecting Rights to Payment for such Grantor.

5.14 Location of Collateral. Such Grantor will: (a) keep the Collateral held by such Grantor at the locations set forth in Schedule 5 or at such other locations as may be disclosed in writing to the Administrative Agent pursuant to clause (b) and will not remove any such Collateral from such locations (other than in connection with sales of Inventory in the ordinary course of such Grantor's business, the movement of Collateral as part of such Grantor's supply chain and in the ordinary course of such Grantor's business, other dispositions permitted by Section 7.5 of the Credit Agreement and movements of Collateral from one disclosed location to another disclosed location within the United States), except upon at least 15 days' prior written notice of any removal to the Administrative Agent; and (b) give the Administrative Agent at least 15 days' prior written notice of any change (additions or deletions) in the locations set forth in Schedule 5.

5.15 Maintenance of Records. Such Grantor will keep separate, accurate and complete Books with respect to Collateral held by such Grantor, disclosing the Administrative Agent's security interest hereunder.

5.16 Disposition of Collateral. Such Grantor will not surrender or lose possession of (other than to the Administrative Agent), sell, lease, rent, or otherwise dispose of or transfer any of the Collateral held by such Grantor or any right or interest therein, except to the extent permitted by Section 7.5 of the Credit Agreement.

5.17 Liens. Such Grantor will keep the Collateral held by such Grantor free of all Liens except Liens permitted under Section 7.3 of the Credit Agreement.

5.18 Expenses. Such Grantor will pay all expenses of protecting, storing, warehousing, insuring, handling and shipping the Collateral held by such Grantor, to the extent the failure to pay any such expenses could reasonably be expected to materially and adversely affect the value of the Collateral.

5.19 Leased Premises; Collateral Held by Warehouseman, Bailee, Etc. To the extent required under Section 6.12(e) of the Credit Agreement, such Grantor will use commercially reasonable efforts to obtain from each Person from whom such Grantor leases any premises, and from each other Person at

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whose premises any Collateral held by such Grantor is at any time present (including any bailee, warehouseman or similar Person), any such collateral access, subordination, landlord waiver, bailment, consent and estoppel agreements as the Administrative Agent may reasonably require, in form and substance reasonably satisfactory to the Administrative Agent.

5.20 Chattel Paper. Such Grantor will not create any Chattel Paper without placing a legend on such Chattel Paper acceptable to the Administrative Agent indicating that the Administrative Agent has a security interest in such Chattel Paper. Such Grantor will give the Administrative Agent prompt notice if such Grantor at any time holds or acquires an interest in any Chattel Paper, including any Electronic Chattel Paper and shall comply, in all respects, with the provisions of Section 5.1 hereof.

5.21 Commercial Tort Claims. Such Grantor will give the Administrative Agent prompt notice if such Grantor shall at any time hold or acquire any Commercial Tort Claim with a potential value in excess of \$100,000.

5.22 Letter-of-Credit Rights. Such Grantor will give the Administrative Agent prompt notice if such Grantor shall at any time hold or acquire any Letter-of-Credit Rights with a potential value in excess of \$100,000.

5.23 Shareholder Agreements and Other Agreements.

(a) Such Grantor shall comply with all of its obligations under any shareholders agreement, operating agreement, partnership agreement, voting trust, proxy agreement or other agreement or understanding (collectively, the "**Pledged Collateral Agreements**") to which it is a party and shall enforce all of its rights thereunder, except, with respect to any such Pledged Collateral Agreement relating to any Pledged Collateral issued by a Person other than a Subsidiary of a Grantor, to the extent the failure to enforce any such rights would not reasonably be expected to materially and adversely affect the value of the Pledged Collateral to which any such Pledged Collateral Agreement relates.

(b) Such Grantor agrees that no Pledged Stock (i) shall be dealt in or traded on any securities exchange or in any securities market, (ii) shall constitute an investment company security, or (iii) shall be held by such Grantor in a Securities Account.

(c) Subject to the terms and conditions of the Credit Agreement, including Sections 7.3 and 7.5 thereof, such Grantor shall not vote to enable or take any other action to: (i) amend or terminate, or waive compliance with any of the terms of, any such Pledged Collateral Agreement, certificate or articles of incorporation, bylaws or other organizational documents in any way that materially and adversely affects the validity, perfection or priority of the Administrative Agent's security interest therein.

## SECTION 6. REMEDIAL PROVISIONS

Each Grantor covenants and agrees with the Administrative Agent and the other Secured Parties that, from and after the date of this Agreement until the Discharge of Obligations:

6.1 Certain Matters Relating to Receivables.

(a) The Administrative Agent hereby authorizes each Grantor to collect such Grantor's Receivables, and the Administrative Agent may curtail or terminate said authority at any time after the occurrence and during the continuance of an Event of Default. If required by the Administrative Agent at any time after the occurrence and during the continuance of an Event of Default, any payments of Receivables, when collected by any Grantor, (i) shall be forthwith (and, in any event, within two Business Days) deposited by such Grantor in the exact form received, duly indorsed by such Grantor to the

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Administrative Agent if required, in a Collateral Account over which the Administrative Agent has control, subject to withdrawal by the Administrative Agent for the account of the Secured Parties only as provided in Section 6.5, and (ii) until so turned over, shall be held by such Grantor in trust for the Administrative Agent and the other Secured Parties, segregated from other funds of such Grantor. After the occurrence and during the continuance of an Event of Default, each such deposit of Proceeds of Receivables shall be accompanied by a report identifying in reasonable detail the nature and source of the payments included in the deposit.

(b) At the Administrative Agent's request, after the occurrence and during the continuance of an Event of Default, each Grantor shall deliver to the Administrative Agent all original and other documents evidencing, and relating to, the agreements and transactions which gave rise to the Receivables, including, without limitation, all original orders, invoices and shipping receipts.

#### 6.2 Communications with Obligors; Grantors Remain Liable.

(a) The Administrative Agent, in its own name or in the name of one of its Affiliates or a Grantor, may at any time after the occurrence and during the continuance of an Event of Default communicate with obligors under the Receivables to verify with them to the Administrative Agent's satisfaction the existence, amount and terms of any Receivables.

(b) Upon the request of the Administrative Agent, at any time after the occurrence and during the continuance of an Event of Default, each Grantor shall notify obligors on the Receivables that the Receivables have been assigned to the Administrative Agent for the ratable benefit of the Secured Parties and that payments in respect thereof shall be made directly to the Administrative Agent.

(c) Anything herein to the contrary notwithstanding, each Grantor shall remain liable under each of the Receivables to observe and perform all the conditions and obligations to be observed and performed by it thereunder, all in accordance with the terms of any agreement giving rise thereto. Neither the Administrative Agent nor any other Secured Party shall have any obligation or liability under any Receivable (or any agreement giving rise thereto) by reason of or arising out of this Agreement or the receipt by the Administrative Agent or any Lender of any payment relating thereto, nor shall the Administrative Agent nor any other Secured Party be obligated in any manner to perform any of the obligations of any Grantor under or pursuant to any Receivable (or any agreement giving rise thereto), to make any payment, to make any inquiry as to the nature or the sufficiency of any payment received by it or as to the sufficiency of any performance by any party thereunder, to present or file any claim, to take any action to enforce any performance or to collect the payment of any amounts which may have been assigned to it or to which it may be entitled at any time or times.

#### 6.3 Investment Property.

(a) Unless an Event of Default shall have occurred and be continuing and the Administrative Agent shall have given written notice to the relevant Grantor of the Administrative Agent's intent to exercise its corresponding rights pursuant to Section 6.3(b), each Grantor shall be permitted to receive all cash dividends paid in respect of the Pledged Collateral and all payments made in respect of the Pledged Notes to the extent not prohibited by the Credit Agreement, and to exercise all voting and corporate or other organizational rights with respect to the Investment Property of such Grantor; provided, however, that no vote shall be cast or corporate or other organizational right exercised or other action taken which, in the Administrative Agent's reasonable discretion, would materially impair the Collateral or which would be inconsistent with or result in any violation of any provision of the Credit Agreement, this Agreement or any other Loan Document.

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(b) If an Event of Default shall occur and be continuing and the Administrative Agent shall give notice of its intent to exercise such rights to the relevant Grantor or Grantors, (i) the Administrative Agent shall have the right (A) to receive any and all cash dividends, payments or other Proceeds paid in respect of the Investment Property (including the Pledged Collateral) of any or all of the Grantors and make application thereof to the Secured Obligations in the order set forth in Section 6.5, and (B) to exchange uncertificated Pledged Collateral for certificated Pledged Collateral and to exchange certificated Pledged Collateral for certificates of larger or smaller denominations, for any purpose consistent with this Agreement (in each case to the extent such exchanges are permitted under the applicable Pledged Collateral Agreements or otherwise agreed upon by the Issuer of such Pledged Collateral), and (ii) any and all of such Investment Property shall be registered in the name of the Administrative Agent or its nominee, and the Administrative Agent or its nominee may thereafter exercise (x) all voting, corporate and other rights pertaining to such Investment Property at any meeting of shareholders of the relevant Issuer or Issuers or otherwise and (y) any and all rights of conversion, exchange and subscription and any other rights, privileges or options pertaining to such Investment Property as if it were the absolute owner thereof (including, without limitation, the right to exchange at its discretion any and all of any such Investment Property upon the merger, consolidation, reorganization, recapitalization or other fundamental change in the corporate or other organizational structure of any Issuer, or upon the exercise by any Grantor or the Administrative Agent of any right, privilege or option pertaining to such Investment Property, and in connection therewith, the right to deposit and deliver any and all of such Investment Property with any committee, depository, transfer agent, registrar or other designated agency upon such terms and conditions as the Administrative Agent may determine), all without liability except to account for property actually received by it, but the Administrative Agent shall have no duty to any Grantor to exercise any such right, privilege or option and shall not be responsible for any failure to do so or delay in so doing.

(c) Each Grantor hereby authorizes and instructs each Issuer of any Pledged Collateral or Pledged Notes pledged by such Grantor hereunder to (i) comply with any instruction received by it from the Administrative Agent in writing that (x) states that an Event of Default has occurred and is continuing and (y) is otherwise in accordance with the terms of this Agreement, without any other or further instructions from such Grantor, and each Grantor agrees that each Issuer shall be fully protected in so complying, and (ii) unless otherwise expressly permitted hereby, pay any dividends or other payments with respect to the Pledged Collateral or, as applicable, the Pledged Notes directly to the Administrative Agent.

(d) If an Event of Default shall have occurred and be continuing, the Administrative Agent shall have the right to apply the balance from any Deposit Account or Securities Account or instruct the bank or securities intermediary at which any Deposit Account or Securities Account is maintained to pay the balance of any Deposit Account or Securities Account to or for the benefit of the Administrative Agent.

6.4 Proceeds to be Turned Over To Administrative Agent. In addition to the rights of the Administrative Agent and the other Secured Parties specified in Section 6.1 with respect to payments of Receivables, if an Event of Default shall occur and be continuing, all Proceeds received by any Grantor consisting of cash, checks, Cash Equivalents and other near-cash items shall be held by such Grantor in trust for the Administrative Agent and the other Secured Parties, segregated from other funds of such Grantor, and shall, forthwith upon receipt by such Grantor, be turned over to the Administrative Agent in the exact form received by such Grantor (duly indorsed by such Grantor to the Administrative Agent, if required). All Proceeds received by the Administrative Agent hereunder shall be held by the Administrative Agent in a Collateral Account over which it maintains control, within the meaning of the UCC. All Proceeds while held by the Administrative Agent in a Collateral Account (or by such Grantor in trust for the Administrative Agent and the other Secured Parties) shall continue to be held as collateral security for all the Secured Obligations and shall not constitute payment thereof until applied as provided in Section 6.5.

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6.5 Application of Proceeds. If an Event of Default shall have occurred and be continuing, at any time at the Administrative Agent's election, the Administrative Agent may apply all or any part of Proceeds constituting Collateral, whether or not held in any Collateral Account, in payment of the Secured Obligations in accordance with Section 8.3 of the Credit Agreement.

