

**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 June 30, 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: 001-36376

2U, INC.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of incorporation or organization)

26-2335939

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

7900 Harkins Road Lanham, MD

(Address of Principal Executive Offices)

20706

(Zip Code)

(301) 892-4350

(Registrant's telephone number, including area code)

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

<u>Title of each class</u>	<u>Trading Symbol(s)</u>	<u>Name of each exchange on which registered</u>
Common stock, \$0.001 par value per share	TWOU	The Nasdaq Global Select 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	<input checked="" type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input type="checkbox"/>	Smaller reporting company	<input type="checkbox"/>
		Emerging growth company	<input type="checkbox"/>

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

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

As of July 28, 2020, there were 64,403,712 shares of the registrant's common stock, par value \$0.001 per share, outstanding.

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SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

This Quarterly Report on Form 10-Q contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995, which are subject to substantial risks and uncertainties. In some cases, you can identify forward-looking statements by the words “may,” “might,” “will,” “could,” “would,” “should,” “expect,” “intend,” “plan,” “objective,” “anticipate,” “believe,” “estimate,” “predict,” “project,” “potential,” “continue” and “ongoing,” or the negative of these terms, or other comparable terminology intended to identify statements about the future. These statements involve known and unknown risks, uncertainties and other factors that may cause our actual results, levels of activity, performance or achievements to be materially different from the information expressed or implied by these forward-looking statements. Although we believe that we have a reasonable basis for each forward-looking statement contained in this Quarterly Report on Form 10-Q, we caution you that these statements are based on a combination of facts and factors currently known by us and our expectations of the future, about which we cannot be certain. Factors that may cause actual results to differ materially from current expectations include, but are not limited to:

- trends in the higher education market and the market for online education, and expectations for growth in those markets;
- the acceptance, adoption and growth of online learning by colleges and universities, faculty, students, employers, accreditors and state and federal licensing bodies;
- the impact of competition on our industry and innovations by competitors;
- our ability to comply with evolving regulations and legal obligations related to data privacy, data protection and information security;
- our expectations about the potential benefits of our cloud-based software-as-a-service technology and technology-enabled services to university clients and students;
- our dependence on third parties to provide certain technological services or components used in our platform;
- our expectations about the predictability, visibility and recurring nature of our business model;
- our ability to meet the anticipated launch dates of our degree programs, short courses and boot camps;
- our ability to acquire new university clients and expand our degree programs, short courses and boot camps with existing university clients;
- our ability to successfully integrate the operations of our acquisitions, including Trilogy, to achieve the expected benefits of our acquisitions and manage, expand and grow the combined company;
- our ability to refinance our indebtedness on attractive terms, if at all, to better align with our focus on profitability;
- our ability to service our substantial indebtedness and comply with the covenants and conversion obligations contained in the Indenture (as defined below) governing our convertible senior notes and the Credit Agreement (as defined below) governing our revolving credit facility;
- our ability to generate sufficient future operating cash flows from recent acquisitions to ensure related goodwill is not impaired;
- our ability to execute our growth strategy in the international, undergraduate and non-degree alternative markets;
- our ability to continue to recruit prospective students for our offerings;
- our ability to maintain or increase student retention rates in our degree programs;
- our ability to attract, hire and retain qualified employees;
- our expectations about the scalability of our cloud-based platform;
- potential changes in regulations applicable to us or our university clients;
- our expectations regarding the amount of time our cash balances and other available financial resources will be sufficient to fund our operations;
- the impact and cost of stockholder activism;

- the impact of any natural disasters or public health emergencies, such as the coronavirus disease 2019 (“COVID-19”) pandemic;
- our expectations regarding the effect of the capped call transactions and regarding actions of the option counterparties and/or their respective affiliates; and
- other factors beyond our control.

You should refer to the risks described in Part I, Item 1A “Risk Factors” in our Annual Report on Form 10-K for the year ended December 31, 2019, as amended and supplemented by Part II, Item 1A “Risk Factors” in this Quarterly Report on Form 10-Q, for a discussion of important factors that may cause our actual results to differ materially from those expressed or implied by our forward-looking statements. As a result of these factors, we cannot assure you that the forward-looking statements in this Quarterly Report on Form 10-Q will prove to be accurate. Furthermore, if our forward-looking statements prove to be inaccurate, the inaccuracy may be material. In light of the significant uncertainties in these forward-looking statements, you should not regard these statements as a representation or warranty by us or any other person that we will achieve our objectives and plans in any specified time frame, or at all. We undertake no obligation to publicly update any forward-looking statements, whether as a result of new information, future events or otherwise, except as required by law.

You should read this Quarterly Report on Form 10-Q completely and with the understanding that our actual future results may be materially different from what we expect. We qualify all of our forward-looking statements by these cautionary statements. In this Quarterly Report on Form 10-Q, the terms “2U,” “our company,” “we,” “us,” and “our” refer to 2U, Inc. and its subsidiaries, unless the context indicates otherwise.

PART I. FINANCIAL INFORMATION
Item 1. Financial Statements

2U, Inc.
Condensed Consolidated Balance Sheets
(in thousands, except share and per share amounts)

	June 30, 2020	December 31, 2019
	(unaudited)	
Assets		
Current assets		
Cash and cash equivalents	\$ 194,803	\$ 170,593
Restricted cash	18,228	19,276
Accounts receivable, net	71,580	33,655
Prepaid expenses and other assets	40,378	37,424
Total current assets	324,989	260,948
Property and equipment, net	55,066	57,643
Right-of-use assets	49,813	43,401
Goodwill	406,340	418,350
Amortizable intangible assets, net	320,559	333,075
University payments and other assets, non-current	75,793	73,413
Total assets	\$ 1,232,560	\$ 1,186,830
Liabilities and stockholders' equity		
Current liabilities		
Accounts payable and accrued expenses	\$ 84,541	\$ 65,381
Accrued compensation and related benefits	29,090	21,885
Deferred revenue	77,071	48,833
Lease liability	8,484	7,320
Other current liabilities	13,785	12,535
Total current liabilities	212,971	155,954
Long-term debt	263,129	246,620
Deferred tax liabilities, net	2,424	5,133
Lease liability, non-current	73,592	66,974
Other liabilities, non-current	1,073	899
Total liabilities	553,189	475,580
Commitments and contingencies (Note 6)		
Stockholders' equity		
Preferred stock, \$0.001 par value, 5,000,000 shares authorized, none issued	—	—
Common stock, \$0.001 par value, 200,000,000 shares authorized, 64,300,599 shares issued and outstanding as of June 30, 2020; 63,569,109 shares issued and outstanding as of December 31, 2019	64	63
Additional paid-in capital	1,306,483	1,197,379
Accumulated deficit	(605,661)	(479,388)
Accumulated other comprehensive loss	(21,515)	(6,804)
Total stockholders' equity	679,371	711,250
Total liabilities and stockholders' equity	\$ 1,232,560	\$ 1,186,830

See accompanying notes to condensed consolidated financial statements.

2U, Inc.
Condensed Consolidated Statements of Operations and Comprehensive Loss
(unaudited, in thousands, except share and per share amounts)

	Three Months Ended June 30,		Six Months Ended June 30,	
	2020	2019	2020	2019
Revenue	\$ 182,687	\$ 135,461	\$ 358,166	\$ 257,695
Costs and expenses				
Curriculum and teaching	26,256	13,308	46,734	20,009
Servicing and support	30,294	23,993	60,827	44,167
Technology and content development	37,307	26,043	72,817	45,837
Marketing and sales	98,341	89,749	197,556	166,710
General and administrative	39,554	28,408	83,207	51,431
Total costs and expenses	231,752	181,501	461,141	328,154
Loss from operations	(49,065)	(46,040)	(102,975)	(70,459)
Interest income	154	1,814	667	4,163
Interest expense	(6,518)	(2,424)	(12,011)	(2,479)
Loss on debt extinguishment	(11,671)	—	(11,671)	—
Other income (expense), net	570	(13)	(1,701)	(383)
Loss before income taxes	(66,530)	(46,663)	(127,691)	(69,158)
Income tax benefit	363	18,691	1,418	19,632
Net loss	\$ (66,167)	\$ (27,972)	\$ (126,273)	\$ (49,526)
Net loss per share, basic and diluted	\$ (1.03)	\$ (0.46)	\$ (1.98)	\$ (0.83)
Weighted-average shares of common stock outstanding, basic and diluted	64,075,405	60,516,662	63,850,869	59,334,246
Other comprehensive loss				
Foreign currency translation adjustments, net of tax of \$0 for all periods presented	1,404	2,243	(14,711)	1,871
Comprehensive loss	\$ (64,763)	\$ (25,729)	\$ (140,984)	\$ (47,655)

See accompanying notes to condensed consolidated financial statements.

2U, Inc.
Condensed Consolidated Statements of Changes in Stockholders' Equity
(unaudited, in thousands, except share amounts)

	Common Stock		Additional Paid-In Capital	Accumulated Deficit	Accumulated Other Comprehensive Income (Loss)	Total Stockholders' Equity
	Shares	Amount				
Balance, December 31, 2019	63,569,109	\$ 63	\$ 1,197,379	\$ (479,388)	\$ (6,804)	\$ 711,250
Issuance of common stock in connection with settlement of restricted stock units, net of withholdings	96,683	1	(1)	—	—	—
Exercise of stock options	37,275	—	384	—	—	384
Stock-based compensation expense	—	—	20,870	—	—	20,870
Net loss	—	—	—	(60,106)	—	(60,106)
Foreign currency translation adjustment	—	—	—	—	(16,115)	(16,115)
Balance, March 31, 2020	<u>63,703,067</u>	<u>\$ 64</u>	<u>\$ 1,218,632</u>	<u>\$ (539,494)</u>	<u>\$ (22,919)</u>	<u>\$ 656,283</u>
Issuance of common stock in connection with settlement of restricted stock units, net of withholdings	355,506	—	(463)	—	—	(463)
Exercise of stock options	158,453	—	1,441	—	—	1,441
Issuance of common stock in connection with employee stock purchase plan	83,573	—	1,771	—	—	1,771
Equity component of convertible senior notes, net of issuance costs	—	—	114,551	—	—	114,551
Purchases of capped calls in connection with convertible senior notes	—	—	(50,540)	—	—	(50,540)
Stock-based compensation expense	—	—	21,091	—	—	21,091
Net loss	—	—	—	(66,167)	—	(66,167)
Foreign currency translation adjustment	—	—	—	—	1,404	1,404
Balance, June 30, 2020	<u>64,300,599</u>	<u>\$ 64</u>	<u>\$ 1,306,483</u>	<u>\$ (605,661)</u>	<u>\$ (21,515)</u>	<u>\$ 679,371</u>

See accompanying notes to condensed consolidated financial statements.

2U, Inc.
Condensed Consolidated Statements of Changes in Stockholders' Equity (Continued)
(unaudited, in thousands, except share amounts)

	Common Stock		Additional Paid-In Capital	Accumulated Deficit	Accumulated Other Comprehensive Income (Loss)	Total Stockholders' Equity
	Shares	Amount				
Balance, December 31, 2018	57,968,493	\$ 58	\$ 957,631	\$ (244,166)	\$ (8,514)	\$ 705,009
Issuance of common stock in connection with settlement of restricted stock units, net of withholdings	9,319	—	—	—	—	—
Exercise of stock options	211,506	—	1,928	—	—	1,928
Stock-based compensation expense	—	—	9,584	—	—	9,584
Net loss	—	—	—	(21,554)	—	(21,554)
Foreign currency translation adjustment	—	—	—	—	(372)	(372)
Balance, March 31, 2019	<u>58,189,318</u>	<u>\$ 58</u>	<u>\$ 969,143</u>	<u>\$ (265,720)</u>	<u>\$ (8,886)</u>	<u>\$ 694,595</u>
Issuance of common stock in connection with business combination, net of offering costs	4,608,101	5	184,317	—	—	184,322
Issuance of common stock in connection with settlement of restricted stock units, net of withholdings	348,418	—	(2,558)	—	—	(2,558)
Exercise of stock options	85,539	—	452	—	—	452
Stock-based compensation expense	—	—	9,967	—	—	9,967
Net loss	—	—	—	(27,972)	—	(27,972)
Foreign currency translation adjustment	—	—	—	—	2,243	2,243
Balance, June 30, 2019	<u>63,231,376</u>	<u>\$ 63</u>	<u>\$ 1,161,321</u>	<u>\$ (293,692)</u>	<u>\$ (6,643)</u>	<u>\$ 861,049</u>

See accompanying notes to condensed consolidated financial statements.

2U, Inc.
Condensed Consolidated Statements of Cash Flows
(unaudited, in thousands)

	Six Months Ended June 30,	
	2020	2019
Cash flows from operating activities		
Net loss	\$ (126,273)	\$ (49,526)
Adjustments to reconcile net loss to net cash used in operating activities:		
Non-cash interest expense	5,675	520
Depreciation and amortization expense	47,470	24,351
Stock-based compensation expense	41,961	19,551
Non-cash lease expense	7,299	5,264
Provision for credit losses	1,267	993
Loss on debt extinguishment	11,671	—
Changes in operating assets and liabilities, net of assets and liabilities acquired:		
Accounts receivable, net	(39,521)	(25,548)
Payments to university clients	4,354	(20,060)
Prepaid expenses and other assets	(8,774)	(8,796)
Accounts payable and accrued expenses	19,606	18,081
Accrued compensation and related benefits	7,383	(5,964)
Deferred revenue	28,843	15,849
Other liabilities, net	(9,299)	(23,056)
Other	1,694	392
Net cash used in operating activities	(6,644)	(47,949)
Cash flows from investing activities		
Purchase of a business, net of cash acquired	(949)	(387,815)
Additions of amortizable intangible assets	(32,497)	(32,430)
Purchases of property and equipment	(4,254)	(8,135)
Purchase of investments	—	(5,000)
Proceeds from maturities of investments	—	25,000
Advances made to university clients	—	(100)
Advances repaid by university clients	275	200
Net cash used in investing activities	(37,425)	(408,280)
Cash flows from financing activities		
Proceeds from debt	371,708	243,726
Payments on debt	(250,409)	—
Payment of debt issuance costs	(3,419)	(1,953)
Purchases of capped calls in connection with issuance of convertible senior notes	(50,540)	—
Prepayment premium on extinguishment of senior secured term loan facility	(2,528)	—
Proceeds from exercise of stock options	1,825	2,380
Tax withholding payments associated with settlement of restricted stock units	(464)	(2,558)
Proceeds from employee stock purchase plan share purchases	1,771	—
Payments for acquisition of amortizable intangible assets	—	(1,283)
Net cash provided by financing activities	67,944	240,312
Effect of exchange rate changes on cash	(713)	(371)
Net increase (decrease) in cash, cash equivalents and restricted cash	23,162	(216,288)
Cash, cash equivalents and restricted cash, beginning of period	189,869	449,772
Cash, cash equivalents and restricted cash, end of period	\$ 213,031	\$ 233,484

See accompanying notes to condensed consolidated financial statements.

2U, Inc.
Notes to Condensed Consolidated Financial Statements
(unaudited)

1. Organization

2U, Inc. (together with its subsidiaries, the “Company”) is a leading provider of education technology for nonprofit colleges and universities. The Company builds, delivers, and supports more than 435 digital and in-person educational offerings, including graduate and undergraduate degrees, professional certificates, boot camps, and short courses, across the Career Curriculum Continuum.