6.6 Code and Other Remedies. If an Event of Default shall occur and be continuing, the Administrative Agent, on behalf of the Secured Parties, may exercise, in addition to all other rights and remedies granted to them in this Agreement and in any other instrument or agreement securing, evidencing or relating to the Secured Obligations, all rights and remedies of a secured party under the UCC or any other applicable law. Without limiting the generality of the foregoing, the Administrative Agent, without demand of performance or other demand, presentment, protest, advertisement or notice of any kind (except any notice required by law) to or upon any Grantor or any other Person (all and each of which demands, defenses, advertisements and notices are hereby waived), may in such circumstances forthwith collect, receive, appropriate and realize upon the Collateral, or any part thereof, and/or may forthwith sell, lease, assign, give option or options to purchase, or otherwise dispose of and deliver the Collateral or any part thereof (or contract to do any of the foregoing), in one or more parcels at public or private sale or sales, at any exchange, broker's board or office of the Administrative Agent or any other Secured Party or elsewhere upon such terms and conditions as it may deem advisable and at such prices as it may deem best, for cash or on credit or for future delivery without assumption of any credit risk. The Administrative Agent or any other Secured Party shall have the right upon any such public sale or sales, and, to the extent permitted by law, upon any such private sale or sales, to purchase the whole or any part of the Collateral so sold, free of any right or equity of redemption in any Grantor, which right or equity is hereby waived and released. Each Grantor further agrees, at the Administrative Agent's request, to assemble the Collateral and make it available to the Administrative Agent at places which the Administrative Agent shall reasonably select, whether at such Grantor's premises or elsewhere. The Administrative Agent shall apply the net proceeds of any action taken by it pursuant to this Section 6.6, in accordance with the provisions of Section 6.5, only after deducting all reasonable costs and expenses of every kind incurred in connection therewith or incidental to the care or safekeeping of any of the Collateral or in any way relating to the Collateral or the rights of the Administrative Agent and the other Secured Parties hereunder, including, without limitation, reasonable attorneys' fees and disbursements, to the payment in whole or in part of the Secured Obligations, in such order as is contemplated by Section 8.3 of the Credit Agreement, and only after such application and after the payment by the Administrative Agent of any other amount required by any provision of law, including Section 9-615(a)(3) of the UCC, but only to the extent of the surplus, if any, owing to any Grantor. To the extent permitted by applicable law, each Grantor waives all claims, damages and demands it may acquire against the Administrative Agent or any other Secured Party arising out of the exercise by any of them of any rights hereunder, except to the extent caused by the gross negligence or willful misconduct of the Administrative Agent or such Secured Party or their respective agents. If any notice of a proposed sale or other disposition of Collateral shall be required by law, such notice shall be deemed reasonable and proper if given at least 10 days before such sale or other disposition. If an Event of Default has occurred and is continuing, Administrative Agent may, in addition to other rights and remedies provided for herein, in the other Loan Documents, or otherwise available to it under applicable law and without the requirement of notice to or upon any Grantor or any other Person (which notice is hereby expressly waived to the maximum extent permitted by the Code or any other applicable law), (i) with respect to any Grantor's Deposit Accounts in which Administrative Agent's Liens are perfected by control under Section 9-104 or any other section of the UCC, instruct the bank maintaining such Deposit Account for the applicable Grantor to pay the balance of such Deposit Account to or for the benefit of the Administrative Agent, and (ii) with respect to any Grantor's Securities Accounts in which Administrative Agent's Liens are perfected by control under Section 9-106 or any other section of the UCC, instruct the securities intermediary maintaining such Securities Account for the applicable Grantor to (A) transfer any cash in such Securities Account to or for the benefit of Administrative Agent, or (B) liquidate any financial assets in such Securities Account that are customarily sold on a recognized market and transfer the cash proceeds thereof

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to or for the benefit of Administrative Agent, in each case above, for application to and repayment of the Secured Obligations. Each Grantor hereby acknowledges that the Secured Obligations arise out of a commercial transaction, and agrees that if an Event of Default shall occur and be continuing Administrative Agent shall have the right to an immediate writ of possession without notice of a hearing. Administrative Agent shall have the right to the appointment of a receiver for the properties and assets of each Grantor, and each Grantor hereby consents to such rights and such appointment and hereby waives any objection such Grantor may have thereto or the right to have a bond or other security posted by Administrative Agent.

6.7 Registration Rights.

(a) If the Administrative Agent shall determine to exercise its right to sell any or all of the Pledged Stock pursuant to Section 6.6, and if in the opinion of the Administrative Agent it is necessary or advisable to have the Pledged Stock, or that portion thereof to be sold, registered under the provisions of the Securities Act, the relevant Grantor will cause the Issuer thereof to (i) execute and deliver, and cause the directors and officers of such Issuer to execute and deliver, all such instruments and documents, and do or cause to be done all such other acts as may be, in the opinion of the Administrative Agent, necessary or advisable to register the Pledged Stock, or that portion thereof to be sold, under the provisions of the Securities Act, (ii) use its best efforts to cause the registration statement relating thereto to become effective and to remain effective for a period of one year from the date of the first public offering of the Pledged Stock, or that portion thereof to be sold, and (iii) make all amendments thereto and/or to the related prospectus which, in the opinion of the Administrative Agent, are necessary or advisable, all in conformity with the requirements of the Securities Act and the rules and regulations of the Securities and Exchange Commission applicable thereto. Each Grantor agrees to cause such Issuer to comply with the provisions of the securities or "Blue Sky" laws of any and all jurisdictions which the Administrative Agent shall designate and to make available to its security holders, as soon as practicable, an earnings statement (which need not be audited) which will satisfy the provisions of Section 11(a) of the Securities Act.

(b) Each Grantor recognizes that the Administrative Agent may be unable to effect a public sale of any or all the Pledged Stock, by reason of certain prohibitions contained in the Securities Act and applicable state securities laws or otherwise, and may be compelled to resort to one or more private sales thereof to a restricted group of purchasers which will be obliged to agree, among other things, to acquire such securities for their own account for investment and not with a view to the distribution or resale thereof. Each Grantor acknowledges and agrees that any such private sale may result in prices and other terms less favorable than if such sale were a public sale and, notwithstanding such circumstances, agrees that any such private sale shall be deemed to have been made in a commercially reasonable manner. Subject to its compliance with state securities laws applicable to private sales, the Administrative Agent shall be under no obligation to delay a sale of any of the Pledged Stock for the period of time necessary to permit the Issuer thereof to register such securities for public sale under the Securities Act, or under applicable state securities laws, even if such Issuer would agree to do so.

(c) Each Grantor agrees to use commercially reasonable efforts to do or cause to be done all such other acts as may be necessary to make such sale or sales of all or any portion of the Pledged Stock pursuant to this Section 6.7 valid and binding and in compliance with any applicable Requirement of Law. Each Grantor further agrees that a breach of any of the covenants contained in this Section 6.7 will cause irreparable injury to the Administrative Agent and the other Secured Parties, that the Administrative Agent and the other Secured Parties have no adequate remedy at law in respect of such breach and, as a consequence, that each and every covenant contained in this Section 6.7 shall be specifically enforceable against such Grantor, and such Grantor hereby waives and agrees not to assert any defenses against an action for specific performance of such covenants except for a defense that no Event of Default has occurred under the Credit Agreement.

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6.8 Intellectual Property License. Solely for the purpose of enabling the Administrative Agent to exercise rights and remedies under this Section 6 and 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, for the benefit of the Secured Parties, an irrevocable, non-exclusive, worldwide license (exercisable without payment of royalty or other compensation to such Grantor), subject, in the case of Trademarks, to sufficient rights to quality control and inspection in favor of such Grantor to avoid the risk of invalidation of said Trademarks, to use, operate under, license, or sublicense any Intellectual Property now owned or hereafter acquired by the Grantors.

6.9 Deficiency. Each Grantor shall remain liable for any deficiency if the proceeds of any sale or other disposition of the Collateral are insufficient to pay its Secured Obligations and the reasonable fees and disbursements of any attorneys employed by the Administrative Agent or any other Secured Party to collect such deficiency.

## SECTION 7. THE ADMINISTRATIVE AGENT

Each Grantor covenants and agrees with the Administrative Agent and the other Secured Parties that:

### 7.1 Administrative Agent's Appointment as Attorney-in-Fact, etc.

(a) Each Grantor hereby irrevocably constitutes and appoints the Administrative Agent and any officer or agent thereof, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of such Grantor and in the name of such Grantor or in its own name, for the purpose of carrying out the terms of this Agreement, to take any and all appropriate action and to execute any and all documents and instruments which may be necessary or desirable to accomplish the purposes of this Agreement, and, without limiting the generality of the foregoing, each Grantor hereby gives the Administrative Agent the power and right, on behalf of such Grantor, without notice to or assent by such Grantor, to do any or all of the following:

(i) in the name of such Grantor or its own name, or otherwise, take possession of and indorse and collect any checks, drafts, notes, acceptances or other instruments for the payment of moneys due under any Receivable or with respect to any other Collateral and file any claim or take any other action or proceeding in any court of law or equity or otherwise deemed appropriate by the Administrative Agent for the purpose of collecting any and all such moneys due under any Receivable or with respect to any other Collateral whenever payable;

(ii) in the case of any Intellectual Property, execute and deliver, and have recorded, any and all agreements, instruments, documents and papers as the Administrative Agent may request to evidence the Administrative Agent's and the other Secured Parties' security interest in such Intellectual Property and the goodwill and general intangibles of such Grantor relating thereto or represented thereby;

(iii) pay or discharge taxes and Liens levied or placed on or threatened against the Collateral, effect any repairs or any insurance called for by the terms of this Agreement and pay all or any part of the premiums therefor and the costs thereof;

(iv) execute, in connection with any sale provided for in Section 6.6 or 6.7, any endorsements, assignments or other instruments of conveyance or transfer with respect to the Collateral; and

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(v) (A) direct any party liable for any payment under any of the Collateral to make payment of any and all moneys due or to become due thereunder directly to the Administrative Agent or as the Administrative Agent shall direct; (B) ask or demand for, collect, and receive payment of and receipt for, any and all moneys, claims and other amounts due or to become due at any time in respect of or arising out of any Collateral; (C) sign and indorse any invoices, freight or express bills, bills of lading, storage or warehouse receipts, drafts against debtors, assignments, verifications, notices and other documents in connection with any of the Collateral; (D) commence and prosecute any suits, actions or proceedings at law or in equity in any court of competent jurisdiction to collect the Collateral or any portion thereof and to enforce any other right in respect of any Collateral; (E) defend any suit, action or proceeding brought against such Grantor with respect to any Collateral; (F) settle, compromise or adjust any such suit, action or proceeding and, in connection therewith, give such discharges or releases as the Administrative Agent may deem appropriate; (G) assign any Copyright, Patent or Trademark (along with the goodwill of the business to which any such Copyright, Patent or Trademark pertains), throughout the world for such term or terms, on such conditions, and in such manner, as the Administrative Agent shall in its sole discretion determine; and (H) generally, sell, transfer, pledge and make any agreement with respect to or otherwise deal with any of the Collateral as fully and completely as though the Administrative Agent were the absolute owner thereof for all purposes, and do, at the Administrative Agent's option and such Grantor's expense, at any time, or from time to time, all acts and things which the Administrative Agent deems necessary to protect, preserve or realize upon the Collateral and the Administrative Agent's and the other Secured Parties' security interests therein and to effect the intent of this Agreement, all as fully and effectively as such Grantor might do.

Anything in this Section 7.1(a) to the contrary notwithstanding, the Administrative Agent agrees that it will not exercise any rights under the power of attorney provided for in this Section 7.1(a) unless an Event of Default shall have occurred and be continuing.

(b) If any Grantor fails to perform or comply with any of its agreements contained herein, the Administrative Agent, at its option, but without any obligation so to do, may perform or comply, or otherwise cause performance or compliance, with such agreement.

(c) The reasonable out-of-pocket expenses of the Administrative Agent incurred in connection with actions undertaken as provided in this Section 7.1, together with interest thereon at a rate per annum equal to the Applicable Margin under the Credit Agreement, from the date of payment by the Administrative Agent to the date reimbursed by the relevant Grantor, shall be payable by such Grantor to the Administrative Agent on demand.

(d) Each Grantor hereby ratifies all that said attorneys shall lawfully do or cause to be done by virtue hereof. All powers, authorizations and agencies contained in this Agreement are coupled with an interest and are irrevocable until this Agreement is terminated and the security interests created hereby are released.

7.2 Duty of Administrative Agent. The Administrative Agent's sole duty with respect to the custody, safekeeping and physical preservation of the Collateral in its possession, under Section 9-207 of the UCC or otherwise, shall be to deal with it in the same manner as the Administrative Agent deals with similar property for its own account. Neither the Administrative Agent, any other Secured Party nor any of their respective officers, directors, employees or agents shall be liable for failure to demand, collect or realize upon any of the Collateral or for any delay in doing so or shall be under any obligation to sell or otherwise dispose of any Collateral upon the request of any Grantor or any other Person or to take any other action whatsoever with regard to the Collateral or any part thereof. The powers conferred on the Administrative Agent and the other Secured Parties hereunder are solely to protect the Administrative Agent's and the other Secured Parties' interests in the Collateral and shall not impose any duty upon the Administrative Agent or any other Secured Party to exercise any such powers. The Administrative Agent

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and the other Secured Parties shall be accountable only for amounts that they actually receive as a result of the exercise of such powers, and neither they nor any of their officers, directors, employees or agents shall be responsible to any Grantor for any act or failure to act hereunder, except for their own gross negligence or willful misconduct.

7.3 Authority of Administrative Agent. Each Grantor acknowledges that the rights and responsibilities of the Administrative Agent under this Agreement with respect to any action taken by the Administrative Agent or the exercise or non-exercise by the Administrative Agent of any option, voting right, request, judgment or other right or remedy provided for herein or resulting or arising out of this Agreement shall, as between the Administrative Agent and the other Secured Parties, be governed by the Credit Agreement and by such other agreements with respect thereto as may exist from time to time among them, but, as between the Administrative Agent and the Grantors, the Administrative Agent shall be conclusively presumed to be acting as agent for the Secured Parties with full and valid authority so to act or refrain from acting, and no Grantor shall be under any obligation, or entitlement, to make any inquiry respecting such authority.

#### SECTION 8. MISCELLANEOUS

8.1 Amendments in Writing. None of the terms or provisions of this Agreement may be waived, amended, supplemented or otherwise modified except in accordance with Section 10.1 of the Credit Agreement.

8.2 Notices. All notices, requests and demands to or upon the Administrative Agent or any Grantor hereunder shall be effected in the manner provided for in Section 10.2 of the Credit Agreement; provided that any such notice, request or demand to or upon any Guarantor shall be addressed to such Guarantor at its notice address set forth on Schedule 1.

8.3 No Waiver by Course of Conduct; Cumulative Remedies. Neither the Administrative Agent nor any other Secured Party shall by any act (except by a written instrument pursuant to Section 8.1), delay, indulgence, omission or otherwise be deemed to have waived any right or remedy hereunder or to have acquiesced in any Default or Event of Default, as applicable. No failure to exercise, nor any delay in exercising, on the part of the Administrative Agent or any other Secured Party, any right, power or privilege hereunder shall operate as a waiver thereof. No single or partial exercise of any right, power or privilege hereunder shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege. A waiver by the Administrative Agent or any other Secured Party of any right or remedy hereunder on any one occasion shall not be construed as a bar to any right or remedy which the Administrative Agent or such other Secured Party would otherwise have on any future occasion. The rights and remedies herein provided are cumulative, may be exercised singly or concurrently and are not exclusive of any other rights or remedies provided by law.

8.4 Enforcement Expenses; Indemnification.

(a) Each Guarantor agrees to pay or reimburse the Administrative Agent and each other Secured Party for all its reasonable out-of-pocket costs and expenses incurred in collecting against such Guarantor under the guaranty contained in Section 2 of this Agreement or otherwise enforcing or preserving any rights under this Agreement and the other Loan Documents to which such Guarantor is a party, including the reasonable fees and disbursements of one primary counsel to the Administrative Agent and the Secured Parties.

(b) Each Guarantor agrees to pay, and to save the Administrative Agent and each other Secured Party harmless from, any and all liabilities with respect to, or resulting from any delay in paying, any and all stamp, excise, sales or other taxes which may be payable or determined to be payable with

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respect to any of the Collateral or in connection with any of the transactions contemplated by this Agreement.

(c) Each Guarantor agrees to pay, and to save the Administrative Agent and each other Secured Party harmless from, any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, reasonable and documented out-of-pocket costs and expenses or disbursements of any kind or nature whatsoever with respect to the execution, delivery, enforcement, performance and administration of this Agreement to the extent the Borrowers would be required to do so pursuant to the Credit Agreement.

(d) The agreements in this Section 8.4 shall survive repayment of the Secured Obligations and any other amounts payable under the Credit Agreement and the other Loan Documents.

8.5 Successors and Assigns. This Agreement shall be binding upon the successors and assigns of each Grantor and shall inure to the benefit of the Administrative Agent and each other Secured Party and their respective successors and permitted assigns; provided that no Grantor may assign, transfer or delegate any of its rights or obligations under this Agreement without the prior written consent of the Administrative Agent.

8.6 Set Off. Each Grantor hereby irrevocably authorizes the Administrative Agent and each other Secured Party and any Affiliate thereof at any time and from time to time after the occurrence and during the continuance of an Event of Default, without advance notice to such Grantor or any other Grantor, any such advance notice being expressly waived by each Grantor, to setoff and appropriate and apply any and all deposits (general or special, time or demand, provisional or final), in any currency, and any other credits, indebtedness or claims, in any currency, in each case whether direct or indirect, absolute or contingent, matured or unmatured, at any time held or owing by the Administrative Agent or such Secured Party or such Affiliate to or for the credit or the account of such Grantor, or any part thereof in such amounts as the Administrative Agent or such Secured Party may elect, against and on account of the Secured Obligations and liabilities of such Grantor to the Administrative Agent or such Secured Party hereunder and under the other Loan Documents and claims of every nature and description of the Administrative Agent or such Secured Party against such Grantor, in any currency, whether arising hereunder, under the Credit Agreement, any other Loan Document, or otherwise as the Administrative Agent or such Secured Party may elect, whether or not the Administrative Agent or any other Secured Party has made any demand for payment and although such obligations, liabilities and claims may be contingent or unmatured. The rights of the Administrative Agent and each other Secured Party under this Section 8.6 are in addition to other rights and remedies (including, without limitation, other rights of setoff) which the Administrative Agent or such other Secured Party may have.

8.7 Counterparts. This Agreement may be executed and delivered by one or more of the parties to this Agreement on any number of separate counterparts (including delivery by facsimile and/or electronic mail), and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

8.8 Severability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

8.9 Section Headings. The Section headings used in this Agreement are for convenience of reference only and are not to affect the construction hereof or be taken into consideration in the interpretation hereof.

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8.10 Integration. This Agreement and the other Loan Documents represent the agreement of the Grantors, the Administrative Agent and the other Secured Parties with respect to the subject matter hereof and thereof, and there are no promises, undertakings, representations or warranties by the Administrative Agent or any other Secured Party relative to the subject matter hereof and thereof not expressly set forth or referred to herein or in the other Loan Documents.

8.11 **GOVERNING LAW. THIS AGREEMENT AND ANY CLAIM, CONTROVERSY, DISPUTE, CAUSE OF ACTION, OR PROCEEDING (WHETHER BASED IN CONTRACT, TORT, OR OTHERWISE) BASED UPON, ARISING OUT OF, CONNECTED WITH, OR RELATING TO THIS AGREEMENT, AND THE TRANSACTIONS CONTEMPLATED HEREBY, AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER, SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE INTERNAL LAWS (AND NOT THE CONFLICT OF LAW RULES) OF THE STATE OF NEW YORK.** This Section 8.11 shall survive the Discharge of Obligations.

8.12 Submission to Jurisdiction; Waivers. Each Grantor hereby irrevocably and unconditionally agrees that the provisions of Sections 10.14(a) and (c) of the Credit Agreement (relating to submission to jurisdiction and waivers and the waiver of the right to claim or recover any special, exemplary, punitive or consequential damages) shall be incorporated herein, *mutatis mutandis*, as if set forth herein in full. This Section 8.12 shall survive the Discharge of Obligations.

8.13 Acknowledgements. Each Grantor hereby acknowledges that:

(a) it has been advised by counsel in the negotiation, execution and delivery of this Agreement and the other Loan Documents to which it is a party;

(b) neither the Administrative Agent nor any other Secured Party has any fiduciary relationship with or duty to any Grantor arising out of or in connection with this Agreement or any of the other Loan Documents, and the relationship between the Grantors, on the one hand, and the Administrative Agent and the other Secured Parties, on the other hand, in connection herewith or therewith is solely that of debtor and creditor; and

(c) no joint venture is created hereby or by the other Loan Documents or otherwise exists by virtue of the transactions contemplated hereby among any of the Secured Parties or among the Grantors and any of the Secured Parties.

8.14 Additional Grantors. Each Subsidiary of a Grantor that is required to become a party to this Agreement pursuant to Section 6.12 of the Credit Agreement shall become a Grantor for all purposes of this Agreement upon execution and delivery by such Subsidiary of an Assumption Agreement in the form of Annex 1 hereto.

8.15 Releases.

(a) Upon the Discharge of Obligations, the Collateral shall be released from the Liens in favor of the Administrative Agent and the other Secured Parties created hereby, this Agreement shall terminate with respect to the Administrative Agent and the other Secured Parties, and all obligations (other than those expressly stated to survive such termination) of each Grantor to the Administrative Agent or any other Secured Party hereunder shall terminate, all without delivery of any instrument or performance of any act by any party. At the sole expense of any Grantor following any such termination, the Administrative Agent shall deliver such documents as such Grantor shall reasonably request to evidence such termination.

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(b) If any of the Collateral shall be sold, transferred or otherwise disposed of by any Grantor to a Person that is not a Grantor in a transaction permitted by Section 7 of the Credit Agreement, (i) such Collateral shall be automatically released from the Liens created hereby on such Collateral, and (ii) then the Administrative Agent, at the request and sole expense of such Grantor, shall promptly execute and deliver to such Grantor all releases or other documents reasonably necessary or desirable for the release of the Liens created hereby on such Collateral, as applicable. At the request and sole expense of the Borrower, a Guarantor shall be released from its obligations hereunder in the event that all the Capital Stock of such Guarantor shall be sold, transferred or otherwise disposed of to a Person other than a Grantor in a transaction permitted by Section 7 of the Credit Agreement; provided that the Borrower shall have delivered to the Administrative Agent, at least ten (10) days, or such shorter period as the Administrative Agent may agree, prior to the date of the proposed release, a written request for release identifying the relevant Guarantor and the terms of the sale or other disposition in reasonable detail, including the price thereof and any expenses in connection therewith, together with a certification by the Borrower stating that such transaction is in compliance with terms and provisions of the Credit Agreement and the other Loan Documents.

8.16 **WAIVER OF JURY TRIAL. EACH GRANTOR AND THE ADMINISTRATIVE AGENT EACH HEREBY IRREVOCABLY AND UNCONDITIONALLY (A) WAIVES, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ITS RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF, CONNECTED WITH, OR BASED UPON THIS AGREEMENT OR ANY TRANSACTION CONTEMPLATED HEREBY; AND (B) AGREES, WITHOUT INTENDING IN ANY WAY TO LIMIT ITS AGREEMENT TO WAIVE ITS RIGHT TO A TRIAL BY JURY, THAT THE PROVISIONS OF SECTION 10.14(b) OF THE CREDIT AGREEMENT (RELATING TO THE WAIVER OF THE RIGHT TO JURY TRIAL) SHALL BE INCORPORATED HEREIN, MUTATIS MUTANDIS, AS IF SET FORTH HEREIN IN FULL. THIS WAIVER OF THE RIGHT TO JURY TRIAL IS A MATERIAL INDUCEMENT FOR THE PARTIES HERETO TO ENTER INTO THIS AGREEMENT. EACH PARTY HERETO HAS REVIEWED THIS WAIVER WITH ITS COUNSEL. THIS SECTION 8.16 SHALL SURVIVE THE DISCHARGE OF OBLIGATIONS.**

8.17 **Patriot Act.** Each Lender and the Administrative Agent (for itself and not on behalf of any other party) hereby notifies each Grantor that, pursuant to the requirements of “know your customer” and anti-money laundering rules and regulations, including the Patriot Act and 31 C.F.R. § 1010.230, it is required to obtain, verify and record information that identifies such Grantor, which information includes the names and addresses and other information that will allow such Lender or the Administrative Agent, as applicable, to identify such Grantor and certain of its beneficial owners and other officers in accordance with the Patriot Act and 31 C.F.R. § 1010.230. Each Grantor will, and will cause each of its Subsidiaries to, provide, to the extent commercially reasonable or required by any Requirement of Law, such information and take such actions as are reasonably requested by the Administrative Agent or any Lender to assist the Administrative Agent and the Lenders in maintaining compliance with “know your customer” requirements under the PATRIOT Act, 31 C.F.R. § 1010.230 or other applicable anti-money laundering laws.