The Company has two reportable segments: the Graduate Program Segment and the Alternative Credential Segment. The Company’s Graduate Program Segment includes the technology and services provided to nonprofit colleges and universities to enable the online delivery of degree programs. Students enrolled in these programs are generally seeking an undergraduate or graduate degree of the same quality they would receive on campus. The Company’s Alternative Credential Segment includes the premium online short courses and technical, skills-based boot camps provided through relationships with nonprofit colleges and universities. Students enrolled in these offerings are generally working professionals seeking career advancement through skills attainment.

2. Significant Accounting Policies

Basis of Presentation and Principles of Consolidation

The accompanying unaudited condensed consolidated financial statements, which include the assets, liabilities, results of operations and cash flows of the Company have been prepared in accordance with: (i) generally accepted accounting principles in the United States (“U.S. GAAP”) for interim financial information; (ii) the instructions to Form 10-Q; and (iii) the guidance of Rule 10-01 of Regulation S-X under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), for financial statements required to be filed with the Securities and Exchange Commission (the “SEC”). As permitted under such rules, certain notes and other financial information normally required by U.S. GAAP have been condensed or omitted. The Company believes the condensed consolidated financial statements reflect all normal and recurring adjustments necessary for a fair statement of the Company’s financial position, results of operations, and cash flows as of and for the periods presented herein. The Company’s results of operations for the three and six months ended June 30, 2020 and 2019 may not be indicative of the Company’s future results. These condensed consolidated financial statements are unaudited and should be read in conjunction with the Company’s audited consolidated financial statements and the notes thereto included in the Company’s Annual Report on Form 10-K for the fiscal year ended December 31, 2019. All significant intercompany accounts and transactions have been eliminated in consolidation.

The condensed consolidated balance sheet data as of December 31, 2019 was derived from the audited financial statements, but does not include all disclosures required by U.S. GAAP on an annual reporting basis.

Use of Estimates

The preparation of condensed consolidated financial statements in accordance with U.S. GAAP requires management to make certain estimates and assumptions that affect the amounts reported herein. The Company bases its estimates and assumptions on historical experience and on various other factors that it believes to be reasonable under the circumstances. Significant estimates and assumptions are inherent in the analysis and the measurement of provisions for credit losses, acquired intangible assets, the recoverability of goodwill and deferred tax assets. Due to the inherent uncertainty involved in making estimates, particularly in light of the COVID-19 pandemic, actual results reported in future periods may be affected by changes in those estimates. The Company evaluates its estimates and assumptions on an ongoing basis.

Accounts Receivable, Contract Assets and Liabilities

Balance sheet items related to contracts consist of accounts receivable, net and deferred revenue on the Company’s condensed consolidated balance sheets. Included in accounts receivable, net are trade accounts receivable, which are comprised of billed and unbilled revenue. Accounts receivable, net is stated at amortized cost net of provision for credit losses. The Company’s methodology to measure the provision for credit losses requires an estimation of loss rates based upon historical loss experience adjusted for factors that are relevant to determining the expected collectability of accounts receivable. Some of these factors include current market conditions, delinquency trends, aging behavior of receivables and credit and liquidity quality indicators for industry groups, customer classes or individual customers.

2U, Inc.
Notes to Condensed Consolidated Financial Statements (Continued)
(unaudited)

2. Significant Accounting Policies (Continued)

The Company's estimates are reviewed and revised periodically based on the ongoing evaluation of credit quality indicators. Historically, actual write-offs for uncollectible accounts have not significantly differed from prior estimates. The Company recognizes unbilled revenue when revenue recognition occurs in advance of billings. Unbilled revenue is recognized in the Graduate Program Segment because billings to university clients do not occur until after the academic term has commenced and final enrollment information is available. The Company's unbilled revenue represents contract assets. Unbilled accounts receivable is recognized in the Alternative Credential Segment once the presentation period commences for amounts to be invoiced to students under installment plans that are paid over the same presentation period.

The following table presents the change in provision for credit losses on the Company's consolidated balance sheets for the period indicated:

	Provision for Credit Losses
	(in thousands)
Balance as of January 1, 2020	\$ 1,330
Current period provision	1,267
Amounts written off	(46)
Balance as of June 30, 2020	<u>\$ 2,551</u>

Deferred revenue represents the excess of amounts billed or received as compared to amounts recognized in revenue on the Company's condensed consolidated statements of operations and comprehensive loss as of the end of the reporting period, and such amounts are reflected as a current liability on the Company's condensed consolidated balance sheets. The Company generally receives payments from Graduate Program Segment university clients early in each academic term and from Alternative Credential Segment students, either in full upon registration for the course or in full before the end of the course based on a payment plan, prior to completion of the service period. These payments are recorded as deferred revenue until the services are delivered or until the Company's obligations are otherwise met, at which time revenue is recognized.

Convertible Senior Notes

In April 2020, the Company issued 2.25% convertible senior notes due May 1, 2025 (the "Notes") in an aggregate principal amount of \$380 million, including the exercise by the initial purchasers of an option to purchase additional Notes, in a private offering. Refer to Note 8 for more information regarding the Notes.

The Notes are accounted for in accordance with Financial Accounting Standards Board ("FASB") Accounting Standards Codification ("ASC") Subtopic 470-20, *Debt with Conversion and Other Options* ("ASC 470-20"). Pursuant to ASC 470-20, issuers of certain convertible debt instruments, such as the Notes, that have a net settlement feature and may be settled wholly or partially in cash upon conversion are required to separately account for the liability (debt) and equity (conversion option) components of the instrument. The carrying amount of the liability component of the instrument is computed by estimating the fair value of a similar liability without the conversion option using a market-based approach. The amount of the equity component is then calculated by deducting the fair value of the liability component from the principal amount of the instrument. The difference between the principal amount and the liability component represents a debt discount that is amortized to interest expense over the term of the Notes using the effective interest rate method. The equity component is not remeasured as long as it continues to meet the conditions for equity classification. In accounting for the issuance costs related to the Notes, the allocation of issuance costs incurred between the liability and equity components was based on their relative values.

Recent Accounting Pronouncements

In March 2020, the FASB issued ASU No. 2020-04, *Reference Rate Reform (Topic 848): Facilitation of the Effects of Reference Rate Reform on Financial Reporting*. This ASU is intended to provide optional expedients and exceptions for applying generally accepted accounting principles to contract modifications and hedging relationships, subject to meeting certain criteria, to ease the potential accounting and financial reporting burden associated with the expected market transition from the London Interbank Offered Rate ("LIBOR") and other interbank offered rates to alternative reference rates. This ASU may be applied as of the beginning of any interim period that includes its effective date (i.e., March 12, 2020) through

2U, Inc.
Notes to Condensed Consolidated Financial Statements (Continued)
(unaudited)

2. Significant Accounting Policies (Continued)

December 31, 2022. The Company does not expect the adoption of this standard to have a material impact on its condensed consolidated financial statements or related disclosures.

In January 2020, the FASB issued ASU No. 2020-01, *Investments—Equity Securities (Topic 321), Investments—Equity Method and Joint Ventures (Topic 323), and Derivatives and Hedging (Topic 815): Clarifying the Interactions between Topic 321, Topic 323, and Topic 815*. ASU No. 2020-01 was issued to clarify the interaction of the accounting for equity securities under ASC 321 and investments accounted for under the equity method of accounting in ASC 323 and the accounting for certain forward contracts and purchased options accounted for under ASC 815. With respect to the interactions between ASC 321 and ASC 323, the amendments clarify that an entity should consider observable transactions that require it to either apply or discontinue the equity method of accounting when applying the measurement alternative in ASC 321, immediately before applying or discontinuing the equity method of accounting. The update regarding forward contracts and purchased options is not applicable as the Company does not have any forward contracts or purchased options. The amendments in this ASU are effective for interim and annual reporting periods beginning after December 15, 2020. Early adoption is permitted, including adoption in any interim period. The Company is evaluating the impact that this ASU will have on its condensed consolidated financial statements and related disclosures.

In December 2019, the FASB issued ASU No. 2019-12, *Income Taxes (Topic 740): Simplifying the Accounting for Income Taxes*, as part of its initiative to reduce complexity in the accounting standards. The amendments in the ASU include removal of certain exceptions to the general principles in Topic 740 related to recognizing deferred taxes for investments, performing intraperiod tax allocation and calculating income taxes in an interim period. The ASU also clarifies and simplifies other aspects of the accounting for income taxes, including the recognition of deferred tax liabilities for outside basis differences. The amendments in this ASU are effective for annual and interim periods in fiscal years beginning after December 15, 2020, with early adoption permitted. The Company is evaluating the impact that this ASU will have on its condensed consolidated financial statements and related disclosures.

In April 2019, the FASB issued ASU No. 2019-04, *Codification Improvements to Topic 326, Financial Instruments—Credit Losses, Topic 815, Derivatives and Hedging, and Topic 825, Financial Instruments*. ASU No. 2019-04 provides corrections, updates and clarifications to the previously issued updates of ASU No. 2016-01, ASU No. 2016-13 and ASU No. 2017-12. Various areas of the ASC were impacted by the update. This standard follows the effective dates of the previously issued ASUs, unless an entity has already early adopted the previous ASUs, in which case the effective date will vary according to each specific ASU adoption. The Company adopted the amendments related to ASU Nos. 2016-01 and 2016-13 on January 1, 2020 under the modified retrospective transition method, with the exception of the amendments related to equity securities without readily determinable fair values for which an entity elects the measurement alternative, which have been adopted prospectively. Adoption of these amendments did not have a material impact on the Company's condensed consolidated financial statements or related disclosures. Refer below for further discussion of ASU No. 2016-13. The amendments to ASU No. 2017-12 are not applicable to the Company.

In June 2016, the FASB issued ASU No. 2016-13, *Financial Instruments—Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments*. Subsequently, the FASB has issued the following standards related to ASU No. 2016-13: ASU No. 2019-11, *Codification Improvements to Topic 326, Financial Instruments—Credit Losses*, ASU No. 2019-05, *Financial Instruments—Credit Losses (Topic 326): Targeted Transition Relief*, ASU No. 2019-04, *Codification Improvements to Topic 326, Financial Instruments—Credit Losses, Topic 815, Derivatives and Hedging, and Topic 825, Financial Instruments*; and ASU No. 2018-19, *Codification Improvements to Topic 326, Financial Instruments—Credit Losses*. ASU No. 2016-13 requires entities to measure all expected credit losses for most financial assets held at the reporting date based on an expected loss model, which includes historical experience, current conditions, and reasonable and supportable forecasts. Entities will now use forward-looking information to better form their credit loss estimates. ASU No. 2016-13 also requires enhanced disclosures to help financial statement users better understand assumptions used in estimating expected credit losses. The Company adopted this ASU and the related amendments on January 1, 2020 under the modified retrospective transition method, which resulted in no cumulative-effect adjustment to retained earnings.

3. Business Combination

On May 22, 2019, the Company completed its acquisition of Trilogy pursuant to an Agreement and Plan of Merger and Reorganization, dated as of April 7, 2019 (the "Merger Agreement"), for a net purchase price of \$608.6 million in cash and stock consideration, subject to final adjustments related to working capital and indebtedness. These final adjustments to the purchase price were paid in the first quarter of 2020. Under the terms of the Merger Agreement, the Company has issued

2U, Inc.
Notes to Condensed Consolidated Financial Statements (Continued)
(unaudited)

3. Business Combination (Continued)

restricted stock units for shares of its common stock, par value \$0.001 per share, to certain employees and officers of Trilogy. These awards were issued pursuant to the Company's 2014 Equity Incentive Plan, are subject to future service requirements and will primarily vest over an 18-month period. In addition, a portion of the purchase price held in escrow was recognized as compensation expense in the third quarter of 2019 as the service requirements of certain key employees was determined to be fulfilled. The net assets and results of operations of Trilogy are included on the Company's condensed consolidated financial statements within the Alternative Credential Segment as of May 22, 2019.

The unaudited pro forma combined financial information below is presented for illustrative purposes and does not purport to represent what the results of operations would actually have been if the business combination occurred as of the date indicated or what the results would be for any future periods. The following table presents the Company's unaudited pro forma combined revenue, pro forma combined net loss and pro forma combined net loss per share for the three and six months ended June 30, 2019, as if the acquisition of Trilogy had occurred on January 1, 2019:

	Three Months Ended June 30, 2019	Six Months Ended June 30, 2019
	(in thousands, except per share amounts)	
Pro forma revenue	\$ 157,865	\$ 311,174
Pro forma net loss	(52,805)	(110,169)
Pro forma net loss per share, basic and diluted	\$ (0.87)	\$ (1.86)

4. Goodwill and Amortizable Intangible Assets

The following table presents the changes in the carrying amount of goodwill by reportable segment on the Company's condensed consolidated balance sheets for the periods indicated.

	Graduate Program Segment	Alternative Credential Segment	Total
	(in thousands)		
Balance as of December 31, 2019	\$ —	\$ 418,350	\$ 418,350
Foreign currency translation adjustments	—	(12,010)	(12,010)
Balance as of June 30, 2020	\$ —	\$ 406,340	\$ 406,340

The carrying amount of goodwill in the Alternative Credential Segment included accumulated impairment charges of \$70.4 million as of both June 30, 2020 and December 31, 2019.

The following table presents the components of amortizable intangible assets, net on the Company's condensed consolidated balance sheets as of each of the dates indicated.

	Estimated Average Useful Life (in years)	June 30, 2020			December 31, 2019		
		Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount
(in thousands)							
Capitalized technology	3-5	\$ 153,588	\$ (57,710)	\$ 95,878	\$ 142,712	\$ (41,106)	\$ 101,606
Capitalized content development	4-5	187,936	(70,492)	117,444	167,758	(54,736)	113,022
University client relationships	9-10	105,810	(16,570)	89,240	110,344	(12,419)	97,925
Trade names and domain names	5-10	25,315	(7,318)	17,997	26,462	(5,940)	20,522
Total amortizable intangible assets, net		\$ 472,649	\$ (152,090)	\$ 320,559	\$ 447,276	\$ (114,201)	\$ 333,075

2U, Inc.
Notes to Condensed Consolidated Financial Statements (Continued)
(unaudited)

4. Goodwill and Amortizable Intangible Assets (Continued)

The amounts presented in the table above include \$29.5 million and \$30.7 million of in process capitalized technology and content development as of June 30, 2020 and December 31, 2019, respectively.

The Company recorded amortization expense related to amortizable intangible assets of \$20.8 million and \$11.9 million for the three months ended June 30, 2020 and 2019, respectively. The Company recorded amortization expense related to amortizable intangible assets of \$41.0 million and \$18.9 million for the six months ended June 30, 2020 and 2019, respectively.

The following table presents the estimated future amortization expense of the Company's amortizable intangible assets placed in service as of June 30, 2020.

	Future Amortization Expense
	(in thousands)
Remainder of 2020	\$ 40,377
2021	76,013
2022	60,367
2023	42,876
2024	25,533
Thereafter	45,933
Total	\$ 291,099

5. Accrued Expenses

The following table presents the components of accounts payable and accrued expenses on the Company's condensed consolidated balance sheets as of each of the dates indicated.

	June 30, 2020	December 31, 2019
	(in thousands)	
Accrued university and instructional staff compensation	\$ 21,402	\$ 23,419
Accrued marketing costs	26,900	22,055
Accrued transaction, integration and restructuring-related costs*	1,894	4,459
Accounts payable and other accrued expenses	34,345	15,448
Total accounts payable and accrued expenses	\$ 84,541	\$ 65,381

* As of June 30, 2020 and December 31, 2019, accrued transaction, integration and restructuring-related costs included zero and \$0.5 million, respectively, related to an employee termination benefits reserve for organizational restructuring.