*[remainder of page intentionally left blank]*

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IN WITNESS WHEREOF, each of the undersigned has caused this Guarantee and Collateral Agreement to be duly executed and delivered as of the date first above written.

**GRANTORS:**

**BENEFITFOCUS, INC.**

By: /s/ Stephen M. Swad

Name: Stephen M. Swad

Title: Chief Financial Officer

**BENEFITFOCUS,COM, INC.**

By: /s/ Stephen M. Swad

Name: Stephen M. Swad

Title: Chief Financial Officer

**BENEFITSTORE, INC.**

By: /s/ Stephen M. Swad

Name: Stephen M. Swad

Title: Chief Financial Officer

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**ADMINISTRATIVE AGENT:**

**SILICON VALLEY BANK**

By: s/ Will Deevy

Name: Will Deevy

Title: Director

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SCHEDULE 1

NOTICE ADDRESSES OF GUARANTORS

<u>Guarantor</u>	<u>Notice Address</u>
Benefitfocus, Inc.	100 Benefitfocus Way Charleston, SC 29492 Attention: Chief Financial Officer and General Counsel E-Mail: Legal1@benefitfocus.com
Benefitfocus.com, Inc.	100 Benefitfocus Way Charleston, SC 29492 Attention: Chief Financial Officer and General Counsel E-Mail: Legal1@benefitfocus.com
BenefitStore, Inc.	100 Benefitfocus Way Charleston, SC 29492 Attention: Chief Financial Officer and General Counsel E-Mail: Legal1@benefitfocus.com

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**SCHEDULE 2**

**DESCRIPTION OF INVESTMENT PROPERTY**

**Pledged Stock:**

<u>Grantor</u>	<u>Issuer</u>	<u>Class of Capital Stock</u>	<u>Certificate No.</u>	<u>No. of Shares / Units</u>
Benefitfocus, Inc.	Benefitfocus.com, Inc.	Common	No. 1	100
Benefitfocus.com, Inc.	BenefitStore, Inc.	Common	No. 1	200

**Pledged Notes:**

<u>Grantor</u>	<u>Issuer</u>	<u>Date of Issuance</u>	<u>Payee</u>	<u>Principal Amount</u>
N/A	N/A	N/A	N/A	N/A

**Securities Accounts:**

<u>Grantor</u>	<u>Securities Intermediary</u>	<u>Address</u>	<u>Account Number(s)</u>
Benefitfocus, Inc.	N/A	N/A	N/A
Benefitfocus.com, Inc.	U.S. Bank, N.A.	CN-OH-W6TC Cincinnati, OH 45202	
	U.S. Bank, N.A.	CN-OH-W6TC Cincinnati, OH 45202	
BenefitStore, Inc.	N/A	N/A	N/A

**Commodity Accounts:**

<u>Grantor</u>	<u>Commodities Intermediary</u>	<u>Address</u>	<u>Account Number(s)</u>
N/A	N/A	N/A	N/A

**Deposit Accounts:**

<u>Grantor</u>	<u>Depository Bank</u>	<u>Address</u>	<u>Account Number(s)</u>
Benefitfocus, Inc.	Comerica <sup>1</sup>	226 Airport Pkwy, Suite #100, M/C 4348 San Jose, CA 95110	
	Comerica <sup>2</sup>	226 Airport Pkwy, Suite #100, M/C 4348 San Jose, CA 95110	

<sup>1</sup> This account is in the process of being closed.

<sup>2</sup> This account is in the process of being closed.

Benefitfocus.com, Inc.	NBSC	P.O. Box 8 Mount Pleasant, SC 29465	
	NBSC	P.O. Box 8 Mount Pleasant, SC 29465	
	NBSC	P.O. Box 8 Mount Pleasant, SC 29465	
	NBSC	P.O. Box 8 Mount Pleasant, SC 29465	
	SVB	3353 Peachtree Road NE Tower, Suite M-10 Atlanta, GA 30326	
	SVB	3353 Peachtree Road NE Tower, Suite M-10 Atlanta, GA 30326	
	SVB	3353 Peachtree Road NE Tower, Suite M-10 Atlanta, GA 30326	
	SVB	3353 Peachtree Road NE Tower, Suite M-10 Atlanta, GA 30326	
BenefitStore, Inc.	NBSC	P.O. Box 8 Mount Pleasant, SC 29465	

<sup>1</sup> This account is in the process of being closed.

<sup>2</sup> This account is in the process of being closed.

SCHEDULE 3

FILINGS AND OTHER ACTIONS  
REQUIRED TO PERFECT SECURITY INTERESTS

Financing Statements

<u>Loan Party</u>	<u>Filing</u>	<u>Filing Office</u>
Benefitfocus, Inc.	UCC-1 Financing Statement	Delaware Secretary of State
Benefitfocus.com, Inc.	UCC-1 Financing Statement	South Carolina Secretary of State
BenefitStore, Inc.	UCC-1 Financing Statement	South Carolina Secretary of State

Other Filings

Filing of the Intellectual Property Security Agreement with the U.S. Copyright Office and the U.S. Patent and Trademark Office.

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SCHEDULE 4

LOCATION OF JURISDICTION OF ORGANIZATION

<u>Grantor</u>	<u>Jurisdiction of Organization</u>	<u>Organizational Identification Number</u>	<u>Location of Chief Executive Office</u>	<u>Location of Books</u>
Benefitfocus, Inc.	Delaware	5301893	100 Benefitfocus Way Charleston, SC 29492	100 Benefitfocus Way Charleston, SC 29492
Benefitfocus.com, Inc.	South Carolina	N/A	100 Benefitfocus Way Charleston, SC 29492	100 Benefitfocus Way Charleston, SC 29492
BenefitStore, Inc.	South Carolina	N/A	100 Benefitfocus Way Charleston, SC 29492	100 Benefitfocus Way Charleston, SC 29492

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SCHEDULE 5

LOCATIONS OF EQUIPMENT AND INVENTORY

<u>Grantor</u>	<u>Address Location</u>
Benefitfocus, Inc.	N/A
Benefitfocus.com, Inc.	100 Benefitfocus Way Charleston, SC 29492
	125 Fairchild Street Charleston, SC 29492
	215 Fairchild Street Charleston, SC 29492
	1016 Woods Crossing Road Suite B Greenville, SC 29607
	2488 E. 81st Street Suite 1700 Tulsa, OK 74137
	TierPoint Hosted Solutions LLC 5301 Departure Drive, Suite 111 Raleigh, NC 27616
	TierPoint Hosted Solutions LLC 4021 Rose Lake Drive Charlotte, NC 28217
	Exhibit Concepts, Inc. 700 Crossroads Court Vandalia, OH 45377
	CubeSmart 460 Seven Farms Drive Units #323, #325, #326, #235, #532, #939 Daniel Island, SC 29492
	18500 West Corporate Drive Suite 250 Brookfield, WI 53045
	44274 Roundtable Plaza Suite L106 Ashburn, VA 20147
	10 West Broadway Salt Lake City, UT 84101
	Sungard Availability Services, LP 1055 Spring Street NE Atlanta, GA 30309
BenefitStore, Inc.	100 Benefitfocus Way Charleston, SC 29492

**SCHEDULE 6**

**RIGHTS OF THE GRANTORS RELATING TO PATENTS**

Issued Patents of Benefitfocus, Inc.

NONE

Pending Patent Applications of Benefitfocus, Inc.

NONE

Issued Patents and Pending Patent Applications Licensed to or used by Benefitfocus, Inc.

NONE

Issued Patents of Benefitfocus.com, Inc.

<u>Jurisdiction</u>	<u>Patent No.</u>	<u>Issue Date</u>	<u>Inventor</u>	<u>Title</u>
United States	8,412,646	04/02/2013	Theodore C. Tanner, Jr.; Matthew Aldridge; Gregory Jorstad	Systems and methods for automatic creation of agent-based systems
United States	8,572,760	10/29/2013	Theodore C. Tanner, Jr.; Amit Jain	Systems and methods for secure agent information
United States	8,935,705	01/13/2015	Jeremy D. Martin	Execution of highly concurrent processing tasks based on the updated dependency data structure at run-time
United States	9,430,504	08/30/2016	Michael Rosier	Systems and methods for dynamically intercepting and adjusting persistence behaviors via runtime configuration
United States	9,454,412	09/27/2016	Michael Rosier	Systems and methods for classifying and analyzing runtime events
United States	9,612,708	04/04/2017	John C. Lunsford	Systems and methods for polymorphic content generation in a multi-application, multi-tenant environment
United States	9,692,654	06/27/2017	Michael Rosier	Systems and methods for correlating derived metrics for system activity
United States	9,729,606	08/08/2017	Adam Wagner	Systems and methods for metadata driven user interface framework

Australia	2009298151	10/29/2015	Theodore C. Tanner, Jr.; Matthew Aldridge; Gregory Jorstad	Systems and methods for automatic creation of agent-based systems
Australia	2012256399	03/16/2017	Jeremy D. Martin	Registration and execution of highly concurrent processing tasks
Canada	2726729	01/24/2017	Theodore C. Tanner, Jr.; Matthew Aldridge; Gregory Jorstad	Systems and methods for automatic creation of agent-based systems
China	ZL200980126895.0	09/03/2014	Theodore C. Tanner, Jr.; Matthew Aldridge; Gregory Jorstad	Systems and methods for automatic creation of agent-based systems
China	ZL201180039769.9	07/22/2015	Theodore C. Tanner, Jr.; Amit Jain	Systems and methods for secure agent information
China	ZL201280021183.4	09/21/2016	Jeremy D. Martin	Registration and execution of highly concurrent processing tasks
Hong Kong	1179722	01/08/2016	Theodore C. Tanner, Jr.; Amit Jain	Systems and methods for secure agent information
Hong Kong	HK1190476	08/04/2017	Jeremy D. Martin	Registration and execution of highly concurrent processing tasks
Japan	5690935	02/06/2015	Theodore C. Tanner, Jr.; Amit Jain	Systems and methods for secure agent information
Japan	5989097	08/19/2016	Jeremy D. Martin	Registration and execution of highly concurrent processing tasks
Taiwan	1531973	05/01/2016	Jeremy D. Martin	Registration and execution of highly concurrent processing tasks
Taiwan	1581111	05/01/2017	Jason Shaun McDonald	System and method for enabling the styling and adornment of multiple, disparate web pages through remote method calls

Pending Patent Applications of Benefitfocus.com, Inc.

<u>Jurisdiction</u>	<u>Serial No.</u>	<u>Filing Date</u>	<u>Inventor</u>	<u>Title</u>
United States	13/299,112	11/17/2011	William B. Gilbert	Systems and methods for dynamic service integration
United States	13/452,580	04/20/2012	Jason Shaun McDonald	System and method for enabling the styling and adornment of multiple, disparate web pages through remote method calls

Issued Patents and Pending Patent Applications Licensed to or used by Benefitfocus.com, Inc.

NONE

Issued Patents of BenefitStore, Inc.

NONE

Pending Patent Applications of BenefitStore, Inc.

NONE

Issued Patents and Pending Patent Applications Licensed to or used by BenefitStore, Inc.

NONE

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**RIGHTS OF THE GRANTORS RELATING TO TRADEMARKS**

Registered Trademarks of Benefitfocus, Inc.

NONE

Pending Trademark Applications of Benefitfocus, Inc.

NONE

Registered Trademarks and Pending Trademark Applications Licensed to or used by Benefitfocus, Inc.

NONE

Registered Trademarks of Benefitfocus.com, Inc.

<u>Jurisdiction</u>	<u>Registration No.</u>	<u>Registration Date</u>	<u>Filing Date</u>	<u>Registered Owner</u>	<u>Mark</u>
United States	2496059	10/09/2001	08/04/2000	Benefitfocus.com, Inc.	BENEFITFOCUS
United States	4057260	11/15/2011	08/04/2010	Benefitfocus.com, Inc.	INSUREADVANTAGE
United States	4102028	02/21/2012	06/30/2011	Benefitfocus.com, Inc.	ALL YOUR BENEFITS. ONE PLACE.
United States	4649999	12/02/2014	07/22/2013	Benefitfocus.com, Inc.	HR INTOUCH
United States	4565511	07/08/2014	07/22/2013	Benefitfocus.com, Inc.	BENEFITFOCUS
United States	4527136	05/06/2014	07/19/2013	Benefitfocus.com, Inc.	ALL YOUR BENEFITS. IN YOUR POCKET.
United States	4758876	06/23/2015	07/21/2014	Benefitfocus.com, Inc.	ONE PLACE
United States	5105506	12/20/2016	09/12/2014	Benefitfocus.com, Inc.	ON RAMP
United States	5483411	06/05/2018	02/29/2016	Benefitfocus.com, Inc.	BENEFITFOCUS
United States	5699142	03/12/2019	04/02/2018	Benefitfocus.com, Inc.	BENEFITFOCUS BENEFITSPLACE
United States	5901734	11/05/2019	04/08/2019	Benefitfocus.com, Inc.	BENEFITSAIGE
United States	5946551	12/24/2019	04/30/2019	Benefitfocus.com, Inc.	CONSUMER BENEFITS COVERAGE INDEX
Australia	International Reg. No. 1182012 Trademark No. 1591274	10/01/2013	10/01/2013	Benefitfocus.com, Inc.	BENEFITFOCUS
Australia	International Reg. No. 1329010	08/29/2016	08/29/2016	Benefitfocus.com, Inc.	BENEFITFOCUS
Australia	1958174	07/31/2018	07/31/2018	Benefitfocus.com, Inc.	BENEFITFOCUS BENEFITSPLACE

Canada	TMA855701	07/19/2013	01/31/2012	Benefitfocus.com, Inc.	BENEFITFOCUS
Canada	TMA867346	12/16/2013	10/29/2012	Benefitfocus.com, Inc.	HR INTOUCH MARKETPLACE
Canada	TMA867347	12/16/2013	10/30/2012	Benefitfocus.com, Inc.	HR INTOUCH
Canada	TMA911121	08/13/2015	12/19/2013	Benefitfocus.com, Inc.	BENEFITFOCUS
Canada	TMA911122	08/13/2015	12/19/2013	Benefitfocus.com, Inc.	HR INTOUCH
Canada	TMA962882	02/15/2017	01/17/2014	Benefitfocus.com, Inc.	ALL YOUR BENEFITS. IN YOUR POCKET.
Canada	TMA1017645	03/19/2019	08/29/2016	Benefitfocus.com, Inc.	BENEFITFOCUS
Canada	International Reg. No. 1182012	10/01/2013	08/09/2019	Benefitfocus.com, Inc.	BENEFITFOCUS
China	International Reg. No. 1182012	10/01/2013	10/01/2013	Benefitfocus.com, Inc.	BENEFITFOCUS
China	14158486	04/21/2015	03/12/2014	Benefitfocus.com, Inc.	BENEFITFOCUS
China	14158487	04/21/2015	03/12/2014	Benefitfocus.com, Inc.	BENEFITFOCUS
China	International Reg. No. 1329010	08/29/2016	08/29/2016	Benefitfocus.com, Inc.	BENEFITFOCUS
China	International Reg. No. 1425051	07/31/2018	07/31/2018	Benefitfocus.com, Inc.	BENEFITFOCUS BENEFITSPLACE
China	International Reg. No. 1487705	09/19/2019	07/18/2019	Benefitfocus.com, Inc.	BENEFITSAIGE
China	International Reg. No. 1491429	11/30/2019	08/09/2019	Benefitfocus.com, Inc.	CBCI
India	International Reg. No. 1182012	10/01/2013	10/01/2013	Benefitfocus.com, Inc.	BENEFITFOCUS
India	International Reg. No. 1329010	08/29/2016	08/29/2016	Benefitfocus.com, Inc.	BENEFITFOCUS
India	International Reg. No. 1425051	07/31/2018	07/31/2018	Benefitfocus.com, Inc.	BENEFITFOCUS BENEFITSPLACE
Ireland	International Reg. No. 1182012	10/01/2013	10/1/2013	Benefitfocus.com, Inc.	BENEFITFOCUS
Ireland	International Reg. No. 1329010	08/29/2016	08/29/2016	Benefitfocus.com, Inc.	BENEFITFOCUS
Israel	International Reg. No. 1182012	10/01/2013	10/01/2013	Benefitfocus.com, Inc.	BENEFITFOCUS

Israel	International Reg. No. 1329010	08/29/2016	08/29/2016	Benefitfocus.com, Inc.	BENEFITFOCUS
Israel	International Reg. No. 1425051	07/31/2018	07/31/2018	Benefitfocus.com, Inc.	BENEFITFOCUS BENEFITSPLACE
New Zealand	967599	04/24/2013	10/23/2012	Benefitfocus.com, Inc.	HR INTOUCH
New Zealand	967600	04/24/2013	10/23/2012	Benefitfocus.com, Inc.	HR INTOUCH MARKETPLACE
New Zealand	International Reg. No. 1182012	10/01/2013	10/01/2013	Benefitfocus.com, Inc.	BENEFITFOCUS
New Zealand	International Reg. No. 1329010	08/29/2016	08/29/2016	Benefitfocus.com, Inc.	BENEFITFOCUS
Russia	International Reg. No. 1106495	12/30/2011	12/30/2011	Benefitfocus.com, Inc.	BENEFITFOCUS
Russia	International Reg. No. 1182012	10/01/2013	10/01/2013	Benefitfocus.com, Inc.	BENEFITFOCUS
Russia	International Reg. No. 1329010	08/29/2016	08/29/2016	Benefitfocus.com, Inc.	BENEFITFOCUS
Russia	International Reg. No. 1425051	07/31/2018	07/31/2018	Benefitfocus.com, Inc.	BENEFITFOCUS BENEFITSPLACE
Ukraine	International Reg. No. 1106495	12/30/2011	12/30/2011	Benefitfocus.com, Inc.	BENEFITFOCUS
Ukraine	International Reg. No. 1182012	10/01/2013	10/01/2013	Benefitfocus.com, Inc.	BENEFITFOCUS
Ukraine	International Reg. No. 1329010	08/29/2016	08/29/2016	Benefitfocus.com, Inc.	BENEFITFOCUS
Ukraine	International Reg. No. 1425051	07/31/2018	07/31/2018	Benefitfocus.com, Inc.	BENEFITFOCUS BENEFITSPLACE
South Africa	2012/28642	03/13/2015	10/23/2012	Benefitfocus.com, Inc.	HR INTOUCH
South Africa	2013/27350	09/28/2015	10/02/2013	Benefitfocus.com, Inc.	BENEFITFOCUS
South Africa	2013/27351	09/28/2015	10/02/2013	Benefitfocus.com, Inc.	HR INTOUCH
South Africa	2014/00310	07/30/2015	01/07/2014	Benefitfocus.com, Inc.	ALL YOUR BENEFITS. IN YOUR POCKET.
United Kingdom	International Reg. No. 1182012	12/17/2019	10/01/2013	Benefitfocus.com, Inc.	BENEFITFOCUS
United Kingdom	International Reg. No. 1329010	08/29/2016	08/29/2016	Benefitfocus.com, Inc.	BENEFITFOCUS

United Kingdom	International Reg. No. 1487705	12/10/2019	07/18/2019	Benefitfocus.com, Inc.	BENEFITSAIGE
United Kingdom	International Reg. No. 1491429	12/30/2019	08/09/2019	Benefitfocus.com, Inc.	CBCI
World Intellectual Property Organization	International Reg. No. 1106495	12/30/2011	12/30/2011	Benefitfocus.com, Inc.	BENEFITFOCUS
World Intellectual Property Organization	International Reg. No. 1142954	10/22/2012	10/22/2012	Benefitfocus.com, Inc.	HR INTOUCH MARKETPLACE
World Intellectual Property Organization	International Reg. No. 1138700	10/22/2012	10/22/2012	Benefitfocus.com, Inc.	HR INTOUCH
World Intellectual Property Organization	International Reg. No. 1182012	10/01/2013	10/01/2013	Benefitfocus.com, Inc.	BENEFITFOCUS
World Intellectual Property Organization	International Reg. No. 1181498	10/01/2013	10/01/2013	Benefitfocus.com, Inc.	HR INTOUCH
World Intellectual Property Organization	International Reg. No. 1191605	12/31/2013	12/31/2013	Benefitfocus.com, Inc.	ALL YOUR BENEFITS. IN YOUR POCKET.
World Intellectual Property Organization	International Reg. No. 1329010	08/29/2016	08/29/2016	Benefitfocus.com, Inc.	BENEFITFOCUS
World Intellectual Property Organization	International Reg. No. 1425051	07/31/2018	07/31/2018	Benefitfocus.com, Inc.	BENEFITFOCUS BENEFITSPPLACE
World Intellectual Property Organization	International Reg. No. 1487705	09/19/2019	07/18/2019	Benefitfocus.com, Inc.	BENEFITSAIGE
World Intellectual Property Organization	International Reg. No. 1491429	10/10/2019	08/09/2019	Benefitfocus.com, Inc.	CBCI

Pending Trademark Applications of Benefitfocus.com, Inc.

<u>Jurisdiction</u>	<u>Application No.</u>	<u>Filing Date</u>	<u>Applicant</u>	<u>Mark</u>
United States	88/408,896	04/30/2019	Benefitfocus.com, Inc.	CBCI
Australia	International Reg. No. 1487705	07/18/2019	Benefitfocus.com, Inc.	BENEFITSAIGE
Australia	2042892	08/09/2019	Benefitfocus.com, Inc.	CBCI



Canada	1912747	08/01/2018	Benefitfocus.com, Inc.	BENEFITFOCUS BENEFITSPLACE
Canada	International Reg. No. 1487705	07/18/2019	Benefitfocus.com, Inc.	BENEFITSAIGE
Canada	1989461	08/09/2019	Benefitfocus.com, Inc.	CBCI
India	International Reg. No. 1487705	07/18/2019	Benefitfocus.com, Inc.	BENEFITSAIGE
India	International Reg. No. 1491429	08/09/2019	Benefitfocus.com, Inc.	CBCI
Ireland	International Reg. No. 1425051	07/31/2018	Benefitfocus.com, Inc.	BENEFITFOCUS BENEFITSPLACE
Ireland	International Reg. No. 1487705	07/18/2019	Benefitfocus.com, Inc.	BENEFITSAIGE
Ireland	International Reg. No. 1491429	08/09/2019	Benefitfocus.com, Inc.	CBCI
Ireland	2020/00088	01/22/2020	Benefitfocus.com, Inc.	BENEFITFOCUS CBCI
Israel	International Reg. No. 1487705	07/18/2019	Benefitfocus.com, Inc.	BENEFITSAIGE
Israel	International Reg. No. 1491429	08/09/2019	Benefitfocus.com, Inc.	CBCI
New Zealand	1130399	07/18/2019	Benefitfocus.com, Inc.	BENEFITSAIGE
New Zealand	1131972	08/09/2019	Benefitfocus.com, Inc.	CBCI
Russia	International Reg. No. 1491429	08/09/2019	Benefitfocus.com, Inc.	CBCI
South Africa	2012/28643	10/23/2012	Benefitfocus.com, Inc.	HR INTOUCH MARKETPLACE
South Africa	2016/24461	08/29/2016	Benefitfocus.com, Inc.	BENEFITFOCUS
South Africa	2016/24462	08/29/2016	Benefitfocus.com, Inc.	BENEFITFOCUS
South Africa	2018/21993	07/31/2018	Benefitfocus.com, Inc.	BENEFITFOCUS BENEFITSPLACE
South Africa	2019/20205	07/19/2019	Benefitfocus.com, Inc.	BENEFITSAIGE
South Africa	2019/20206	07/19/2019	Benefitfocus.com, Inc.	BENEFITSAIGE
South Africa	2019/30160	10/23/2019	Benefitfocus.com, Inc.	CBCI
South Africa	2019/30161	10/23/2019	Benefitfocus.com, Inc.	CBCI
Ukraine	International Reg. No. 1491429	08/09/2019	Benefitfocus.com, Inc.	CBCI

Registered Trademarks and Pending Trademark Applications Licensed to or used by Benefitfocus.com, Inc.