For the three and six months ended June 30, 2020 and 2019, expense related to the Company's marketing and advertising efforts of its own brand were not material.

In response to COVID-19, various government programs have been announced to provide financial relief for affected businesses. Most significantly, under the Coronavirus Aid, Relief, and Economic Security Act, which was enacted in the United States on March 27, 2020, the Company is allowed to defer payment of the employer's share of Social Security taxes incurred from March 2020 through December 31, 2020. The Company currently estimates the amount of payroll taxes subject to deferred payment is approximately \$3.9 million, which has been reflected within accrued compensation and related benefits on the Company's condensed consolidated balance sheet as of June 30, 2020.

2U, Inc.
Notes to Condensed Consolidated Financial Statements (Continued)
(unaudited)

6. Commitments and Contingencies

Legal Contingencies

The Company is involved in various claims and legal proceedings arising in the ordinary course of business. The Company accrues a liability when a loss is considered probable and the amount can be reasonably estimated. While the Company does not expect that the ultimate resolution of any existing claims and proceedings (other than the specific matter described below, if decided adversely), individually or in the aggregate, will have a material adverse effect on its financial position, an unfavorable outcome in some or all of these proceedings could have a material adverse impact on the results of operations or cash flows for a particular period. This assessment is based on the Company's current understanding of relevant facts and circumstances. With respect to current legal proceedings, the Company does not believe it is probable a material loss exceeding amounts already recognized has been incurred as of the date of the balance sheets presented herein. As such, the Company's view of these matters is subject to inherent uncertainties and may change in the future.

In re 2U, Inc., Securities Class Action

On August 7 and 9, 2019, Aaron Harper and Anne M. Chinn filed putative class action complaints against the Company, Christopher J. Paucek, the Company's CEO, and Catherine A. Graham, the Company's former CFO, in the United States District Court for the Southern District of New York, alleging violations of Sections 10(b) and 20(a) of the Exchange Act, and Rule 10b-5 promulgated thereunder, based upon allegedly false and misleading statements regarding the Company's business prospects and financial projections. The district court transferred the cases to the United States District Court for the District of Maryland, consolidated them under docket number 8:19-cv-3455 (D. Md.), and appointed Fiyyaz Pirani as the lead plaintiff in the consolidated action. On July 30, 2020, Mr. Pirani filed a consolidated class action complaint ("CAC"), adding Harsha Mokkarala, the Company's former Chief Marketing Officer, as a defendant. The CAC also asserts claims under Sections 11, 12(A)(2), and 15 of the Securities Act of 1933, as amended, against Mr. Paucek, Ms. Graham, members of the Company's Board of Directors, and the Company's underwriters, based on allegations related to the Company's secondary stock offering on May 23, 2018. The proposed class consists of all persons who acquired the Company's securities between February 26, 2018 and July 30, 2019. The deadline for the defendants to file a motion to dismiss is September 29, 2020.

The Company believes that the claims are without merit and it intends to vigorously defend against these claims. However, due to the complex nature of the legal and factual issues involved, the outcome of this matter is not presently determinable.

Stockholder Derivative Suit

On April 30, 2020, Richard Theis filed a stockholder derivative complaint purportedly on behalf of the Company and against Christopher J. Paucek, the Company's CEO, Catherine A. Graham, the Company's former CFO, and the Company's board of directors in the United States District Court for the Southern District of New York, with docket number 20-cv-3360. The complaint alleges claims for breaches of fiduciary duty, insider sales and misappropriation of information, unjust enrichment, and violations of Section 14(a) of the Exchange Act based upon allegedly false and misleading statements regarding the Company's business prospects and financial projections. On July 22, 2020, the court entered a joint stipulation staying the case pending resolution of the securities class action. Due to the complex nature of the legal and factual issues involved, the outcome of this matter is not presently determinable.

Marketing and Sales Commitments

Certain of the agreements entered into between the Company and its university clients in the Graduate Program Segment require the Company to commit to meet certain staffing and spending investment thresholds related to marketing and sales activities. In addition, certain of the agreements in the Graduate Program Segment require the Company to invest up to agreed-upon levels in marketing the programs to achieve specified program performance. The Company believes it is currently in compliance with all such commitments.

2U, Inc.
Notes to Condensed Consolidated Financial Statements (Continued)
(unaudited)

6. Commitments and Contingencies (Continued)

Future Minimum Payments to University Clients

Pursuant to certain of the Company's contracts in the Graduate Program Segment, the Company has made, or is obligated to make, payments to university clients in exchange for contract extensions and various marketing and other rights. As of June 30, 2020, the future minimum payments due to university clients have not materially changed relative to the amounts provided in the notes to the consolidated financial statements included in the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2019.

Contingent Payments

The Company has entered into agreements with certain of its university clients in the Graduate Program Segment under which the Company would be obligated to make future minimum payments in the event that certain program metrics are not achieved on an annual basis. The Company recognizes any estimated contingent payments under these agreements as contra revenue over the period in which they relate, and records a liability in other current liabilities on the condensed consolidated balance sheets.

The Company has entered into an agreement to make an investment in an education technology company with \$5.0 million outstanding, upon demand by the investee.

7. Leases

The Company leases facilities under non-cancellable operating leases primarily in the United States, South Africa, the United Kingdom and Canada. The Company's operating leases have remaining lease terms of between one to 11 years, some of which include options to extend the leases for up to five years, and some of which include options to terminate the leases within one year. These options to extend the terms of the Company's operating leases were not deemed to be reasonably certain of exercise as of lease commencement and are therefore not included in the determination of their respective non-cancellable lease terms. The future lease payments due under non-cancellable operating lease arrangements contain fixed rent increases over the term of the lease. The Company also leases office equipment under non-cancellable leases. The Company did not have any subleases as of June 30, 2020.

The following table presents the components of lease expense on the Company's condensed consolidated statements of operations and comprehensive loss for each of the periods indicated.

	Three Months Ended June 30,		Six Months Ended June 30,	
	2020	2019	2020	2019
	(in thousands)			
Operating lease expense	\$ 3,721	\$ 2,714	\$ 7,341	\$ 5,336
Short-term lease expense	121	154	234	390
Variable lease expense	1,211	1,091	2,671	2,005
Total lease expense	<u>\$ 5,053</u>	<u>\$ 3,959</u>	<u>\$ 10,246</u>	<u>\$ 7,731</u>

2U, Inc.
Notes to Condensed Consolidated Financial Statements (Continued)
(unaudited)

7. Leases (Continued)

As of June 30, 2020, for the Company's operating leases, the weighted-average remaining lease term was 7.6 years and the weighted-average discount rate was 11.8%. For the six months ended June 30, 2020 and 2019, cash paid for amounts included in the measurement of operating lease liabilities was \$8.3 million and \$5.9 million, respectively.

The following table presents the maturities of the Company's operating lease liabilities as of the date indicated.

	June 30, 2020
	(in thousands)
Remainder of 2020	\$ 8,834
2021	17,088
2022	16,354
2023	16,063
2024	15,603
Thereafter	52,166
Total lease payments	126,108
Less: imputed interest	(44,032)
Total lease liability	<u>\$ 82,076</u>

As of June 30, 2020, the Company has additional operating leases for facilities that have not yet commenced with future minimum lease payments of approximately \$66.3 million. These operating leases will commence during fiscal years 2020 through 2021, with lease terms of between four to 12 years.

8. Debt

The following table presents the components of outstanding long-term debt on the Company's condensed consolidated balance sheets as of each of the dates indicated.

	June 30, 2020	December 31, 2019
	(in thousands)	
Convertible senior notes	\$ 380,000	\$ —
Senior secured term loan facility	—	250,000
Deferred government grant obligations	3,500	3,500
Other borrowings	1,798	998
Less: unamortized debt issuance costs	(121,557)	(7,238)
Total debt	263,741	247,260
Less: current portion of long-term debt	(612)	(640)
Total long-term debt	<u>\$ 263,129</u>	<u>\$ 246,620</u>

2U, Inc.
Notes to Condensed Consolidated Financial Statements (Continued)
(unaudited)

8. Debt (Continued)

The Company believes the carrying value of its long-term debt approximates the fair value of the debt as the terms and interest rates approximate the market rates, other than the convertible senior notes, which had an estimated fair value of \$565.7 million as of June 30, 2020. Each of the Company's long-term debt instruments were classified as Level 2 within the fair value hierarchy.

Convertible Senior Notes

In April 2020, the Company issued the Notes in an aggregate principal amount of \$380 million, including the exercise by the initial purchasers of an option to purchase additional Notes, in a private placement to qualified institutional buyers under Rule 144A of the Securities Act of 1933, as amended. The net proceeds from the offering of the Notes were approximately \$369.6 million after deducting the initial purchasers' discounts, commissions and offering expenses payable by the Company.

The Notes are governed by an indenture (the "Indenture") between the Company and Wilmington Trust, National Association, as trustee. The Notes bear interest at a rate of 2.25% per annum, payable semi-annually in arrears on May 1 and November 1 of each year, beginning on November 1, 2020. The Notes will mature on May 1, 2025, unless earlier repurchased, redeemed or converted. The interest expense related to the Notes for each of the three- and six-month periods ended June 30, 2020, including amortization of the debt discount and debt issuance costs, was \$5.0 million. The associated effective interest rate of the Notes for each of the three- and six-month periods ended June 30, 2020 was approximately 10.3%.

The Notes are the senior, unsecured obligations of the Company and are equal in right of payment with the Company's senior unsecured indebtedness, senior in right of payment to the Company's indebtedness that is expressly subordinated to the Notes, effectively subordinated to the Company's senior secured indebtedness (including the Loans (as defined below)), to the extent of the value of the collateral securing that indebtedness, and structurally subordinated to all indebtedness and other liabilities, including trade payables, and (to the extent the Company is not a holder thereof) preferred equity, if any, of the Company's subsidiaries.

In accounting for the issuance of the Notes, the Company separated the Notes into liability and equity components. The carrying amount of the liability component was calculated using a discount rate of 10.3%, which was determined by measuring the fair value of a similar debt instrument that does not have an associated convertible feature. The carrying amount of the equity component representing the conversion option, excluding debt issuance costs, was \$117.8 million and was determined by deducting the fair value of the liability component from the par value of the Notes. The equity component is not remeasured as long as it continues to meet the conditions for equity classification. The excess of the principal amount of the liability component over its carrying amount, or the debt discount, is amortized to interest expense at an annual effective interest rate over the contractual term of the Notes.

Holders may convert their Notes at their option in the following circumstances:

- during any calendar quarter commencing after the calendar quarter ending on September 30, 2020 (and only during such calendar quarter), if the last reported sale price per share of the Company's common stock, exceeds 130% of the conversion price for each of at least 20 trading days, whether or not consecutive, during the 30 consecutive trading days ending on, and including, the last trading day of the immediately preceding calendar quarter;
- during the five consecutive business days immediately after any 10 consecutive trading day period (such 10 consecutive trading day period, the "measurement period") in which the trading price per \$1,000 principal amount of Notes for each trading day of the measurement period was less than 98% of the product of the last reported sale price per share of the Company's common stock on such trading day and the conversion rate on such trading day;
- upon the occurrence of certain corporate events or distributions on the Company's common stock, as provided in the Indenture;
- if the Company calls such Notes for redemption; and
- at any time from, and including, November 1, 2024 until the close of business on the second scheduled trading day immediately before the maturity date.

The initial conversion rate for the Notes is 35.3773 shares of the Company's common stock per \$1,000 principal amount of Notes, which represents an initial conversion price of approximately \$28.27 per share of the Company's common stock, and is subject to adjustment upon the occurrence of certain specified events as set forth in the Indenture. Upon

2U, Inc.
Notes to Condensed Consolidated Financial Statements (Continued)
(unaudited)

8. Debt (Continued)

conversion, the Company will pay or deliver, as applicable, cash, shares of the Company's common stock or a combination of cash and shares of the Company's common stock, at the Company's election. Upon the occurrence of a "make-whole fundamental change" (as defined in the Indenture), the Company will in certain circumstances increase the conversion rate for a specified period of time.

In addition, upon the occurrence of a "fundamental change" (as defined in the Indenture), holders of the Notes may require the Company to repurchase their Notes at a cash repurchase price equal to the principal amount of the Notes to be repurchased, plus accrued and unpaid interest, if any.

The Notes will be redeemable, in whole or in part, at the Company's option at any time, and from time to time, on or after May 5, 2023 and on or before the 40th scheduled trading day immediately before the maturity date, at a cash redemption price equal to the principal amount of the Notes to be redeemed, plus accrued and unpaid interest, if any, but only if the last reported sale price per share of the Company's common stock exceeds 130% of the conversion price on (i) each of at least 20 trading days, whether or not consecutive, during the 30 consecutive trading days ending on, and including, the trading day immediately before the date the Company sends the related redemption notice, and (ii) the trading day immediately before the date the Company sends such notice. In addition, calling any Note for redemption will constitute a "make-whole fundamental change" with respect to that Note, in which case the conversion rate applicable to the conversion of that Note will be increased in certain circumstances if such Note is converted after it is called for redemption. No sinking fund is provided for the Notes.

In connection with the Notes, the Company entered into privately negotiated capped call transactions (the "Capped Call Transactions") with certain counterparties. The Capped Call Transactions are generally expected to reduce potential dilution to the Company's common stock upon any conversion of Notes and/or offset any cash payments the Company is required to make in excess of the principal amount of converted Notes, as the case may be, with such reduction and/or offset subject to a cap, based on the cap price of the Capped Call Transactions. The cap price of the Capped Call Transactions is initially \$44.34 per share. The cost of the Capped Call Transactions was approximately \$50.5 million.

In April 2020, the Company used a portion of the proceeds from the sale of the Notes to repay in full all amounts outstanding, and discharge all obligations in respect of, the Term Loan (as defined below). The Company intends to use the remaining net proceeds from the sale of the Notes for working capital or other general corporate purposes, which may include capital expenditures, potential acquisitions and strategic transactions.

Credit Agreement

On June 25, 2020, the Company entered into a credit agreement (the "Credit Agreement") with Morgan Stanley Senior Funding, Inc., as administrative agent and collateral agent, and certain other lenders party thereto that provides for \$50 million in revolving loans (the "Loans"). The Credit Agreement allows for incremental borrowings from time to time in an aggregate amount for all such incremental amounts not to exceed (i) the lesser of (x) \$50 million and (y) an amount such that the aggregate principal amount of the lenders' commitments under the revolving credit facility does not exceed \$100 million, plus (ii) certain specified prepayments of indebtedness, plus (iii) an unlimited amount subject to satisfaction of a leverage ratio based compliance test.

The Loans mature on December 26, 2023 and bear interest, at the Company's option, at variable rates based on (i) a customary base rate plus an applicable margin of 2.75% or (ii) an adjusted LIBOR rate (with a floor of 0.00%) for the interest period relevant to such borrowing plus an applicable margin of 3.75%.