NONE

Registered Trademarks of BenefitStore, Inc.

NONE

Pending Trademark Applications of BenefitStore, Inc.

NONE

Registered Trademarks and Pending Trademark Applications Licensed to or used by BenefitStore, Inc.

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**RIGHTS OF THE GRANTORS RELATING TO COPYRIGHTS**

Registered Copyrights of Benefitfocus, Inc.

NONE

Pending Copyright Applications of Benefitfocus, Inc.

NONE

Registered Copyrights and Pending Copyright Applications Licensed to or used by Benefitfocus, Inc.

NONE

Registered Copyrights of Benefitfocus.com, Inc.

<u>Jurisdiction</u>	<u>Registration No.</u>	<u>Registration Date</u>	<u>Work of Authorship</u>
United States	TX0006032200	11/14/2001	Benefit focus online enrollment and data exchange service application.
United States	TX0006032199	11/14/2001	Benefit focus online enrollment and data exchange services application version 1.14.
United States	TXu001936144	01/31/2013	Benefitfocus: Winning with Culture.
United States	TXu001936077	05/30/2014	Benefitfocus: Winning with Culture 2.

Pending Copyright Applications of Benefitfocus.com, Inc.

NONE

Registered Copyrights and Pending Copyright Applications Licensed to or used by Benefitfocus.com, Inc.

NONE

Registered Copyrights of BenefitStore, Inc.

NONE

Pending Copyright Applications of BenefitStore, Inc.

NONE

Registered Copyrights and Pending Copyright Applications Licensed to or used by BenefitStore, Inc.

NONE

**OTHER LICENSE RIGHTS RELATING TO INTELLECTUAL PROPERTY**

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1. Benefitfocus.com, Inc. grants licenses in the ordinary course for the use of its software to its customers pursuant to Terms of Use, Master Services Agreements and related Software License and Service Agreements.
2. Benefitfocus.com, Inc. licenses certain Intellectual Property rights from Oracle America, Inc. pursuant to that Ordering Document, effective November 22, 2013, by and between Arrow Enterprise Computing Solutions Inc., CDW Logistics, Inc., Oracle America, Inc. and Benefitfocus.com, Inc. (incorporating by reference the Oracle Master Agreement, US-OMA-68046).

Benefitfocus.com, Inc. licenses certain Intellectual Property rights from John Hopkins University pursuant to that ACG Consultant Production License and Professional Services Agreement, dated May 2, 2011.

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**SCHEDULE 7**

**LETTER OF CREDIT RIGHTS**

None.

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**SCHEDULE 8**

**COMMERCIAL TORT CLAIMS**

None.

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ANNEX 1 TO  
GUARANTEE AND COLLATERAL AGREEMENT

FORM OF  
ASSUMPTION AGREEMENT

This ASSUMPTION AGREEMENT, dated as of [\_\_\_\_], is executed and delivered by [\_\_\_\_] (the “**Additional Grantor**”), in favor of **SILICON VALLEY BANK**, as administrative agent and collateral agent (in such capacities, the “**Administrative Agent**”) for the banks and other financial institutions or entities (the “**Lenders**”) from time to time party to that certain Credit Agreement, dated as of March 3, 2020 (as amended, amended and restated, supplemented, restructured or otherwise modified, renewed or replaced from time to time, the “**Credit Agreement**”), among **BENEFITFOCUS, INC.**, a Delaware corporation (“**Parent**”), **BENEFITFOCUS.COM, INC.**, a South Carolina corporation (“**Benefitfocus.com**”), and **BENEFITSTORE, INC.**, a South Carolina corporation (“**BenefitStore**”, and together with Parent and Benefitfocus.com, each individually, a “**Borrower**”, and collectively, and jointly and severally, the “**Borrowers**”), the Lenders party thereto and the Administrative Agent. All capitalized terms not defined herein shall have the respective meanings ascribed to such terms in such Credit Agreement.

W I T N E S S E T H:

WHEREAS, in connection with the Credit Agreement, the Borrowers and certain of its Affiliates (other than the Additional Grantor) have entered into that certain Guarantee and Collateral Agreement, dated as of March 3, 2020, in favor of the Administrative Agent for the benefit of the Secured Parties defined therein (as amended, amended and restated, supplemented, restructured or otherwise modified, renewed or replaced from time to time, the “**Guarantee and Collateral Agreement**”);

WHEREAS, the Borrowers are required, pursuant to Section 6.12 of the Credit Agreement to cause the Additional Grantor to become a party to the Guarantee and Collateral Agreement in order to grant in favor of the Administrative Agent (for the ratable benefit of the Secured Parties) the Liens and security interests therein specified and provide its guarantee of the Obligations as therein contemplated; and

WHEREAS, the Additional Grantor has agreed to execute and deliver this Assumption Agreement in order to become a party to the Guarantee and Collateral Agreement;

NOW, THEREFORE, IT IS AGREED:

1. **Guarantee and Collateral Agreement.** By executing and delivering this Assumption Agreement, the Additional Grantor, as provided in Section 8.14 of the Guarantee and Collateral Agreement, (a) hereby becomes a party to the Guarantee and Collateral Agreement as both a “Grantor” and a “Guarantor” thereunder with the same force and effect as if originally named therein as a Grantor and a Guarantor and, without limiting the generality of the foregoing, hereby expressly assumes all obligations and liabilities of a Grantor and a Guarantor thereunder, and (b) hereby grants to the Administrative Agent, for the benefit of the Secured Parties, as security for the Secured Obligations, a security interest in all of the Additional Grantor’s right, title and interest in any and to all Collateral of the Additional Grantor, in each case whether now owned or hereafter acquired or in which the Additional Grantor now has or hereafter acquires an interest and wherever the same may be located, but subject in all respects to the terms, conditions and exclusions set forth in the Guarantee and Collateral Agreement. The information set forth in Schedule 1 hereto is hereby added to the information set forth in the Schedules to the Guarantee and Collateral Agreement. The Additional Grantor hereby represents and warrants that each of the representations and warranties contained in Section 4 of the Guarantee and Collateral Agreement (x) that

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is qualified by materiality is true and correct, and (y) that is not qualified by materiality, is true and correct in all material respects, in each case, on and as the date hereof (after giving effect to this Assumption Agreement) as if made on and as of such date (except to the extent any such representation and warranty expressly relates to an earlier date, in which case such representation and warranty was true and correct in all material respects as of such earlier date).

2. Governing Law. **THIS ASSUMPTION AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE INTERNAL LAWS (AND NOT THE CONFLICT OF LAW RULES) OF THE STATE OF NEW YORK.**

3. Loan Document. This Assumption Agreement shall constitute a Loan Document under the Credit Agreement.

IN WITNESS WHEREOF, the undersigned has caused this Assumption Agreement to be duly executed and delivered as of the date first above written.

[ADDITIONAL GRANTOR]

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

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Supplement to Schedule 1

Supplement to Schedule 2

Supplement to Schedule 3

Supplement to Schedule 4

Supplement to Schedule 5

Supplement to Schedule 6

Supplement to Schedule 7

Supplement to Schedule 8

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ANNEX 2 TO  
GUARANTEE AND COLLATERAL AGREEMENT

FORM OF  
PLEDGE SUPPLEMENT

To: Silicon Valley Bank, as Administrative Agent

Re: **BENEFITFOCUS, INC.,**  
**BENEFITFOCUS.COM, INC.**  
**BENEFITSTORE, INC.**

Date: \_\_\_\_\_

Ladies and Gentlemen:

This Pledge Supplement (this "**Pledge Supplement**") is made and delivered pursuant to Section 3.3(g) of that certain Guarantee and Collateral Agreement, dated as of March 3, 2020 (as amended, modified, renewed or extended from time to time, the "**Guarantee and Collateral Agreement**"), among each Grantor party thereto (each a "**Grantor**" and collectively, the "**Grantors**"), and Silicon Valley Bank (the "**Administrative Agent**"). All capitalized terms used in this Pledge Supplement and not otherwise defined herein shall have the meanings assigned to them in either the Guarantee and Collateral Agreement or the Credit Agreement (as defined in the Guarantee and Collateral Agreement), as the context may require.

The undersigned, \_\_\_\_\_ [insert name of Grantor], a \_\_\_\_\_ [corporation, partnership, limited liability company, etc.], confirms and agrees that all Pledged Collateral of the undersigned, including the property described on the supplemental schedule attached hereto, shall be and become part of the Pledged Collateral and shall secure all Secured Obligations.

Schedule 2 to the Guarantee and Collateral Agreement is hereby amended by adding to such Schedule 2 the information set forth in the supplement attached hereto.

This Pledge Supplement shall constitute a Loan Document under the Credit Agreement.

**THIS PLEDGE SUPPLEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE INTERNAL LAWS (AND NOT THE CONFLICT OF LAW RULES) OF THE STATE OF NEW YORK.**

IN WITNESS WHEREOF, the undersigned has executed this Pledge Supplement, as of the date first above written.

[NAME OF APPLICABLE GRANTOR]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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**SUPPLEMENT TO ANNEX 2  
TO THE SECURITY AGREEMENT**

<u>Name of Subsidiary</u>	<u>Number of Units/Shares Owned</u>	<u>Certificate(s) Numbers</u>	<u>Date Issued</u>	<u>Class or Type of Units or Shares</u>	<u>Percentage of Subsidiary's Total Equity Interests Owned</u>
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ny-1857796

## BENEFITFOCUS.COM, INC.

## EMPLOYMENT AGREEMENT

THIS AGREEMENT (the "**Agreement**"), is made and entered into this 1st day of January 2020, by and between: Benefitfocus.com, Inc., having its principal place of business at 100 Benefitfocus Way, Charleston, SC 29492, (hereinafter referred to as "**Benefitfocus**") and **Annamarie Fini** whose present address is: 808 Beckon Street, Charleston, SC (hereinafter referred to as the "**Associate**").

1. Employment. Benefitfocus hereby agrees to employ the Associate in the capacity of Executive Vice President of Customer Success Organization, upon the terms and conditions set out herein, and the Associate accepts such employment.
  2. Term. The term of this Agreement shall commence on January 1, 2020. The Associate understands and acknowledges that employment is "at will" and is terminable at any time at the will of Benefitfocus or the Associate, notwithstanding any other provisions of this Agreement, including Section 19 hereof. This Agreement shall remain in force until terminated at the will of either party or as described in Section 19 of this Agreement.
  3. Duties. The Associate shall perform, for Benefitfocus, the duties set out in the attached Exhibit A entitled "Job Description," which is incorporated herein and made a part of this Agreement, along with those other duties as may be assigned to Associate from time to time by Benefitfocus' Chief Executive Officer or his designee.
  4. Compensation. The Associate's initial compensation shall be paid in accordance with that outlined in Exhibit B entitled "Compensation Program," which is incorporated herein and made a part hereof, and is subject to review in accordance with then current compensation practices of Benefitfocus.
  5. Extent of Services. The Associate shall devote her entire time, attention, and energies to Benefitfocus' business and shall not, during the term of this Agreement, be engaged in other business activities that conflict with, or take the Associate's time or attention away from, the Associate's work for Benefitfocus, whether or not such business activity is pursued for gain, profit or other pecuniary advantage. The Associate further agrees that she will perform all of the duties assigned to the Associate to the best of her ability and in a manner satisfactory to Benefitfocus, that she will truthfully and accurately maintain all records, preserve all such records, and make all such reports as Benefitfocus may require; that she will fully account for all money and all of the property of Benefitfocus of which the Associate may have custody and will pay over and deliver the same whenever and however the Associate may be directed to do so.
  6. Expenses. Benefitfocus agrees to reimburse the Associate for travel and other expenses incurred while conducting business on behalf of Benefitfocus as long as they are reasonable and approved by Benefitfocus and comply with government regulations covering such expenses for business purposes. Such expenses will be stated on a Benefitfocus furnished expense form, have required receipts, be signed by the Associate, and sent to Benefitfocus for approval and reimbursement, all in accordance with
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7. Covenant Not to Disclose Trade Secrets and Confidential Information.

- a. As an employee of Benefitfocus, the Associate will be exposed to "Trade Secrets" and "Confidential Business Information" (as those terms are defined below). "**Trade Secrets**" shall mean information or data of or about Benefitfocus or any affiliated entity, including, but not limited to, technical or non-technical data, formulas, patterns, compilations, programs, devices, methods, techniques, drawings, processes, financial data, financial plans, products plans, or lists of actual or potential customers, clients, distributors, or licensees, that: (i) derive economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from their disclosure or use; and (ii) are the subject of efforts that are reasonable under the circumstances to maintain their secrecy. To the extent that the foregoing definition is inconsistent with a broader definition of "trade secret" under applicable law, the latter definition shall govern for purposes of interpreting the Associate's obligations under this Agreement. Except as required to perform her obligations under this Agreement or except with Benefitfocus' prior written permission, the Associate shall not use, redistribute, market, publish, disclose or divulge to any other person or entity any Trade Secrets of Benefitfocus. The Associate's obligations under this provision shall remain in force (during or after the Term) for so long as such information or data shall continue to constitute a "trade secret" under applicable law. The Associate agrees to cooperate with any and all confidentiality requirements of Benefitfocus and the Associate shall immediately notify Benefitfocus of any unauthorized disclosure or use of any Trade Secrets of which the Associate becomes aware.
  - b. The Associate agrees to maintain in strict confidence and, except as necessary to perform her duties for Benefitfocus, not to use or disclose any Confidential Business Information at any time, during the term of her employment and for a period of one (1) year after the Associate's last date of employment, so long as the pertinent data or information remains Confidential Business Information. "**Confidential Business Information**" shall mean any non-public Information of a competitively sensitive or personal nature, other than Trade Secrets, acquired by the Associate, directly or indirectly, in connection with the Associate's employment (including her employment with Benefitfocus prior to the date of this Agreement), including (without limitation) oral and written information concerning Benefitfocus or its affiliates relating to financial position and results of operations (revenues, margins, assets, net income, etc.), annual and long-range business plans, marketing plans and methods, account invoices, oral or written customer information, and personnel information. Confidential Business Information also includes information recorded in manuals, memoranda, projections, minutes, plans, computer programs, and records, whether or not legended or otherwise identified by Benefitfocus and its affiliates as Confidential Business Information, as well as information which is the subject of meetings and discussions and not so recorded; provided, however, that Confidential Business Information shall not include information that is generally available to the public, other than as a result of disclosure, directly or indirectly, by the Associate, or that was available to the Associate on a non-confidential basis prior to its disclosure to the Associate.
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- c. Without limiting any of the foregoing, Associate acknowledges that Trade Secrets and Confidential Business Information exist in all formats in which information is preserved, including electronic, print, or any other form, and that each term includes all originals, copies, notes, or other reproductions or replicas thereof.
- d. Upon termination of employment, the Associate shall leave with Benefitfocus all Trade Secrets, Confidential Business Information, and any other business records relating to Benefitfocus and its affiliates including, without limitation, all contracts, calendars, and other materials or business records concerning its business or customers, including all physical, electronic, and computer copies thereof, whether or not the Associate prepared such materials or records herself, and Associate shall retain no copies of any such materials. In addition, upon termination of employment, Associate will immediately return to Benefitfocus all other property whatsoever of Benefitfocus in her possession or under her control. If requested, Associate shall certify in writing to Benefitfocus that no such materials are in her possession.
- e. As set forth above, the Associate shall not disclose Trade Secrets or Confidential Business Information. However, nothing in this Section 7 shall prevent the Associate from (i) disclosing Trade Secrets or Confidential Business Information pursuant to a court order or court-issued subpoena, so long as the Associate first notifies Benefitfocus of said order or subpoena in sufficient time to allow Benefitfocus to seek an appropriate protective order, and provided that Associate only discloses such information as she is actually required to disclose, or (ii) from reporting violations of law to any governmental agency or entity, or otherwise making disclosures that are protected under a whistleblower any law. The Associate agrees that if she receives any formal or informal discovery request, court order, or subpoena requesting that the Associate disclose Trade Secrets or Confidential Business Information, she will immediately notify Benefitfocus and provide Benefitfocus with a copy of said request, court order, or subpoena.
- f. Pursuant to the Defend Trade Secrets Act of 2016, Associate is hereby notified that an individual will not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that (i) is made (A) in confidence to a federal, state or local government official, either directly or indirectly, or to an attorney; and (B) solely for the purpose of reporting or investigating a suspected violation of law; or (ii) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. An individual who files a lawsuit for retaliation by an employer for reporting a suspected violation of law may disclose the trade secret to his or her attorney and use the trade secret information in the court proceeding, if the individual files any document containing the trade secret under seal, and does not disclose the trade secret, except pursuant to court order.

**8. Covenant Not to Solicit Customers.**

- a. The Associate covenants and agrees that during her employment and for a period of one (1) year following the date of termination of the Associate's employment with Benefitfocus, for any reason, whether by the Associate or Benefitfocus, the Associate shall not (except on behalf of or with the prior written consent of Benefitfocus) either directly or indirectly, on the Associate's own behalf or in the
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service or on behalf of others, (i) solicit, divert or appropriate to or for a Competing Business (as defined below), or (ii) attempt to solicit, divert, or appropriate to or for a Competing Business, any person or entity that was a customer or prospective customer of Benefitfocus on the date of termination and with whom the Associate had direct material contact within six months of the Associate's last date of employment. For purposes of this Agreement, the term "**Competing Business**" shall mean the business of offering human resource management and benefit administration services to companies via a Web-based system.

- b. The Associate recognizes and acknowledges that Benefitfocus' customers and the specific needs of such customers are essential to the success of its business and its continued goodwill and that its customer list and customer information constitute a property interest of Benefitfocus, having been developed by Benefitfocus at great effort and expense.

9. Covenant Not to Solicit Employees/Consultants. The Associate covenants and agrees that during her employment and for a period of one (1) year following the date of termination of the Associate's employment with Benefitfocus, for any reason, whether by Associate or Benefitfocus, Associate will not, either directly or indirectly, on the Associate's own behalf or in the service or on behalf of others, (i) solicit, divert, or hire away, or (ii) attempt to solicit, divert, or hire away any employee of or consultant to Benefitfocus or any of its affiliates, regardless of whether the employee or consultant is full-time or temporary, the employment or engagement is pursuant to written agreement, or the employment is for a determined period or is at will.
10. Covenant Not to Compete. The Associate covenants and agrees that during her employment and for a period of one (1) year following the termination of the Associate's employment with Benefitfocus (by either party and regardless of the reason for such termination). Associate will not, hold a position based in or with responsibility for all or part of the Restricted Territory (as defined below), with any Competing Business (as defined above) whether as employee, consultant, or otherwise, in which Associate will have duties, or will perform or be expected to perform services for such Competing Business, that is or are the same as or substantially similar to the position held by Associate or those duties or services actually performed by Associate for Benefitfocus within the twelve (12) month period immediately preceding the termination of Associate's employment with Benefitfocus, or in which Associate will use or disclose or be reasonably expected to use or disclose any confidential or proprietary information of Benefitfocus for the purpose of providing, or attempting to provide, such Competing Business with a competitive advantage with respect to the Business. As used herein, "**Restricted Territory**" means the United States of America, it being understood that Benefitfocus' business is nationwide in scope, provided, however, that if a court of competent jurisdiction determines that the foregoing definition is too broad to be enforced under applicable law, then the parties agree that "Restricted Territory" will mean any State, province, or similar political subdivision to which Associate directed, or in which Associate performed, employment-related activities on behalf of Benefitfocus at the time of, or during the twelve (12) month period prior to, the termination of Associate's employment with Benefitfocus for any reason.
11. Covenants are Independent. The covenants on the part of the Associate contained in Sections 7, 8, 9, 10, 25 and 26 hereof, as well as in each subsection thereof, shall each
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be construed as agreements independent of each other and of any other provision in this Agreement and the unenforceability of one shall not affect the remaining covenants.

12. Consideration. The Associate acknowledges and agrees that valid consideration has been given to the Associate by Benefitfocus in return for the promises of the Associate set forth herein, including the promise of additional compensation to which the Associate was not entitled prior to the execution of this Agreement.
  13. Extension of Periods. Each of the time periods described in Sections 7, 8, 9, and 10 of this Agreement shall be automatically extended by any length of time during which the Associate is in breach of the corresponding covenant contained herein, and such provisions shall continue in full force and effect throughout the duration of the extended periods.
  14. Reasonable Restraint. The parties agree that the foregoing covenants in this Agreement are necessary for the legitimate business interests of Benefitfocus and impose a reasonable restraint on the Associate in light of the activities and Business of Benefitfocus on the date of the execution of this Agreement.
  15. Notices. Any notice required or desired to be given under this Agreement shall be given in writing, sent by certified mail, return receipt requested, to her residence as shown in the records of Benefitfocus in the case of the Associate, or to its principal place of business to the attention of General Counsel, in the case of Benefitfocus.
  16. Waiver of Breach. The waiver by Benefitfocus of a breach of any provision of this Agreement by the Associate shall not operate or be construed as a waiver of any subsequent breach by the Associate. No waiver shall be valid unless in writing and signed by Benefitfocus.
  17. Assignment. The Associate acknowledges that the services to be rendered by the Associate are unique and personal. Accordingly, the Associate may not assign any of her rights or delegate any of her duties or obligations under this Agreement. The rights and obligations of Benefitfocus under this Agreement shall inure to the benefit of and shall be binding upon the successors and assigns of Benefitfocus. The Associate agrees that this Agreement, and the covenants contained herein, may be assigned by Benefitfocus to any successor company.
  18. Paid Time Off. Associate will be eligible to receive paid time off in accordance with Benefitfocus' paid time off policies as detailed in its Associate Handbook, the provisions of which are subject to change on a prospective basis.
  19. Termination. Either party may terminate this Agreement at any time, with or without cause. In the event that Associate chooses to resign her employment, Benefitfocus requests fourteen (14) days written notice to Benefitfocus. In such event, the Associate shall continue (if agreed to by Benefitfocus) to render her services and shall be paid her regular compensation up to the date of termination.
  20. Entire Agreement; Amendment. This Agreement and the attached Exhibits contain the entire understanding of the parties with respect to the subject matter hereof and supersedes all prior agreements (whether written or oral and whether express or implied) between the parties to the extent related to such subject matter. It may be changed only by an Agreement in writing, signed by the parties hereto.
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21. Construction of Agreement. Should any of the provisions or terms of this Agreement require judicial interpretation, it is agreed that the court interpreting or construing this Agreement shall not apply a presumption that such provision(s) or term(s) shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party who prepared it, it being agreed that all parties have participated in the preparation and review of this Agreement and have had the opportunity to be represented by counsel.
  22. Governing law; Jurisdiction and Venue. This Agreement, and all transactions contemplated hereby, shall be governed by, construed and enforced in accordance with the laws of the State of South Carolina. The parties agree that any dispute, controversy or claim arising out of or related to this Agreement or any alleged breach thereof shall be filed exclusively in a court having subject matter jurisdiction located in Charleston County, South Carolina, and the parties waive any objection to personal jurisdiction or venue in such courts.
  23. Work Facilities. The Associate shall be provided with such other facilities and services as are suitable to the Associate's position and appropriate for the performance of her duties. In the case of an Associate performing the sales duties and located remote to the main office, it is expected that the Associate will maintain some form of office at her residence, which contains the necessary equipment to perform the assigned duties.
  24. Severability. To the extent that any provision or language of this Agreement is deemed unenforceable, by virtue of the scope of the business activity prohibited or the length of time the activity is prohibited, Benefitfocus and Associate agree that this Agreement shall be enforced to the fullest extent permissible under the laws and public policies of the State of South Carolina.
  25. Remedies for Breach. The Associate recognizes and agrees that a breach by the Associate of any covenant contained in this Agreement would cause immeasurable and irreparable harm to Benefitfocus. In the event of a breach or threatened breach of any covenant contained herein, Benefitfocus shall be entitled to temporary and permanent injunctive relief, restraining the Associate from violating or threatening to violate any covenant contained herein, as well as all costs and fees incurred by Benefitfocus, including attorneys' fees, as a result of the Associate's breach or threatened breach of the covenant. Benefitfocus and the Associate agree that the relief described herein is in addition to such other and further relief as may be available to Benefitfocus at equity or by law. Nothing herein shall be construed as prohibiting Benefitfocus from pursuing any other remedies available to it for such breach or threatened breach, including the recovery of damages from the Associate.
  26. Additional Representations and Warranties of Associate. Indemnification by Associate. The Associate acknowledges and agrees that: (i) the covenants contained in this Agreement are the essence of this Agreement; (ii) the Associate has received good, adequate and valuable consideration for each of these covenants; (iii) each of these covenants is reasonable and necessary to protect and preserve the interests and properties of Benefitfocus; (iv) each of these covenants in this Agreement is separate, distinct and severable not only from the other covenants but also from the remaining provisions of this Agreement; (v) the unenforceability of any covenants or agreements shall not affect the validity or enforceability of any of the other covenants or agreements or any other provision or provisions of this Agreement; and (vi) if the covenants herein shall ever be deemed to exceed the time, activity, or geographic limitations permitted by
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applicable law, then such provisions shall be and hereby are reformed to the maximum time, activity, or geographical limitations permitted by applicable law. **The Associate represents and warrants that her acceptance of employment with Benefitfocus has not been improperly induced with respect to any prior employment and the performance of her duties hereunder will not conflict with, or result in a violation of, a breach of, or a default under any contract, agreement, or understanding to which she is a party or is otherwise bound, including any non-solicitation, non-competition, or other similar covenant or agreement of a prior employer.**

27. **At-Will Employment. THE ASSOCIATE UNDERSTANDS AND AGREES THAT THIS AGREEMENT SHALL IN NO WAY IMPOSE UPON BENEFITFOCUS ANY OBLIGATION TO EMPLOY THE ASSOCIATE OR TO CONTINUE THE ASSOCIATE'S EMPLOYMENT FOR ANY LENGTH OF TIME. EMPLOYMENT BY BENEFITFOCUS IS, AND AT ALL TIMES SHALL REMAIN, IN THE ABSOLUTE DISCRETION OF BENEFITFOCUS, WHICH EMPLOYMENT MAY BE TERMINATED BY THE ASSOCIATE OR BENEFITFOCUS AT WILL.**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of this 1st day of January, 2020.