The Credit Agreement contains customary conditions to borrowing, events of default and covenants, including covenants that restrict the Company's ability to incur indebtedness, grant liens, make investments and acquisitions, pay dividends, repurchase equity interests in the Company and enter into affiliate transactions and asset sales. The Credit Agreement also contains financial covenants that require the Company to (i) maintain minimum liquidity and minimum consolidated EBITDA (as defined in the Credit Agreement) through the Company's fiscal quarter ending on December 31, 2021 and (ii) not exceed certain maximum leverage and fixed charge ratios for any period of four consecutive fiscal quarters ending after (but not including) December 31, 2021 through the maturity date.

As of June 30, 2020, the Company's borrowing capacity was \$50.0 million and no amounts were outstanding under the Credit Agreement.

2U, Inc.
Notes to Condensed Consolidated Financial Statements (Continued)
(unaudited)

8. Debt (Continued)

Senior Secured Term Loan Facility

The Company had a credit agreement with Owl Rock Capital Corporation, as administrative agent and collateral agent, and certain other lenders party thereto that provided for a \$250 million senior secured term loan facility (the “Term Loan”). On April 23, 2020, the Company repaid its \$250 million Term Loan in full, plus accrued interest of \$1.3 million. In addition, the Company recognized a loss on debt extinguishment of \$11.7 million, consisting of a write-off of previously capitalized deferred financing costs of \$9.2 million and a prepayment premium of \$2.5 million, and terminated the credit agreement with Owl Rock Capital Corporation.

Deferred Government Grant Obligations

The Company has a total of two outstanding conditional loan agreements with Prince George’s County, Maryland and the State of Maryland for an aggregate amount of \$3.5 million, each bearing an interest rate of 3% per annum. These agreements are conditional loan obligations that may be forgiven provided that the Company attains certain conditions related to employment levels at 2U’s Lanham, Maryland headquarters. The conditional loan with the State of Maryland has a maturity date of December 31, 2026, and the conditional loan with Prince George’s County has a maturity date of June 22, 2027. On July 1, 2020, the Company amended its conditional loan agreement with Prince George’s County to extend the date on which the Company must comply with the employment level thresholds. The interest expense related to these loans for the three and six months ended June 30, 2020 and 2019 was immaterial. As of June 30, 2020 and December 31, 2019, the Company’s combined accrued interest balance associated with the deferred government grant obligations was \$0.3 million and \$0.3 million, respectively.

2U, Inc.
Notes to Condensed Consolidated Financial Statements (Continued)
(unaudited)

9. Income Taxes

The Company's income tax provisions for all periods consist of federal, state and foreign income taxes. The income tax provisions for the three and six months ended June 30, 2020 and 2019 were based on estimated full-year effective tax rates, including the mix of income for the period between higher-taxed and lower-taxed jurisdictions, after giving effect to significant items related specifically to the interim periods, and loss-making entities for which it is not more likely than not that a tax benefit will be realized.

The Company's effective tax rate was approximately 1% and 40% for the three months ended June 30, 2020 and 2019, respectively. The Company's effective tax rate was approximately 1% and 28% for the six months ended June 30, 2020 and 2019, respectively. The Company's tax benefit of \$1.4 million for the six months ended June 30, 2020 related to losses generated by operations and the amortization of acquired intangibles in the Alternative Credential Segment that are expected to be realized through future reversing taxable temporary differences. The Company's tax benefit of \$19.6 million for the six months ended June 30, 2019 related to the reversal of its tax valuation allowance that was no longer needed as a result of recognizing an additional net deferred tax liability due to the acquisition of Trilogy. The Company expects to continue to recognize a tax benefit in the future for the Alternative Credential Segment to the extent that this segment continues to generate pre-tax losses while carrying deferred tax liabilities that are in excess of deferred tax assets. To date, the Company has not been required to pay U.S. federal income taxes because of current and accumulated net operating losses.

10. Stockholders' Equity

Common Stock

As of June 30, 2020, the Company was authorized to issue 205,000,000 total shares of capital stock, consisting of 200,000,000 shares of common stock and 5,000,000 shares of preferred stock. As of June 30, 2020, there were 64,300,599 shares of common stock outstanding, and the Company had reserved a total of 26,638,801 of its authorized shares of common stock for future issuance as follows:

	Shares Reserved for Future Issuance
Outstanding restricted stock units	3,534,193
Outstanding performance restricted stock units	1,831,648
Outstanding stock options	4,132,718
Reserved for convertible senior notes	17,140,242
Total shares of common stock reserved for future issuance	26,638,801

Stock-Based Compensation

The Company maintains two stock-based compensation plans: the Amended and Restated 2014 Equity Incentive Plan (the "2014 Plan") and the 2008 Stock Incentive Plan (the "2008 Plan" and together with the 2014 Plan, the "Stock Plans"). Upon the effective date of the 2014 Plan in January 2014, the Company ceased using the 2008 Plan to grant new equity awards. The shares available for future issuance under the 2014 Plan increased by 3,175,011 and 2,896,365 on January 1, 2020 and 2019, respectively, pursuant to the automatic share reserve increase provision in the 2014 Plan.

The Company also has a 2017 Employee Stock Purchase Plan (the "ESPP"). During the six months ended June 30, 2020, an aggregate of 83,573 shares of the Company's common stock were purchased in accordance with the ESPP. Net proceeds from the issuance of these shares was \$1.8 million. As of June 30, 2020, 729,391 shares remained available for purchase under the ESPP.

The following table presents stock-based compensation expense related to the Stock Plans and the ESPP, contained on the following line items on the Company's condensed consolidated statements of operations and comprehensive loss for each of the periods indicated.

2U, Inc.
Notes to Condensed Consolidated Financial Statements (Continued)
(unaudited)

10. Stockholders' Equity (Continued)

	Three Months Ended June 30,		Six Months Ended June 30,	
	2020	2019	2020	2019
	(in thousands)			
Curriculum and teaching	\$ 58	\$ 5	\$ 191	\$ 8
Servicing and support	3,642	1,834	7,570	3,503
Technology and content development	2,936	1,648	6,105	3,504
Marketing and sales	1,853	1,487	5,086	2,743
General and administrative	12,602	4,993	23,009	9,793
Total stock-based compensation expense	<u>\$ 21,091</u>	<u>\$ 9,967</u>	<u>\$ 41,961</u>	<u>\$ 19,551</u>

Restricted Stock Units

The 2014 Plan provides for the issuance of restricted stock units ("RSUs") to employees and certain non-employees. RSUs generally vest over a three- or four-year period. The following table presents a summary of the Company's RSU activity for the period indicated.

	Number of Units	Weighted- Average Grant Date Fair Value per Share
Outstanding balance as of December 31, 2019	2,281,142	\$ 40.49
Granted	1,865,348	20.11
Vested	(476,317)	52.61
Forfeited	(135,980)	32.13
Outstanding balance as of June 30, 2020	<u>3,534,193</u>	<u>\$ 28.42</u>

Performance Restricted Stock Units

The 2014 Plan provides for the issuance of performance restricted stock units ("PRSUs") to employees and certain non-employees. PRSUs generally include both service conditions and market conditions related to total shareholder return targets relative to that of companies comprising the Russell 3000 Index. The following table presents a summary of the Company's PRSU activity for the period indicated.

	Number of Units	Weighted- Average Grant Date Fair Value per Share
Outstanding balance as of December 31, 2019	1,413,773	\$ 28.12
Granted	653,879	22.46
Vested	(444)	64.51
Forfeited	(235,560)	52.91
Outstanding balance as of June 30, 2020	<u>1,831,648</u>	<u>\$ 22.90</u>

Stock Options

The Stock Plans provide for the issuance of stock options to employees and certain non-employees. Stock options issued under the Stock Plans generally are exercisable for periods not to exceed 10 years and generally vest over four years. The following table presents a summary of the Company's stock option activity for the period indicated.

2U, Inc.
Notes to Condensed Consolidated Financial Statements (Continued)
(unaudited)

10. Stockholders' Equity (Continued)

	Number of Options	Weighted-Average Exercise Price per Share	Weighted-Average Remaining Contractual Term (in years)	Aggregate Intrinsic Value (in thousands)
Outstanding balance as of December 31, 2019	4,373,895	\$ 34.24	5.88	\$ 28,736
Granted	8,597	19.61		
Exercised	(195,728)	9.32		
Forfeited	(22,294)	57.38		
Expired	(31,752)	41.11		
Outstanding balance as of June 30, 2020	4,132,718	35.22	5.54	58,683
Exercisable as of June 30, 2020	3,162,499	\$ 25.87	4.72	\$ 57,663

The weighted-average grant date fair value of stock options granted during the six months ended June 30, 2020 and 2019 was \$11.48 and \$32.71 per share, respectively.

The aggregate intrinsic value of stock options exercised during the six months ended June 30, 2020 and 2019 was \$4.4 million and \$13.2 million, respectively.

The total unrecognized compensation cost related to the unvested stock options as of June 30, 2020 was \$26.5 million and will be recognized over a weighted-average period of approximately 2.60 years.

11. Net Loss per Share

Diluted net loss per share is the same as basic net loss per share for all periods presented because the effects of potentially dilutive items were antidilutive, given the Company's net loss. The following table presents a summary of the securities that have been excluded from the calculation of weighted-average shares of common stock outstanding because the effect is antidilutive for each of the periods indicated.

	Three and Six Months Ended June 30,	
	2020	2019
Stock options	4,132,718	4,325,728
Restricted stock units	3,534,193	1,208,112
Performance restricted stock units	1,831,648	199,636
Shares related to convertible senior notes	3,432,837	—
Total antidilutive securities	12,931,396	5,733,476

The following table presents the calculation of the Company's basic and diluted net loss per share for each of the periods indicated.

	Three Months Ended June 30,		Six Months Ended June 30,	
	2020	2019	2020	2019
Numerator (in thousands):				
Net loss	\$ (66,167)	\$ (27,972)	\$ (126,273)	\$ (49,526)
Denominator:				
Weighted-average shares of common stock outstanding, basic and diluted	64,075,405	60,516,662	63,850,869	59,334,246
Net loss per share, basic and diluted	\$ (1.03)	\$ (0.46)	\$ (1.98)	\$ (0.83)

2U, Inc.
Notes to Condensed Consolidated Financial Statements
(unaudited)

12. Segment and Geographic Information

The Company has two reportable segments: the Graduate Program Segment and the Alternative Credential Segment. The Company's reportable segments are determined based on (i) financial information reviewed by the chief operating decision maker, the Chief Executive Officer ("CEO"), (ii) internal management and related reporting structure, and (iii) the basis upon which the CEO makes resource allocation decisions. The Company's Graduate Program Segment includes the technology and services provided to nonprofit colleges and universities to enable the online delivery of degree programs. The Company's Alternative Credential Segment includes the premium online short courses and technical skills-based boot camps provided through relationships with nonprofit colleges and universities.

Graduate Program Segment

For the three months ended June 30, 2020, one university client accounted for 10% or more of the Company's consolidated revenue, contributing \$18.8 million, or approximately 10% of the Company's consolidated revenue. For the three months ended June 30, 2019, one university client accounted for 10% or more of the Company's consolidated revenue, contributing \$21.2 million, or approximately 16 % of the Company's consolidated revenue.

For the six months ended June 30, 2020, one university client accounted for 10% or more of the Company's consolidated revenue, contributing \$36.3 million, or approximately 10% of the Company's consolidated revenue. For the six months ended June 30, 2019, one university client accounted for 10% or more of the Company's consolidated revenue, contributing \$43.8 million, or approximately 17% of the Company's consolidated revenue.

As of June 30, 2020, one university client accounted for 10% or more of the Company's consolidated accounts receivable, net balance, contributing \$15.2 million, or approximately 21% of the Company's consolidated accounts receivable, net balance. As of December 31, 2019, two university clients each accounted for 10% or more of the Company's consolidated accounts receivable, net balance, contributing \$6.1 million and \$4.9 million, or approximately 18% and 15% of the Company's consolidated accounts receivable, net balance, respectively.

Alternative Credential Segment

For the three and six months ended June 30, 2020 and 2019, there were no customers or individual university clients that had associated offerings that accounted for 10% or more of the Company's consolidated revenue. In addition, as of June 30, 2020 and December 31, 2019, no customers had accounts receivable, net balances that accounted for 10% or more of the Company's consolidated accounts receivable, net balance, as customers are individual students or third parties paying on their behalf, rather than university clients.

For the three months ended June 30, 2020, offerings associated with one university client accounted for 10% or more of the segment's revenue, contributing \$9.2 million, or approximately 14% of the segment's revenue. For the three months ended June 30, 2019, offerings associated with two university clients each accounted for 10% or more of the segment's revenue, and when combined, accounted for approximately 37% of the segment's revenue.

For the six months ended June 30, 2020, offerings associated with one university client accounted for 10% or more of the segment's revenue, contributing \$17.1 million, or approximately 14% of the segment's revenue. For the six months ended June 30, 2019, offerings associated with three university clients each accounted for 10% or more of the segment's revenue, and when combined, accounted for approximately 56% of the segment's revenue.

Segment Performance

The following table presents financial information regarding each of the Company's reportable segment's results of operations for each of the periods indicated.

2U, Inc.
Notes to Condensed Consolidated Financial Statements (Continued)
(unaudited)

12. Segment and Geographic Information (Continued)

	Three Months Ended June 30,		Six Months Ended June 30,	
	2020	2019	2020	2019
(dollars in thousands)				
Revenue by segment*				
Graduate Program Segment	\$ 115,685	\$ 101,403	\$ 234,142	\$ 205,577
Alternative Credential Segment	67,002	34,058	124,024	52,118
Total revenue	<u>\$ 182,687</u>	<u>\$ 135,461</u>	<u>\$ 358,166</u>	<u>\$ 257,695</u>
Segment profitability**				
Graduate Program Segment	\$ 4,703	\$ (8,049)	\$ 11,163	\$ (7,339)
Alternative Credential Segment	(6,790)	(6,926)	(17,554)	(10,842)
Total segment profitability	<u>\$ (2,087)</u>	<u>\$ (14,975)</u>	<u>\$ (6,391)</u>	<u>\$ (18,181)</u>
Segment profitability margin***				
Graduate Program Segment	4.1 %	(7.9)%	4.8 %	(3.6)%
Alternative Credential Segment	(10.1)	(20.3)	(14.2)	(20.8)
Total segment profitability margin	(1.1)%	(11.1)%	(1.8)%	(7.0)%

* The Company has excluded immaterial amounts of intersegment revenues from the three- and six-month periods ended June 30, 2020 and 2019.

** The Company defines segment profitability as net income or net loss, as applicable, before net interest income (expense), taxes, depreciation and amortization expense, foreign currency gains or losses, deferred revenue fair value adjustments, transaction costs, integration costs, restructuring-related costs, stockholder activism costs, impairment charges, losses on debt extinguishment, and stock-based compensation expense. Some or all of these items may not be applicable in any given reporting period.

*** The Company defines segment profitability margin as segment profitability as a percentage of the respective segment's revenue.

2U, Inc.
Notes to Condensed Consolidated Financial Statements (Continued)
(unaudited)

12. Segment and Geographic Information (Continued)

The following table presents a reconciliation of the Company's net loss to total segment profitability for each of the periods indicated.

	Three Months Ended June 30,		Six Months Ended June 30,	
	2020	2019	2020	2019
	(in thousands)			
Net loss	\$ (66,167)	\$ (27,972)	\$ (126,273)	\$ (49,526)
Adjustments:				
Net interest expense (income)	6,364	610	11,344	(1,684)
Foreign currency (gain) loss	(570)	13	1,701	383
Income tax benefit	(363)	(18,691)	(1,418)	(19,632)
Depreciation and amortization expense	23,985	14,653	47,470	24,351
Deferred revenue fair value adjustment	—	3,352	—	3,352
Transaction and integration costs	359	3,093	1,083	5,024
Restructuring-related costs	196	—	484	—
Stockholder activism costs	1,347	—	5,586	—
Stock-based compensation expense	21,091	9,967	41,961	19,551
Loss on debt extinguishment	11,671	—	11,671	—
Total adjustments	64,080	12,997	119,882	31,345
Total segment profitability	\$ (2,087)	\$ (14,975)	\$ (6,391)	\$ (18,181)

The following table presents the Company's total assets by segment as of each of the dates indicated.

	June 30, 2020	December 31, 2019
	(in thousands)	
Total assets		
Graduate Program Segment	\$ 560,137	\$ 507,187
Alternative Credential Segment	672,423	679,643
Total assets	\$ 1,232,560	\$ 1,186,830

2U, Inc.
Notes to Condensed Consolidated Financial Statements (Continued)
(unaudited)

12. Segment and Geographic Information (Continued)**Trade Accounts Receivable and Contract Liabilities**

The following table presents the Company's trade accounts receivable and contract liabilities in each segment as of each of the dates indicated.

	June 30, 2020	December 31, 2019
	(in thousands)	
Trade accounts receivable		
Graduate Program Segment accounts receivable	\$ 17,185	\$ 3,454
Graduate Program Segment unbilled revenue	27,777	12,123
Alternative Credential Segment accounts receivable	29,158	19,408
Provision for credit losses	(2,540)	(1,330)
Total trade accounts receivable	<u>\$ 71,580</u>	<u>\$ 33,655</u>
Contract liabilities		
Graduate Program Segment deferred revenue	\$ 15,112	\$ 2,210
Alternative Credential Segment deferred revenue	61,959	46,623
Total contract liabilities	<u>\$ 77,071</u>	<u>\$ 48,833</u>

For the Graduate Program Segment, no revenue recognized during each of the three months ended June 30, 2020 and 2019 was included in the deferred revenue balance at the beginning of each respective year. Revenue recognized in this segment during the six months ended June 30, 2020 and 2019 that was included in the deferred revenue balance at the beginning of each year was \$2.2 million and \$2.4 million, respectively.

For the Alternative Credential Segment, revenue recognized during the three months ended June 30, 2020 and 2019 that was included in the deferred revenue balance at the beginning of each year was \$12.2 million and zero, respectively. Revenue recognized in this segment during the six months ended June 30, 2020 and 2019 that was included in the deferred revenue balance at the beginning of each year was \$46.6 million and \$5.4 million, respectively.

Contract Acquisition Costs

The Graduate Program Segment had \$0.5 million and \$0.5 million of net capitalized contract acquisition costs recorded primarily within university payments and other assets, non-current on the condensed consolidated balance sheets as of June 30, 2020 and December 31, 2019, respectively.

Geographical Information

The Company's non-U.S. revenue is based on the currency of the country in which the university client primarily operates. The Company's non-U.S. revenue was \$17.2 million and \$11.1 million for the three months ended June 30, 2020 and 2019, respectively. The Company's non-U.S. revenue was \$30.0 million and \$18.9 million for the six months ended June 30, 2020 and 2019, respectively. Substantially all of the Company's non-U.S. revenue for each of the aforementioned periods was

sourced from the Alternative Credential Segment's operations outside of the U.S. The Company's long-lived tangible assets in non-U.S. countries as of June 30, 2020 and December 31, 2019 totaled \$1.8 million and \$2.7 million, respectively.

2U, Inc.
Notes to Condensed Consolidated Financial Statements (Continued)
(unaudited)

13. Supplemental Cash Flow Information

The Company's cash interest payments, net of amounts capitalized, were \$6.2 million and \$1.9 million for the six months ended June 30, 2020 and 2019, respectively. The Company's accrued but unpaid capital expenditures were \$1.1 million and \$1.2 million for the six months ended June 30, 2020 and 2019, respectively.

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 condensed consolidated financial statements and the related notes to those statements included elsewhere in this Quarterly Report on Form 10-Q and our Annual Report on Form 10-K for the year ended December 31, 2019. Certain statements contained in this Quarterly Report on Form 10-Q may constitute forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended (the “Securities Act”), and Section 21E of the Securities Exchange Act of 1934, as amended (the “Exchange Act”). The words or phrases “would be,” “will allow,” “intends to,” “will likely result,” “are expected to,” “will continue,” “is anticipated,” “estimate,” “project,” or similar expressions, or the negative of such words or phrases, are intended to identify “forward-looking statements.” We have based these forward-looking statements on our current expectations and projections about future events. Because such statements include risks and uncertainties, actual results may differ materially from those expressed or implied by such forward-looking statements. Many factors could cause or contribute to these differences, including those discussed in Item 1A, “Risk Factors” in this Quarterly Report on Form 10-Q and in our Annual Report on Form 10-K for the year ended December 31, 2019, and our other filings with the Securities and Exchange Commission (the “SEC”). Statements made herein are as of the date of the filing of this Form 10-Q with the SEC and should not be relied upon as of any subsequent date. Unless otherwise required by applicable law, we do not undertake, and we specifically disclaim, any obligation to update any forward-looking statements to reflect occurrences, developments, unanticipated events or circumstances after the date of such statement.

Unless the context otherwise requires, all references to “we,” “us” or “our” refer to 2U, Inc., together with its subsidiaries. The following discussion and analysis of our financial condition and results of operations should be read in conjunction with our unaudited condensed consolidated financial statements and related notes that appear in Item 1 of this Quarterly Report on Form 10-Q and with our audited consolidated financial statements and related notes for the year ended December 31, 2019, which are included in our Annual Report on Form 10-K, filed with the SEC on February 28, 2020.

Overview

We are a leading provider of education technology for nonprofit colleges and universities. We build, deliver, and support more than 435 digital and in-person educational offerings, including graduate degrees, undergraduate degrees, professional certificates, boot camps, and short courses, across the Career Curriculum Continuum. Together with our university clients, we have positively transformed the lives of more than 245,000 students.

Our comprehensive platform of tightly integrated technology and services provides the digital infrastructure that universities need to attract, enroll, educate and support students at scale. With our platform, students can pursue their education anytime, anywhere, without quitting their jobs or moving; and university clients can provide broader access to their educational offerings, thereby improving outcomes, skills attainment and career prospects for a greater number of students.

We have two reportable segments: the Graduate Program Segment and the Alternative Credential Segment.

In our Graduate Program Segment, we provide the technology and services to nonprofit colleges and universities to enable the online delivery of degree programs. Students enrolled in these programs are generally seeking an undergraduate or graduate degree of the same quality they would receive on campus.

In our Alternative Credential Segment, we provide premium online short courses and technical, skills-based boot camps through relationships with nonprofit colleges and universities. Students enrolled in these offerings are generally seeking to reskill or upskill through shorter duration, lower-priced offerings that are relevant to the needs of industry and society.

COVID-19 Update

In March 2020, the World Health Organization characterized COVID-19 as a pandemic and, as of the date of this report, COVID-19 continues to spread around the world. In response to the COVID-19 pandemic, we have taken several steps to ensure the continuity of our business, to provide unique solutions to our university clients, and to ensure the health and safety of our employees in the current environment. For example, we have:

- shifted our global workforce to work-from-home arrangements other than essential personnel;
- shifted boot camp offerings and other campus-based experiences from physical classrooms to online;
- modified our course production capability into a “Studio-in-a-Box” approach, which allows faculty to record asynchronous content directly in their home or office with virtual assistance from our course designers;
- provided training to our university clients’ campus-based faculty on best practices for successful online teaching through No Back Row[®] PRO; and

- offered new solutions for existing and new clients, including 2UOS Essential and 2UOS Plus, which provide continuity and support for university clients to conduct classes online.

During the second quarter of 2020 we experienced increasing demand from prospective and current university clients as universities planned for the Fall 2020 academic term, which we expect to begin having an impact on our results of operations in 2021. For example, we recently signed agreements with Amherst College and Simmons University to transform their on-campus courses into online learning experiences beginning in the Fall 2020 academic term. We believe that COVID-19 will continue to accelerate university adoption of online education and that, over the longer term, online programs will constitute a larger portion of universities' overall offerings.

During the second quarter of 2020 we also experienced increasing demand for our offerings from prospective students, which we expect to continue for the foreseeable future. Given the lag between enrollment and revenue in much of our portfolio, we expect this higher demand to have an increasing impact on our results of operations beginning in 2021.

While we have observed increasing demand from new and existing university clients and from prospective students during the second quarter of 2020, we cannot estimate the impact of COVID-19 on these demand trends, our business or economic conditions generally. For a discussion of additional risks related to COVID-19, see Part II, Item 1.A. "Risk Factors" below.

Our Business Model and Components of Operating Results

The key elements of our business model and components of our operating results are described below.

Revenue Drivers

In our Graduate Program Segment, we derive substantially all of our revenue from revenue-share arrangements with our university clients under which we receive a contractually specified percentage of the amounts students pay them to enroll in degree programs. In our Alternative Credential Segment, we derive substantially all of our revenue from tuition and fees from students taking our short courses and boot camps. Revenue in each segment is primarily driven by the number of student enrollments in our offerings and the prices of those offerings.

Operating Expense

Marketing and Sales

Our most significant expense relates to marketing and sales activities to attract students to our offerings across both of our segments. This includes the cost of Search Engine Optimization, Search Engine Marketing and Social Media Optimization, as well as personnel and personnel-related expense for our marketing and recruiting teams.

In our Graduate Program Segment, our marketing and sales expense in any period generates student enrollments eight months later, on average. We then generate revenue as students progress through their programs, which generally occurs over a two-year period following initial enrollment. Accordingly, our marketing and sales expense in any period is an investment to generate revenue in future periods. Therefore, we do not believe it is meaningful to directly compare current period revenue to current period marketing and sales expense. Further, in this segment we believe that our marketing and sales expense in future periods will generally decline as a percentage of the revenue reported in those same periods as our revenue base from returning students in existing programs increases.

In our Alternative Credential Segment, our marketing and sales expense in any period generates student enrollments as much as 24 weeks later, on average. We then generate revenue as students progress through their courses, which typically occurs over a two- to six-month period following initial enrollment.

Curriculum and Teaching

Curriculum and teaching expense consists primarily of amounts due to universities for licenses to use their brand names and other trademarks in connection with our short course and boot camp offerings. The payments are based on contractually specified percentages of the tuition and fees we receive from students in those offerings. Curriculum and teaching expense also includes personnel and personnel-related expense for our short course and boot camp instructional staff.

Servicing and Support

Servicing and support expense consists primarily of personnel and personnel-related expense associated with the management and operations of our educational offerings, as well as supporting students and faculty members. Servicing and support expense also includes costs to support our platform, facilitate in-program field placements and student immersions, and assist with compliance requirements.

Technology and Content Development

Technology and content development expense consists primarily of personnel and personnel-related expense associated with the ongoing improvement and maintenance of our platform, as well as hosting and licensing costs. Technology and content expense also includes the amortization of capitalized technology and content.

General and Administrative

General and administrative expense consists primarily of personnel and personnel-related expense for our centralized functions, including executive management, legal, finance, human resources, and other departments that do not provide direct operational services. General and administrative expense also includes professional fees and other corporate expense.

Net Interest Income (Expense)

Net interest income (expense) consists primarily of interest expense from our long-term debt and interest income from our cash and cash equivalents. Interest expense also includes the amortization of debt issuance costs.

Loss on Debt Extinguishment

Loss on debt extinguishment consists of amounts recorded related to the retirement of our debt obligations.

Other Income (Expense), Net

Other income (expense), net primarily consists of foreign currency gains and losses.

Income Taxes

Our income tax provisions for all periods consist of U.S. federal, state and foreign income taxes. Our effective tax rate for the period is based on a mix of higher-taxed and lower-taxed jurisdictions.

Results of Operations

Consolidated Operating Results

Comparison of Three Months Ended June 30, 2020 and 2019

The following table presents selected condensed consolidated statement of operations data for each of the periods indicated.

	Three Months Ended June 30,				Period-to-Period Change	
	2020		2019		Amount	Percentage
	Amount	Percentage of Revenue	Amount	Percentage of Revenue		
	(dollars in thousands)					
Revenue	\$ 182,687	100.0 %	\$ 135,461	100.0 %	\$ 47,226	34.9 %
Costs and expenses						
Curriculum and teaching	26,256	14.4	13,308	9.8	12,948	97.3
Servicing and support	30,294	16.6	23,993	17.7	6,301	26.3
Technology and content development	37,307	20.4	26,043	19.2	11,264	43.2
Marketing and sales	98,341	53.8	89,749	66.3	8,592	9.6
General and administrative	39,554	21.7	28,408	21.0	11,146	39.2
Total costs and expenses	231,752	126.9	181,501	134.0	50,251	27.7
Loss from operations	(49,065)	(26.9)	(46,040)	(34.0)	(3,025)	6.6
Interest income	154	0.1	1,814	1.3	(1,660)	(91.5)
Interest expense	(6,518)	(3.6)	(2,424)	(1.8)	(4,094)	168.8
Loss on debt extinguishment	(11,671)	(6.4)	—	—	(11,671)	*
Other income (expense), net	570	0.3	(13)	0.0	583	*
Loss before income taxes	(66,530)	(36.5)	(46,663)	(34.5)	(19,867)	42.6
Income tax benefit	363	0.2	18,691	13.8	(18,328)	(98.1)
Net loss	\$ (66,167)	(36.3) %	\$ (27,972)	(20.7) %	\$ (38,195)	136.5 %

* Not meaningful for comparative purposes.

Revenue. Revenue for the three months ended June 30, 2020 increased \$47.2 million, or 34.9%, to \$182.7 million as compared to \$135.5 million in 2019. This increase was driven by a 14.1% increase in Graduate Program Segment revenue and a 96.7% increase in Alternative Credential Segment revenue. The increase in revenue from the Alternative Credential Segment includes incremental revenue of \$24.7 million from Trilogy, which we acquired in May 2019.

Revenue from our Graduate Program Segment increased \$14.3 million, or 14.1%, primarily due to growth in full course equivalent (“FCE”) enrollments of 6,962, or 17.8%, partially offset by a decrease in the average revenue per FCE enrollment, from \$2,588 to \$2,507. We expect to continue to see a decline in average revenue per FCE enrollment in this segment due to increasing enrollments in our undergraduate offerings.

Revenue from our Alternative Credential Segment increased \$32.9 million, or 96.7%, primarily due to growth in FCE enrollments of 7,773, or 61.4%, as well as an increase in the average revenue per FCE enrollment, from \$2,955 to \$3,279. These increases were primarily due to the addition of 2,149 incremental FCE enrollments from Trilogy.

Curriculum and Teaching. Curriculum and teaching expense increased \$13.0 million, or 97.3%, to \$26.3 million as compared to \$13.3 million in 2019. This increase was primarily due to a \$9.6 million increase in university and instructional staff compensation expense from the addition of Trilogy boot camps. The remaining increase was primarily due to a \$3.4 million increase in university and instructional staff compensation expense from short courses.

Servicing and Support. Servicing and support expense increased \$6.3 million, or 26.3%, to \$30.3 million as compared to \$24.0 million in 2019. This increase was primarily due to a \$4.3 million increase in personnel and personnel-related expense to serve a greater number of students and faculty. The remaining increase was primarily due to a \$3.9 million addition of servicing and support expense from Trilogy boot camps. These increases were partially offset by a \$2.2 million decrease in travel and related expense due to cost efficiencies and the impact of COVID-19.