BENEFITFOCUS

ASSOCIATE

/s/ Ray August  
By: Ray August  
Its: Chief Executive Officer

Annmarie Fini  
By: Annmarie Fini

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**Executive Vice President of Customer Success Organization Job Description**

**Executive Vice President, Customer Success**

The Executive Vice President, Customer Success is the lead champion for our customers. Responsible for understanding and reinventing how we engage with every member of our ecosystem and their end-to-end experience. Reporting to the CEO, this role works cross-functionally to identify priorities, form consumer- focused strategies, and execute that vision through continuous development and longer-term planning. The EVP, Customer Success sets the strategic direction and delivers on customer success for the end-to-end customer experience across implementation, customer management, administrative services, Benefits Service Center and account general management.

Partnering with leaders from across the organization this leader works directly with Sales, Marketing, Platform Strategy and Technology teams to develop and evolve a strategic roadmap focused on the customer experience defining objectives and setting measurable outcomes.

**Primary Responsibilities:**

- Lead and partner across the organization to understand the Benefitfocus Customer experience and envision consumer-focused strategies
- Use data and insights to identify priorities and align business leaders and stakeholders
- Develop, own, and report on OKRs related to consumer experience and strategic initiatives
- Manage, coach, and mentor Customer Success leaders
- Continue to recruit, train and develop our world-class associates
- Oversee the strategy and planning for the entire customer lifecycle
- Deliver best-in-class customer retention and growth metrics
- Increase and maintain customer renewal rates and reduce churn
- Influence future lifetime value through higher product adoption, customer satisfaction, and overall customer health scores
- Drive new business growth through greater advocacy and reference-ability
- Translate business objectives into an execution strategy and successfully execute on the strategy
- Engage deeply with our customers; attending QBRs, facilitating thought leadership, and establishing close relationships with executives
- Collaborate with the product and engineering teams to champion the needs of our customers
  - Develop deep understanding of the Benefitfocus product and the competitive space, with the ability to speak about everything from Benefitfocus architecture to platform
- Inspire Customer Success company-wide
- Lead Customer Success Management Team

**Required Skills & Experience:**

- 15+ years of progressive experience demonstrating passion for the customer success.
  - Experience untangling complex problems, thinking strategically and executing successfully
  - Action-oriented
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- Visionary and intellectually curious
- Experience driving initiatives cross-functionally and leading through influence
- Ability to communicate across all technical and business functions, and throughout all levels of the organization
- Demonstrated change management skills
- Excellent people management skills; high empathy and consideration for team morale and individual career progression
- Experience building and scaling world-class teams; experience hiring, onboarding and training
- Understand the development and implementation of large-scale, complex applications
- Experience managing globally distributed teams

**You Will Be Measured By**

- Revenue Retention and Gross Revenue Achievement
  - Customer Health Scores
  - Net Promoter Score (NPS)
  - Employee Net Promoter Score (eNPS)
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## EXHIBIT B

Benefitfocus.com, Inc.  
Compensation Program for Annmarie Fini

Exhibit B to Employment Agreement dated January 1, 2020.

1. *Salary:* As compensation for services rendered by you, Benefitfocus shall pay a salary at the annualized rate of \$348,676, payable in installments in accordance with Benefitfocus' customary payroll practices as in effect from time to time. All compensation paid to you shall be subject to withholding for such federal, state and local taxes as Benefitfocus determines are required to be withheld pursuant to applicable law.
  2. *Annual Review:* Annual salary reviews will occur on or around the annual budget process for Benefitfocus.
  3. *2020 Short Term Incentive Program:* You are eligible to participate in the Benefitfocus Short Term Incentive Program at the EVP level, which is 50% of your base salary, subject to adoption by the Board of Directors from time to time, and conditioned on achievement of annual performance targets. The targets for achieving the Bonus will be the same Company targets set for the entire Executive Management Team as adjusted at the beginning of each year. In general, you must be employed by Benefitfocus on the date on which a bonus is paid in order to earn and receive the bonus, except as contemplated by Section 8 of this Exhibit B.
  4. *Long Term Incentive Program.* You will be eligible to participate in Benefitfocus' Management Incentive Bonus program, with a target award of 200% of your base salary. The terms of the longterm incentive awards for any given year will be determined by the Compensation Committee.
  5. *Normal Hours of Work:* Full time executive positions are expected to work the amount of time needed to meet or exceed all job duties and performance expectations as assigned by the President and CEO.
  6. *Benefits:* You are eligible for all Benefitfocus associate benefit programs including but not limited to Health Insurance, Life Insurance, Disability Insurance, 401(k) Retirement Program, and more, subject to the terms and conditions of such programs. Nothing in this Agreement or Compensation Program alters or limits Benefitfocus' rights to modify or terminate any such programs in its sole discretion.
  7. *Paid Time Off and Paid Holidays:* Your paid time off will follow the company schedule, as outlined in the benefit summary.
  8. *[Severance.*
    - a) In the event that Benefitfocus terminates your employment without Cause or you resign for Good Reason (as each is defined herein), then upon your execution of a general release of claims satisfactory to Benefitfocus within the time allowed for execution, which release is not revoked by you during any revocation period allowed by law, Benefitfocus will provide you with an amount of severance equal to six (6) months of your then-current rate of base salary, paid in substantially equal
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installments in accordance with Benefitfocus' usual and customary payroll schedule, commencing on the first regularly-scheduled pay day that is at least sixty (60) days after the date of your termination.

- b) "Cause" shall mean a reasonable determination by Benefitfocus<sup>1</sup> board of directors of any of the following: (i) your violation of any applicable material law or regulation respecting the business of Benefitfocus; (ii) your conviction of, or plea of nolo contendere to, a felony or any crime involving fraud, embezzlement or any other act of moral turpitude; (iii) your act of dishonesty, fraud or misrepresentation made in connection with your responsibilities as an employee; (iv) your gross misconduct that results in a reasonable probability of material injury (whether tangible or reputational) to Benefitfocus; (v) your material breach of any material obligations under any written agreement with Benefitfocus or your continued failure to substantially perform your material employment duties, which breach or failure is not cured to Benefitfocus' reasonable satisfaction within five (5) business days after notice thereof is delivered to you.
- c) "Good Reason" shall mean the occurrence of any of the following without your written consent: (i) a material diminution in your base salary or targeted annual bonus, or (ii) a material diminution in your authority, duties, or responsibilities. You may not establish "Good Reason" unless you have provided written notice of the existence of such condition to Benefitfocus within thirty (30) days of the event constituting such Good Reason, and Benefitfocus fails to reasonably cure such condition within the 30-day period immediately following receipt of such notice and you terminate your employment within thirty (30) days after the end of the cure period.
- d) *Noncompete/Nonsolicitation.* The receipt of any severance payments or benefits pursuant to this Section will be subject to you not violating the covenants contained within Section 7, 8, 9 and 10 of the Employment Agreement. In the event you breach such covenants, Benefitfocus shall, in addition to all other legal and equitable remedies, have the right to terminate or suspend all continuing payments and benefits to which you may otherwise be entitled pursuant to this Section 8 without affecting the release or any other obligations under the release agreement.]

9. *Application of Internal Revenue Code Section 409A:* All provisions of this Agreement will be interpreted in a manner consistent with Section 409A of the Internal Revenue Code and the regulations and other guidance thereunder and any state law of similar effect (collectively "**Section 409A**"). Notwithstanding anything to the contrary set forth herein, any payments and benefits provided under this Exhibit B that constitute "deferred compensation" within the meaning of Section 409A will not commence in connection with your termination of employment unless and until you have also incurred a "separation from service" (as such term is defined in Treasury Regulation Section 1.409A-1(h), unless Benefitfocus reasonably determines that such amounts may be provided to you without causing you to incur the additional 20% tax under Section 409A. The parties intend that each installment of the severance benefits payments provided for above is a separate "payment" for purposes of Treasury Regulation Section 1.409A-2(b)(2)(i). For avoidance of doubt, the parties intend that payments of the severance benefits satisfy, to the greatest extent possible, the exemptions from the application of Section 409A provided under Treasury Regulation Sections 1.409A-1(b)(4), 1.409A-1(b)(5), and 1.409A-1(b)(9).
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However, if Benefitfocus determines that the severance benefits constitute "deferred compensation" under Section 409A and you are, on the termination of service, a "specified employee" of Benefitfocus, as such term is defined in Section 409A, then, solely to the extent necessary to avoid the incurrence of the adverse personal tax consequences under Section 409A, the timing of the severance benefit payments will be delayed until the earlier to occur of: (i) the date that is six months and one day after your separation from service, or (ii) the date of your death (such applicable date, the "**Specified Employee Initial Payment Date**"), and Benefitfocus will (A) pay you a lump sum amount equal to the sum of the severance benefits payments that you would otherwise have received through the Specified Employee Initial Payment Date if the commencement of the payment of the severance benefits had not been so delayed pursuant to this paragraph, and (B) commence paying the balance of the severance benefits in accordance with the applicable payment schedules set forth in this Agreement.

CERTIFICATION PURSUANT TO  
SECTION 302 OF  
THE SARBANES-OXLEY ACT OF 2002

I, Raymond A. August, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Benefitfocus, Inc. (the registrant);
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: May 7, 2020

/s/ Raymond A. August  
Raymond A. August  
President and Chief Executive Officer  
(Principal executive officer)



CERTIFICATION PURSUANT TO  
SECTION 302 OF  
THE SARBANES-OXLEY ACT OF 2002

I, Stephen M. Swad, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Benefitfocus, Inc. (the registrant);
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: May 7, 2020

/s/ Stephen M. Swad  
Stephen M. Swad  
Chief Financial Officer  
(Principal financial and accounting officer)

CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In accordance with 18 U.S.C. 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, Raymond A. August, President and Chief Executive Officer (principal executive officer) of Benefitfocus, Inc. (the "registrant"), and Stephen M. Swad, Chief Financial Officer (principal financial and accounting officer) of the registrant, each hereby certifies that, to the best of their knowledge:

1. The registrant's Quarterly Report on Form 10-Q for the period ended March 31, 2020, to which this Certification is attached as Exhibit 32.1 (the "Report"), fully complies with the requirements of Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934, as amended; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition of the registrant at the end of the period covered by the Report and results of operations of the registrant for the periods covered by the Report.

Date: May 7, 2020

/s/ Raymond A. August  
Raymond A. August  
*President and Chief Executive Officer*  
(Principal executive officer)

/s/ Stephen M. Swad  
Stephen M. Swad  
*Chief Financial Officer*  
(Principal financial and accounting officer)