Technology and Content Development. Technology and content development expense increased \$11.3 million, or 43.2%, to \$37.3 million as compared to \$26.0 million in 2019. This increase was primarily due to a \$6.5 million addition of technology and content development expense from Trilogy boot camps. The remaining increase was primarily due to a \$3.5 million increase in amortization expense and a \$2.7 million increase in personnel and personnel-related expense. These increases were partially offset by a \$1.6 million decrease in travel and related expense due to cost efficiencies and the impact of COVID-19.

Marketing and Sales. Marketing and sales expense increased \$8.6 million, or 9.6%, to \$98.3 million as compared to \$89.7 million in 2019. This increase was primarily due to a \$12.1 million increase in marketing and sales expense from the addition of Trilogy boot camps. The remaining increase was primarily due to a \$1.2 million increase in direct marketing costs. These increases were partially offset by a \$3.5 million decrease in travel and related expense due to cost efficiencies and the impact of COVID-19, and a \$2.1 million decrease in personnel and personnel-related expense.

General and Administrative. General and administrative expense increased \$11.2 million, or 39.2%, to \$39.6 million as compared to \$28.4 million in 2019. This increase was primarily due to a \$12.4 million increase in personnel and personnel-related expense and a \$1.5 million increase in restructuring-related and stockholder activism expense. The remaining increase was primarily due to a \$2.4 million addition of general and administrative expense from Trilogy boot camps. These increases were partially offset by a \$2.7 million decrease in transaction and integration-related expense and a \$1.7 million decrease in travel and related expense due to cost efficiencies and the impact of COVID-19.

Net Interest Income (Expense). Net interest expense was \$6.4 million and \$0.6 million for the three months ended June 30, 2020 and 2019, respectively. The net interest expense for the three months ended June 30, 2020 was primarily due to our \$380 million aggregate principal amount of 2.25% convertible senior notes due 2025 (the “Notes”) and our \$250 million senior secured term loan facility (“Term Loan”). The net interest expense for the three months ended June 30, 2019 was primarily due to our Term Loan, partially offset by interest earned on our cash balances.

Loss on Debt Extinguishment. Loss on debt extinguishment was \$11.7 million and zero for the three months ended June 30, 2020 and 2019, respectively. This increase was due to the write-off of deferred financing costs and fees paid in connection with the extinguishment of our Term Loan in April 2020.

Other Income (Expense), Net. Other income (expense), net was \$0.6 million and \$(13) thousand for the three months ended June 30, 2020 and 2019, respectively. This change was primarily due to fluctuations in foreign currency rates impacting our operations in the Alternative Credential Segment.

Income Tax Benefit. For the three months ended June 30, 2020, we recognized a tax benefit of \$0.4 million, and our effective tax rate was approximately 1%. This tax benefit was due to net operating losses and the reversal of taxable temporary differences of the acquired intangibles in our Alternative Credential Segment. For the three months ended June 30, 2019, we recognized a tax benefit of \$18.7 million, which primarily relates to the reversal of our tax valuation allowance that was no longer needed as a result of recognizing an additional net deferred tax liability due to the acquisition of Trilogy. We expect to continue to recognize a tax benefit for our Alternative Credential Segment to the extent that this segment continues to generate pre-tax losses while carrying a net deferred tax liability. To date, we have not been required to pay U.S. federal income taxes because of our current and accumulated net operating losses.

Comparison of Six Months Ended June 30, 2020 and 2019

The following table presents selected condensed consolidated statement of operations data for each of the periods indicated.

	Six Months Ended June 30,				Period-to-Period Change	
	2020		2019		Amount	Percentage
	Amount	Percentage of Revenue	Amount	Percentage of Revenue		
	(dollars in thousands)					
Revenue	\$ 358,166	100.0 %	\$ 257,695	100.0 %	\$ 100,471	39.0 %
Costs and expenses						
Curriculum and teaching	46,734	13.0	20,009	7.8	26,725	133.6
Servicing and support	60,827	17.0	44,167	17.1	16,660	37.7
Technology and content development	72,817	20.3	45,837	17.8	26,980	58.9
Marketing and sales	197,556	55.2	166,710	64.7	30,846	18.5
General and administrative	83,207	23.2	51,431	20.0	31,776	61.8
Total costs and expenses	461,141	128.7	328,154	127.4	132,987	40.5
Loss from operations	(102,975)	(28.7)	(70,459)	(27.4)	(32,516)	46.1
Interest income	667	0.2	4,163	1.6	(3,496)	(84.0)
Interest expense	(12,011)	(3.4)	(2,479)	(1.0)	(9,532)	384.6
Loss on debt extinguishment	(11,671)	(3.3)	—	—	(11,671)	*
Other expense, net	(1,701)	(0.5)	(383)	(0.1)	(1,318)	344.1
Loss before income taxes	(127,691)	(35.7)	(69,158)	(26.9)	(58,533)	84.6
Income tax benefit	1,418	0.4	19,632	7.6	(18,214)	(92.8)
Net loss	\$ (126,273)	(35.3) %	\$ (49,526)	(19.3) %	\$ (76,747)	155.0 %

* Not meaningful for comparative purposes.

Revenue. Revenue for the six months ended June 30, 2020 increased \$100.5 million, or 39.0%, to \$358.2 million as compared to \$257.7 million in 2019. This increase was driven by a 13.9% increase in Graduate Program Segment revenue and a 138.0% increase in Alternative Credential Segment revenue. The increase in revenue from the Alternative Credential Segment includes incremental revenue of \$60.1 million from Trilogy, which we acquired in May 2019.

Revenue from our Graduate Program Segment increased \$28.6 million, or 13.9%, primarily due to growth in FCE enrollments of 13,184, or 16.8%, partially offset by a decrease in the average revenue per FCE enrollment, from \$2,612 to \$2,548. We expect to continue to see a decline in average revenue per FCE enrollment in this segment in the future due to increasing enrollments for our undergraduate offerings.

Revenue from our Alternative Credential Segment increased \$71.9 million, or 138.0%, primarily due to growth in FCE enrollments of 15,314, or 75.6%, as well as an increase in the average revenue per FCE enrollment, from \$2,738 to \$3,486. These increases were primarily due to the addition of 5,678 incremental FCE enrollments from Trilogy.

Curriculum and Teaching. Curriculum and teaching expense increased \$26.7 million, or 133.6%, to \$46.7 million as compared to \$20.0 million in 2019. This increase was primarily due to a \$22.2 million increase in university and instructional staff compensation expense from the addition of Trilogy boot camps. The remaining increase was primarily due to a \$4.6 million increase in university and instructional staff compensation expense from short courses.

Servicing and Support. Servicing and support expense increased \$16.6 million, or 37.7%, to \$60.8 million as compared to \$44.2 million in 2019. This increase was primarily due to a \$9.7 million increase in personnel and personnel-related expense to serve a greater number of students and faculty. The remaining increase was primarily due to a \$9.4 million addition of servicing and support expense from Trilogy boot camps. These increases were partially offset by a \$2.3 million decrease in travel and related expense due to cost efficiencies and the impact of COVID-19.

Technology and Content Development. Technology and content development expense increased \$27.0 million, or 58.9%, to \$72.8 million as compared to \$45.8 million in 2019. This increase was primarily due to a \$16.8 million addition of technology and content development expense from Trilogy boot camps. The remaining increase was primarily due to a \$7.3 million increase in amortization expense and a \$4.8 million increase in personnel and personnel-related expense. These increases were partially offset by a \$1.6 million decrease in travel and related expense due to cost efficiencies and the impact of COVID-19.

Marketing and Sales. Marketing and sales expense increased \$30.9 million, or 18.5%, to \$197.6 million as compared to \$166.7 million in 2019. This increase was primarily due to a \$31.7 million increase in marketing and sales expense from the addition of Trilogy boot camps. The remaining increase was primarily due to a \$4.0 million increase in direct marketing costs. These increases were partially offset by a \$3.7 million decrease in travel and related expense due to cost efficiencies and the impact of COVID-19, and a \$1.6 million decrease in personnel and personnel-related expense.

General and Administrative. General and administrative expense increased \$31.8 million, or 61.8%, to \$83.2 million as compared to \$51.4 million in 2019. This increase was primarily due to a \$22.1 million increase in personnel and personnel-related expense. The remaining increase was primarily due to a \$14.3 million addition of general and administrative expense from Trilogy boot camps. In addition, \$6.1 million of the increase related to restructuring-related and stockholder activism expense. These increases were partially offset by a \$3.9 million decrease in transaction and integration-related expense, and a \$2.7 million decrease in travel and related expense due to cost efficiencies and the impact of COVID-19.

Net Interest Income (Expense). Net interest income (expense) was \$(11.3) million and \$1.7 million for the six months ended June 30, 2020 and 2019, respectively. The net interest expense for the six months ended June 30, 2020 was primarily due to our Term Loan and our Notes. The net interest income for the six months ended June 30, 2019 was primarily due to interest earned on our cash balances, partially offset by interest related to our Term Loan.

Loss on Debt Extinguishment. Loss on debt extinguishment was \$11.7 million and zero for the six months ended June 30, 2020 and 2019, respectively. This increase was due to the write-off of deferred financing costs and fees paid in connection with the extinguishment of our Term Loan in April 2020.

Other Expense, Net. Other expense, net was \$1.7 million and \$0.4 million for the six months ended June 30, 2020 and 2019, respectively. This increase was primarily due to fluctuations in foreign currency rates impacting our operations in the Alternative Credential Segment.

Income Tax Benefit. For the six months ended June 30, 2020, we recognized a tax benefit of \$1.4 million, and our effective tax rate was approximately 1%. This tax benefit was due to net operating losses and the reversal of taxable temporary differences of the acquired intangibles in our Alternative Credential Segment. For the six months ended June 30, 2019, we recognized a tax benefit of \$19.6 million, which primarily relates to the reversal of our tax valuation allowance that was no longer needed as a result of recognizing an additional net deferred tax liability due to the acquisition of Trilogy. We expect to continue to recognize a tax benefit for our Alternative Credential Segment to the extent that this segment continues to generate pre-tax losses while carrying a net deferred tax liability. To date, we have not been required to pay U.S. federal income taxes because of our current and accumulated net operating losses.

Business Segment Operating Results

We define segment profitability as net income or net loss, as applicable, before net interest income (expense), taxes, depreciation and amortization expense, foreign currency gains or losses, deferred revenue fair value adjustments, transaction costs, integration costs, restructuring-related costs, stockholder activism costs, impairment charges, losses on debt

extinguishment, and stock-based compensation expense. Some or all of these items may not be applicable in any given reporting period. Total segment profitability is a non-GAAP measure when presented outside of the financial statement footnotes. Total segment profitability is a key measure used by our management and board of directors to understand and evaluate our operating performance and trends, to develop short- and long-term operational plans and to compare our performance against that of other peer companies using similar measures. In particular, the exclusion of certain expenses in calculating total segment profitability can provide a useful measure for period-to-period comparisons of our business. Accordingly, we believe that total segment profitability provides useful information to investors and others in understanding and evaluating our operating results in the same manner as our management and board of directors.

The following table presents a reconciliation of net loss to total segment profitability for each of the periods indicated.

	Three Months Ended June 30,		Six Months Ended June 30,	
	2020	2019	2020	2019
	(in thousands)			
Net loss	\$ (66,167)	\$ (27,972)	\$ (126,273)	\$ (49,526)
Adjustments:				
Net interest expense (income)	6,364	610	11,344	(1,684)
Foreign currency (gain) loss	(570)	13	1,701	383
Income tax benefit	(363)	(18,691)	(1,418)	(19,632)
Depreciation and amortization expense	23,985	14,653	47,470	24,351
Deferred revenue fair value adjustment	—	3,352	—	3,352
Transaction and integration costs	359	3,093	1,083	5,024
Restructuring-related costs	196	—	484	—
Stockholder activism costs	1,347	—	5,586	—
Loss on debt extinguishment	11,671	—	11,671	—
Stock-based compensation expense	21,091	9,967	41,961	19,551
Total adjustments	64,080	12,997	119,882	31,345
Total segment profitability	\$ (2,087)	\$ (14,975)	\$ (6,391)	\$ (18,181)

Three Months Ended June 30, 2020 and 2019

The following table presents revenue by segment and segment profitability for each of the periods indicated.

	Three Months Ended June 30,		Period-to-Period Change	
	2020	2019	Amount	Percentage
	(dollars in thousands)			
Revenue by segment*				
Graduate Program Segment	\$ 115,685	\$ 101,403	\$ 14,282	14.1 %
Alternative Credential Segment	67,002	34,058	32,944	96.7
Total revenue	\$ 182,687	\$ 135,461	\$ 47,226	34.9 %
Segment profitability				
Graduate Program Segment	\$ 4,703	\$ (8,049)	\$ 12,752	**
Alternative Credential Segment	(6,790)	(6,926)	136	(1.9)
Total segment profitability	\$ (2,087)	\$ (14,975)	\$ 12,888	(86.0) %

* Immaterial amounts of intersegment revenue have been excluded from the above results for the three months ended June 30, 2020 and 2019.

** Not meaningful for comparative purposes.

Graduate Program Segment profitability increased \$12.8 million to \$4.7 million as compared to \$(8.0) million in 2019. This increase was primarily due to revenue growth of \$14.3 million, a reduced launch schedule, cost control initiatives, marketing efficiencies and reduced travel and related expense.

Alternative Credential Segment profitability increased \$0.1 million, or 1.9%, to \$(6.8) million as compared to \$(6.9) million in 2019. This increase was primarily due to improvements driven by short course marketing efficiencies and boot camp integration efforts. Segment profitability for the three months ended June 30, 2019 included Trilogy’s results of operations from May 22, 2019, the date of acquisition.

Six Months Ended June 30, 2020 and 2019

The following table presents revenue by segment and segment profitability for each of the periods indicated.

	Six Months Ended June 30,		Period-to-Period Change	
	2020	2019	Amount	Percentage
	(dollars in thousands)			
Revenue by segment*				
Graduate Program Segment	\$ 234,142	\$ 205,577	\$ 28,565	13.9 %
Alternative Credential Segment	124,024	52,118	71,906	138.0
Total revenue	\$ 358,166	\$ 257,695	\$ 100,471	39.0 %
Segment profitability				
Graduate Program Segment	\$ 11,163	\$ (7,339)	\$ 18,502	**
Alternative Credential Segment	(17,554)	(10,842)	(6,712)	61.9
Total segment profitability	\$ (6,391)	\$ (18,181)	\$ 11,790	(64.8) %

* Immaterial amounts of intersegment revenue have been excluded from the above results for the six months ended June 30, 2020 and 2019.

** Not meaningful for comparative purposes.

Graduate Program Segment profitability increased \$18.5 million to \$11.2 million as compared to \$(7.3) million in 2019. This increase was primarily due to revenue growth of \$28.6 million, a reduced launch schedule, cost control initiatives, marketing efficiencies and reduced travel and related expense.

Alternative Credential Segment profitability decreased \$6.7 million, or 62%, to \$(17.6) million as compared to \$(10.8) million in 2019. This decrease was primarily due to the addition of Trilogy’s results of operations since the acquisition date.

Liquidity and Capital Resources

As of June 30, 2020, our principal sources of liquidity were cash and cash equivalents totaling \$194.8 million, which were held for working capital and general corporate purposes, and the ability to borrow under our revolving credit facility as discussed below.

In April 2020, we issued the Notes in an aggregate principal amount of \$380 million, including the exercise by the initial purchasers of an option to purchase additional Notes, in a private placement to qualified institutional buyers under Rule 144A of the Securities Act. The Notes are governed by an indenture (the “Indenture”) between the Company and Wilmington Trust, National Association, as trustee. The Notes bear interest at a rate of 2.25% per annum, payable semi-annually in arrears on May 1 and November 1 of each year, beginning on November 1, 2020. The Notes mature on May 1, 2025, unless repurchased, redeemed or converted in accordance with their terms prior to such date. Prior to November 1, 2024, the Notes are convertible only upon satisfaction of certain conditions, and thereafter at any time until the close of business on the second scheduled trading date immediately before the maturity date. In connection with the Notes, we entered into privately negotiated capped call transactions with a premium cost of approximately \$50.5 million. The capped call transactions are generally expected to reduce the potential dilution to our common stock upon any conversion of the Notes and/or to offset any cash payments we are required to make in excess of the principal amount of the converted Notes, with such reduction and/or offset subject to the cap. The net proceeds from the issuance of the Notes were \$319.0 million after deducting the initial purchasers’ discount, offering expenses and the cost of the capped call transactions. As of June 30, 2020, the Notes are not currently convertible into our common stock and are therefore classified as long-term debt. Refer to Note 8 in the “Notes to Condensed

Consolidated Financial Statements” included in Part I, Item 1 of this Quarterly Report on Form 10-Q for more information regarding our Notes.

On June 25, 2020, we entered into a \$50 million credit agreement (the “Credit Agreement”) with Morgan Stanley Senior Funding, Inc., as administrative agent and collateral agent, and certain other lenders party thereto that provides for \$50 million in revolving loans. The Credit Agreement allows for incremental borrowings from time to time in an aggregate amount for all such incremental amounts not to exceed (i) the lesser of (x) \$50 million and (y) an amount such that the aggregate principal amount of the lenders’ commitments under the revolving credit facility does not exceed \$100 million, plus (ii) certain specified prepayments of indebtedness, plus (iii) an unlimited amount subject to satisfaction of a leverage ratio based compliance test. As of June 30, 2020, our borrowing capacity was \$50.0 million and no amounts were outstanding under the Credit Agreement.

On April 23, 2020, we repaid our \$250 million Term Loan in full (including interest and prepayment premium) and terminated our credit agreement with Owl Rock Capital Corporation. In connection with the extinguishment of the Term Loan, we recognized a charge of approximately \$11.7 million in the second quarter of 2020.

To date, we have financed our operations primarily through payments from university clients and students for our technology and services, the Term Loan, the Notes, and public and private equity financings. We believe that our existing cash and cash equivalents, together with cash generated from operations and available borrowing capacity under the Credit Agreement, will be sufficient to meet our working capital and capital expenditure requirements for the next 12 months.

We or our affiliates may, at any time and from time to time, seek to retire or purchase our outstanding debt through cash purchases and/or exchanges for equity or debt, in open-market purchases, privately negotiated transactions or otherwise. Such repurchases or exchanges, if any, will be upon such terms and at such prices as we may determine, and will depend on prevailing market conditions, our liquidity requirements, contractual restrictions and other factors. The amounts involved may be material.

Operating Activities

Cash flows from operating activities have typically been generated from our net income (loss) and by changes in our operating assets and liabilities, particularly from accounts receivable, adjusted for non-cash expense items such as amortization and depreciation expense and stock-based compensation expense.

Net cash used in operating activities for the six months ended June 30, 2020 consisted primarily of our net loss of \$126.3 million, adjusted for non-cash items including \$47.5 million of depreciation and amortization expense, \$42.0 million of stock-based compensation expense, an \$11.7 million loss on the extinguishment of our Term Loan, \$7.3 million of reductions in the carrying amounts of our right-of-use assets, and \$5.7 million of non-cash interest expense. The net change in operating assets and liabilities of \$4.3 million was favorable to cash flows from operations primarily due to a \$28.8 million increase in deferred revenue and a \$19.6 million increase in accounts payable and accrued expenses, partially offset by an increase in accounts receivable of \$39.5 million.

Net cash used in operating activities for the six months ended June 30, 2019 consisted primarily of our net loss of \$49.5 million, adjusted for non-cash items including \$24.4 million of depreciation and amortization expense, \$19.6 million of stock-based compensation expense, and \$5.3 million of reductions in the carrying amounts of our right-of-use-assets. The net change in operating assets and liabilities of \$49.1 million was unfavorable to cash flows from operations primarily due to a \$25.5 million increase in accounts receivable, a \$23.1 million decrease in other liabilities, a \$20.1 million change in payments to university clients, partially offset by favorable changes in accounts payable and accrued expenses of \$18.1 million and deferred revenue of \$15.8 million.

Investing Activities

Net cash used in investing activities for the six months ended June 30, 2020 was \$37.4 million, consisting primarily of \$32.5 million of additions of amortizable intangible assets and \$4.3 million of purchases of property, plant and equipment.

Net cash used in investing activities for the six months ended June 30, 2019 was \$408.3 million, consisting primarily of a \$387.8 million outflow related to our acquisition of Trilogy, net of cash acquired, additions of amortizable intangible assets of \$32.4 million and purchases of property and equipment of \$8.1 million. These outflows were partially offset by a \$25.0 million inflow from the maturity of a certificate of deposit investment.

Financing Activities

Net cash provided by financing activities for the six months ended June 30, 2020 was \$67.9 million, consisting primarily of \$319.0 million of proceeds from the issuance of the Notes (net of payments related to the initial purchasers’

discount, offering expenses and the cost of the capped call transactions), partially offset by the repayment of \$252.9 million of principal, interest and prepayment premium associated with the extinguishment of our Term Loan and a \$2.5 million payment of debt issuance costs.

Net cash provided by financing activities for the six months ended June 30, 2019 was \$240.3 million, consisting primarily of \$241.8 million of proceeds, net of issuance costs, from our Term Loan and \$2.4 million of proceeds received from the exercise of stock options. These inflows were partially offset by tax withholding payments associated with the settlement of restricted stock units of \$2.6 million.

Off-Balance Sheet Arrangements

We do not have any off-balance sheet arrangements, as defined in Item 303(a)(4)(ii) of Regulation S-K, such as the use of unconsolidated subsidiaries, structured finance, special purpose entities or variable interest entities.

Critical Accounting Policies

Revenue Recognition, Accounts Receivable and Allowance for Doubtful Accounts

We generate substantially all of our revenue from contractual arrangements, with either our university clients or students, to provide a comprehensive platform of tightly integrated technology and technology-enabled services that support our offerings.

Performance Obligations

A performance obligation is a promise in a contract to transfer a distinct good or service to the customer. A contract's transaction price is allocated to each distinct performance obligation and recognized as revenue when, or as, the performance obligation is satisfied. The transaction price is determined based on the consideration to which we will be entitled in exchange for transferring services to the customer. To the extent the transaction price includes variable consideration, we estimate the amount of variable consideration that should be included in the transaction price utilizing the expected value method. Variable consideration is included in the transaction price if, in our judgment, it is probable that a significant future reversal of cumulative revenue under the contract will not occur. Any estimates, including the effect of the constraint on variable consideration, are evaluated at each reporting period, and if necessary, we adjust our estimate of the overall transaction price. Revenue is then recognized over the remaining estimated period of performance using the cumulative catch-up method.

Our Graduate Program Segment derives revenue primarily from contractually specified percentages of the amounts our university clients receive from their students in 2U-enabled degree programs for tuition and fees, less credit card fees and other specified charges we have agreed to exclude in certain university contracts. Our contracts with university clients in this segment typically have terms of 10 to 15 years and have a single performance obligation, as the promises to provide a platform of tightly integrated technology and services that university clients need to attract, enroll, educate and support students are not distinct within the context of the contracts. The single performance obligation is delivered as the university clients receive and consume benefits, which occurs ratably over a series of academic terms. The amounts received from university clients over the term of the arrangement are variable in nature in that they are dependent upon the number of students that are enrolled in the program within each academic term. These amounts are allocated to and are recognized ratably over the related academic term, defined as the period beginning on the first day of classes through the last. Revenue is recognized net of an allowance, which is established for our expected obligation to refund tuition and fees to university clients.

Our Alternative Credential Segment derives revenue primarily from contracts with students for the tuition and fees paid to enroll in, and progress through, our short courses and boot camps. Our short courses run between six and 16 weeks, while our boot camps run between 12 and 24 weeks. In this segment, our contracts with students include the delivery of the educational and related student support services and are treated as either a single performance obligation or multiple performance obligations, depending upon the offering being delivered. All performance obligations are satisfied ratably over the same presentation period, which is defined as the period beginning on the first day of the course through the last. We recognize the proceeds received, net of any applicable pricing concessions, from the students enrolled and share contractually specified amounts received from students with the associated university client, in exchange for licenses to use the university brand name and other university trademarks. These amounts are recognized as curriculum and teaching costs on our condensed consolidated statements of operations and comprehensive loss. Our contracts with university clients in this segment are typically shorter and less restrictive than our contracts with university clients in our Graduate Program Segment.

We do not disclose the value of unsatisfied performance obligations for our Graduate Program Segment because the variable consideration is allocated entirely to a wholly unsatisfied promise to transfer a service that forms part of a single performance obligation. We do not disclose the value of unsatisfied performance obligations for our Alternative Credential Segment because the performance obligations are part of contracts that have original durations of less than one year.

Contract Acquisition Costs

We pay commissions to certain of our employees to obtain contracts with university clients in our Graduate Program Segment. These costs are capitalized and recorded on a contract-by-contract basis and amortized using the straight-line method over the expected life, which is generally the length of the contract.

With respect to contract acquisition costs in our Alternative Credential Segment, we have elected to apply the practical expedient in ASC Topic 606 to expense these costs as incurred, as the terms of contracts with students in this segment are less than one year.

Payments to University Clients

Pursuant to certain of our contracts in the Graduate Program Segment, we have made, or are obligated to make, payments to university clients at either execution of a contract or at the extension of a contract in exchange for various marketing and other rights. Generally, these amounts are capitalized and amortized as contra revenue over the life of the contract, commencing on the later of when payment is due or when contract revenue recognition begins.

Accounts Receivable, Contract Assets and Liabilities

Balance sheet items related to contracts consist of accounts receivable, net and deferred revenue on our condensed consolidated balance sheets. Included in accounts receivable, net are trade accounts receivable, which are comprised of billed and unbilled revenue. Accounts receivable, net is stated at amortized cost net of provision for credit losses. Our methodology to measure the provision for credit losses requires an estimation of loss rates based upon historical loss experience adjusted for factors that are relevant to determining the expected collectability of accounts receivable. Some of these factors include current market conditions, delinquency trends, aging behavior of receivables and credit and liquidity quality indicators for industry groups, customer classes or individual customers.

Our estimates are reviewed and revised periodically based on the ongoing evaluation of credit quality indicators. Historically, actual write-offs for uncollectible accounts have not significantly differed from prior estimates. We recognize unbilled revenue when revenue recognition occurs in advance of billings. Unbilled revenue is recognized in our Graduate Program Segment because billings to university clients do not occur until after the academic term has commenced and final enrollment information is available. Our unbilled revenue represents contract assets. Unbilled accounts receivable is recognized in the Alternative Credential Segment once the presentation period commences for amounts to be invoiced to students under installment plans that are paid over the same presentation period.

Deferred revenue represents the excess of amounts billed or received as compared to amounts recognized in revenue on our condensed consolidated statements of operations and comprehensive loss as of the end of the reporting period, and such amounts are reflected as a current liability on our condensed consolidated balance sheets. We generally receive payments from Graduate Program Segment university clients early in each academic term and from Alternative Credential Segment students, either in full upon registration for the course or in full before the end of the course based on a payment plan, prior to completion of the service period. These payments are recorded as deferred revenue until the services are delivered or until our obligations are otherwise met, at which time revenue is recognized.

Long-Lived Assets

Amortizable Intangible Assets

Acquired Intangible Assets. We capitalize purchased intangible assets, such as software, websites and domains, and amortize them on a straight-line basis over their estimated useful life. Historically, we have assessed the useful lives of these acquired intangible assets to be between three and 10 years.

Capitalized Technology. Capitalized technology includes certain purchased software and technology licenses, direct third-party costs, and internal payroll and payroll-related costs used in the creation of our internal-use software. Software development projects generally include three stages: the preliminary project stage (all costs are expensed as incurred), the application development stage (certain costs are capitalized and certain costs are expensed as incurred) and the post-implementation/operation stage (all costs are expensed as incurred). Costs capitalized in the application development stage include costs of designing the application, coding, integrating our and the university's networks and systems, and the testing of the software. Capitalization of costs requires judgment in determining when a project has reached the application development stage and the period over which we expect to benefit from the use of that software. Once the software is placed in service, these costs are amortized using the straight-line method over the estimated useful life of the software, which is generally three to five years.

Capitalized Content Development. We develop content for each offering on a course-by-course basis in collaboration with university client faculty and industry experts. Depending upon the offering, we may use materials provided by university clients and their faculty, including curricula, case studies, presentations and other reading materials. We are responsible for the creation of materials suitable for delivery through our learning platform, including all expenses associated with this effort. With respect to the Graduate Program Segment, the development of content is part of our single performance obligation and is considered a contract fulfillment cost.

The content development costs that qualify for capitalization are third-party direct costs, such as videography, editing and other services associated with creating digital content. Additionally, we capitalize internal payroll and payroll-related costs incurred to create and produce videos and other digital content utilized in the university clients' offerings for delivery via our online learning platform. Capitalization ends when content has been fully developed by both us and the university client, at which time amortization of the capitalized content development costs begins. The capitalized costs for each offering are recorded on a course-by-course basis and included in capitalized content costs in amortizable intangible assets, net on our consolidated balance sheets. These costs are amortized using the straight-line method over the estimated useful life of the respective course, which is generally four to five years. The estimated useful life corresponds with the planned curriculum refresh rate. This refresh rate is consistent with expected curriculum refresh rates as cited by faculty members for similar on-campus offerings.

Evaluation of Long-Lived Assets

We review long-lived assets, which consist of property and equipment, capitalized technology costs, capitalized content development costs and acquired finite-lived intangible assets, for impairment whenever events or changes in circumstances indicate the carrying value of an asset may not be recoverable. In order to assess the recoverability of the capitalized technology and content development costs, the costs are grouped by the lowest level of independent cash flows. Recoverability of a long-lived asset is measured by a comparison of the carrying value of an asset or asset group to the future undiscounted net cash flows expected to be generated by that asset or asset group. If such assets are not recoverable, the impairment to be recognized is measured by the amount by which the carrying value of an asset exceeds the estimated fair value (discounted cash flow) of the asset or asset group. Our impairment analysis is based upon cumulative results and forecasted performance.

Goodwill

Goodwill is the excess of purchase price over the fair value of identified net assets of businesses acquired. Our goodwill balance relates to the acquisitions of GetSmarter in July 2017 and Trilogy in May 2019. We review goodwill at least annually, as of October 1. Between annual tests, goodwill is reviewed for possible impairment if an event occurs or circumstances change that would more likely than not reduce the fair value of a reporting unit below its carrying value. We test our goodwill at the reporting unit level, which is an operating segment or one level below an operating segment. We initially assess qualitative factors to determine if it is necessary to perform a quantitative goodwill impairment review. We review goodwill for impairment using a quantitative approach if we decide to bypass the qualitative assessment or determine that it is more likely than not that the fair value of a reporting unit is less than its carrying value based on a qualitative assessment. Upon completion of a quantitative assessment, we may be required to recognize an impairment based on the difference between the carrying value and the fair value of the reporting unit.

We determine the fair value of a reporting unit by utilizing a weighted combination of the income-based and market-based approaches. The income-based approach requires us to make significant assumptions and estimates. These assumptions and estimates primarily include, but are not limited to, the selection of appropriate peer group companies, discount rates, terminal growth rates, and forecasts of revenue, operating income, depreciation and amortization expense, capital expenditures and future working capital requirements. When determining these assumptions and preparing these estimates, we consider each reporting unit's historical results and current operating trends, revenue, profitability, cash flow results and forecasts, and industry trends. These estimates can be affected by a number of factors including, but not limited to, general economic and regulatory conditions, market capitalization, the continued efforts of competitors to gain market share and prospective student enrollment patterns.

In addition, the value of a reporting unit using the market-based approach is estimated by comparing the reporting unit to other publicly traded companies and/or to publicly-disclosed business mergers and acquisitions in similar lines of business. The value of a reporting unit is based on pricing multiples of certain financial parameters observed in the comparable companies. We also make estimates and assumptions for market values to determine a reporting unit's estimated fair value.

Other than the reporting unit impaired in the third quarter of 2019, we had no reporting units whose estimated fair value exceeded their carrying value by less than 10% as of October 1, 2019, the date of our annual goodwill impairment assessment. It is possible that future changes in our circumstances, including a potential impact from COVID-19, or in the

variables associated with the judgments, assumptions and estimates used in assessing the fair value of our reporting units, could require us to record additional impairment charges in the future.

Recent Accounting Pronouncements

Refer to Note 2 in the “Notes to Condensed Consolidated Financial Statements” included in Part I, Item 1 of this Quarterly Report on Form 10-Q for a discussion of the FASB’s recent accounting pronouncements and their effect on us.

Key Business and Financial Performance Metrics

We use a number of key metrics to evaluate our business, measure our performance, identify trends affecting our business, formulate financial projections and make strategic decisions. In addition to adjusted EBITDA (loss), which we discuss below, and revenue and the components of loss from operations in the section above entitled “Our Business Model and Components of Operating Results,” we utilize FCE enrollments as a key metric to evaluate the success of our business.

Full Course Equivalent Enrollments

We measure FCE enrollments for each of the courses offered during a particular period by taking the number of students enrolled in that course and multiplying it by the percentage of the course completed during that period. We add the FCE enrollments for each course within each segment to calculate the total FCE enrollments per segment. This metric allows us to consistently view period-over-period changes in enrollments by accounting for the fact that many courses we enable straddle multiple fiscal quarters. For example, if a course had 25 enrolled students and 40% of the course was completed during a particular period, we would count the course as having 10 FCE enrollments for that period. Any individual student may be enrolled in more than one course during a period.

Average revenue per FCE enrollment represents our weighted-average revenue per course across the mix of courses being offered during a period in each of our operating segments. This number is derived by dividing the total revenue for a period for each of our operating segments by the number of FCE enrollments within the applicable segment during that same period. This amount may vary from period to period depending on the academic calendars of our university clients, the relative growth rates of our degree programs, short courses, and boot camps, as applicable, and varying tuition levels, among other factors.

The following table presents the FCE enrollments and average revenue per FCE enrollment in our Graduate Program Segment and Alternative Credential Segment for each of the periods indicated.

	Three Months Ended June 30,		Six Months Ended June 30,	
	2020	2019	2020	2019
Graduate Program Segment				
FCE enrollments	46,142	39,180	91,876	78,692
Average revenue per FCE enrollment	\$ 2,507	\$ 2,588	\$ 2,548	\$ 2,612
Alternative Credential Segment*				
FCE enrollments	20,435	12,662	35,576	20,262
Average revenue per FCE enrollment**	\$ 3,279	\$ 2,955	\$ 3,486	\$ 2,738

* Trilogy’s results of operations are included in our results of operations since the acquisition date.

** The calculation of the Alternative Credential Segment’s average revenue per FCE enrollment includes \$3.3 million of revenue that was excluded from the results of operations during each of the three- and six-month periods ended June 30, 2019, respectively, due to a deferred revenue fair value purchase accounting adjustment recorded in connection with the acquisition of Trilogy.

Of the increase in FCE enrollments in our Graduate Program Segment for the three months ended June 30, 2020 and 2019, 2,018, or 29.0%, and 3,276, or 38.0%, respectively, were attributable to degree programs launched during the preceding 12 months. Of the increase in FCE enrollments in our Graduate Program Segment for the six months ended June 30, 2020 and 2019, 4,898, or 37.2%, and 5,928, or 32.3%, respectively, were attributable to degree programs launched during the preceding 12 months.

Of the increase in FCE enrollments in our Alternative Credential Segment for the three months ended June 30, 2020 and 2019, 4,200, or 54.0%, and 2,555, or 57.5%, respectively, were attributable to offerings launched during the preceding

12 months. Of the increase in FCE enrollments in our Alternative Credential Segment for the six months ended June 30, 2020 and 2019, 6,339, or 41.4%, and 4,898, or 81.1%, respectively, were attributable to offerings launched during the preceding 12 months.

Adjusted EBITDA (Loss)

We define adjusted EBITDA (loss) as net income or net loss, as applicable, before net interest income (expense), taxes, depreciation and amortization expense, foreign currency gains or losses, deferred revenue fair value adjustments, transaction costs, integration costs, restructuring-related costs, stockholder activism costs, impairment charges, losses on debt extinguishment, and stock-based compensation expense. In the second quarter of 2020, we revised our definition of adjusted EBITDA (loss) to exclude losses on debt extinguishment. We believe this change is useful to investors because we did not have a loss on debt extinguishment in prior periods, and as a result, excluding the impact of such a loss in this period facilitates a period-to-period comparison of our business.

Adjusted EBITDA (loss) is a key measure used by our management and board of directors to understand and evaluate our operating performance and trends, to develop short- and long-term operational plans and to compare our performance against that of other peer companies using similar measures. In particular, the exclusion of certain expenses in calculating adjusted EBITDA (loss) can provide a useful measure for period-to-period comparisons of our business. Accordingly, we believe that adjusted EBITDA (loss) provides useful information to investors and others in understanding and evaluating our operating results in the same manner as our management and board of directors.

Adjusted EBITDA (loss) is not a measure calculated in accordance with U.S. GAAP, and should not be considered as an alternative to any measure of financial performance calculated and presented in accordance with U.S. GAAP.

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

- although depreciation and amortization expense are non-cash charges, the assets being depreciated and amortized may have to be replaced in the future, and adjusted EBITDA (loss) does not reflect cash capital expenditure requirements for such replacements or for new capital expenditure requirements;
- adjusted EBITDA (loss) does not reflect changes in, or cash requirements for, our working capital needs;
- adjusted EBITDA (loss) does not reflect the impact of changes in foreign currency exchange rates;
- adjusted EBITDA (loss) does not reflect acquisition related gains or losses such as, but not limited to, post-acquisition changes in the value of contingent consideration reflected in operations;
- adjusted EBITDA (loss) does not reflect transaction costs, integration costs, restructuring-related costs, impairment charges, stockholder activism costs or losses on debt extinguishment;
- adjusted EBITDA (loss) does not reflect the impact of deferred revenue fair value adjustments;
- adjusted EBITDA (loss) does not reflect the potentially dilutive impact of equity-based compensation;
- adjusted EBITDA (loss) does not reflect interest or tax payments that may represent a reduction in cash available to us; and
- other companies, including companies in our industry, may calculate adjusted EBITDA (loss) differently, which reduces its usefulness as a comparative measure.

Because of these and other limitations, you should consider adjusted EBITDA (loss) alongside other U.S. GAAP-based financial performance measures, including various cash flow metrics, net income (loss) and our other U.S. GAAP results. The following table presents a reconciliation of net loss to adjusted EBITDA (loss) for each of the periods indicated.

	Three Months Ended June 30,		Six Months Ended June 30,	
	2020	2019	2020	2019
	(in thousands)			
Net loss	\$ (66,167)	\$ (27,972)	\$ (126,273)	\$ (49,526)
Adjustments:				
Interest expense (income), net	6,364	610	11,344	(1,684)
Foreign currency (gain) loss	(570)	13	1,701	383
Income tax benefit	(363)	(18,691)	(1,418)	(19,632)
Depreciation and amortization expense	23,985	14,653	47,470	24,351
Deferred revenue fair value adjustment	—	3,352	—	3,352
Transaction and integration costs	359	3,093	1,083	5,024
Restructuring-related costs	196	—	484	—
Stockholder activism costs	1,347	—	5,586	—
Loss on debt extinguishment	11,671	—	11,671	—
Stock-based compensation expense	21,091	9,967	41,961	19,551
Total adjustments	64,080	12,997	119,882	31,345
Adjusted EBITDA (loss)	\$ (2,087)	\$ (14,975)	\$ (6,391)	\$ (18,181)

Item 3. Quantitative and Qualitative Disclosures About Market Risk

There have been no material changes to market risk from the information provided in Part II, Item 7A of our Annual Report on Form 10-K, filed with the SEC on February 28, 2020.

Foreign Currency Exchange Risk

We transact material business in foreign currencies and are exposed to risks resulting from fluctuations in foreign currency exchange rates. Our primary exposures are related to non-U.S. dollar denominated revenue and operating expenses in South Africa and the United Kingdom. Accounts relating to foreign operations are translated into U.S. dollars using prevailing exchange rates at the relevant period end. As a result, we would experience increased revenue and operating expenses in our non-U.S. operations if there were a decline in the value of the U.S. dollar relative to these foreign currencies. Conversely, we would experience decreased revenue and operating expenses in our non-U.S. operations if there were an increase in the value of the U.S. dollar relative to these foreign currencies. Translation adjustments are included as a separate component of stockholders' equity.

For the three months ended June 30, 2020 and 2019, our foreign currency translation adjustment was a gain of \$1.4 million and \$2.2 million, respectively. For the six months ended June 30, 2020 and 2019, our foreign currency translation adjustment was a loss of \$14.7 million and a gain of \$1.9 million, respectively.

For the three months ended June 30, 2020 and 2019, we recognized foreign currency exchange gains of \$0.6 million and losses of \$13.0 thousand, respectively, included on our condensed consolidated statements of operations and comprehensive loss. For the six months ended June 30, 2020 and 2019, we recognized foreign currency exchange losses of \$1.7 million and \$0.4 million, respectively, included on our condensed consolidated statements of operations and comprehensive loss.

The foreign exchange rate volatility of the trailing 12 months ended June 30, 2020 was 13% and 9% for the South African rand and British pound, respectively. The foreign exchange rate volatility of the trailing 12 months ended June 30, 2019 was 13% and 6% for the South African rand and British pound, respectively. A 10% fluctuation of foreign currency exchange rates would have had an immaterial effect on our results of operations and cash flows for all periods presented. The fluctuations of currencies in which we conduct business can both increase and decrease our overall revenue and expenses for any given fiscal period. Such volatility, even when it increases our revenue or decreases our expense, impacts our ability to accurately predict our future results and earnings.

Item 4. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

We maintain disclosure controls and procedures that are designed to ensure that information required to be disclosed in our reports under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC’s rules and forms, and that such information is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosure based on the definition of “disclosure controls and procedures” as promulgated under the Exchange Act and the rules and regulations thereunder. In designing and evaluating the disclosure controls and procedures, management recognized that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives, and management necessarily was required to apply its judgment in evaluating the cost-benefit relationship of possible controls and procedures. Based on this evaluation, management concluded that our disclosure controls and procedures were effective as of June 30, 2020 at a reasonable assurance level.

Changes in Internal Control Over Financial Reporting

We made no changes in internal control over financial reporting during the three months ended June 30, 2020 that materially affected, or are reasonably likely to materially affect, our internal control over financial reporting, other than changes in our control environment to integrate the business we acquired in the Trilogy acquisition.

PART II. OTHER INFORMATION

Item 1. Legal Proceedings

We are involved in various claims and legal proceedings arising in the ordinary course of business. We accrue a liability when a loss is considered probable and the amount can be reasonably estimated. See “Note 6. Commitments and Contingencies—Legal Contingencies” to our unaudited financial statements included elsewhere in this periodic report. While we do not expect that the ultimate resolution of any existing claims and proceedings (other than the specific matter described below, if decided adversely), individually or in the aggregate, will have a material adverse effect on our financial position, an unfavorable outcome in some or all of these proceedings could have a material adverse impact on the results of operations or cash flows for a particular period. This assessment is based on our current understanding of relevant facts and circumstances. As such, our view of these matters is subject to inherent uncertainties and may change in the future.

In re 2U, Inc., Securities Class Action

On August 7 and 9, 2019, Aaron Harper and Anne M. Chinn filed putative class action complaints against us, Christopher J. Paucek, our CEO, and Catherine A. Graham, our former CFO, in the United States District Court for the Southern District of New York, alleging violations of Sections 10(b) and 20(a) of the Exchange Act, and Rule 10b-5 promulgated thereunder, based upon allegedly false and misleading statements regarding our company’s business prospects and financial projections. The district court transferred the cases to the United States District Court for the District of Maryland, consolidated them under docket number 8:19-cv-3455 (D. Md.), and appointed Fiyyaz Pirani as the lead plaintiff in the consolidated action. On July 30, 2020, Mr. Pirani filed a consolidated class action complaint (“CAC”), adding Harsha Mokkarala, our former Chief Marketing Officer, as a defendant. The CAC also asserts claims under Sections 11, 12(A) (2), and 15 of the Securities Act, against Mr. Paucek, Ms. Graham, members of our Board of Directors, and our underwriters, based on allegations related to our secondary stock offering on May 23, 2018. The proposed class consists of all persons who acquired our company’s securities between February 26, 2018 and July 30, 2019. The deadline for the defendants to file a motion to dismiss is September 29, 2020.

We believe that the claims are without merit and we intend to vigorously defend against these claims. However, due to the complex nature of the legal and factual issues involved, the outcome of this matter is not presently determinable.

Stockholder Derivative Suit

On April 30, 2020, Richard Theis filed a stockholder derivative complaint purportedly on behalf of our company and against Christopher J. Paucek, our CEO, Catherine A. Graham, our former CFO, and our board of directors in the United States District Court for the Southern District of New York, with docket number 20-cv-3360. The complaint alleges claims for breaches of fiduciary duty, insider sales and misappropriation of information, unjust enrichment, and violations of Section 14(a) of the Exchange Act based upon allegedly false and misleading statements regarding our company’s business prospects and financial projections. On July 22, 2020, the court entered a joint stipulation staying the case pending resolution of the securities class action. Due to the complex nature of the legal and factual issues involved, the outcome of this matter is not presently determinable.

Item 1A. Risk Factors

You should carefully review and consider the information regarding certain factors that could materially affect our business, financial condition or future results. The risks described in Part I, Item 1A “Risk Factors” of our Annual Report on Form 10-K for the year ended December 31, 2019 are amended and supplemented by the risk factors provided below, which supersede and replace any similarly titled risk factors. These risks do not identify all risks that we face. Our operations could also be affected by factors that are not presently known to us or that we currently consider to be immaterial to our operations.

The global coronavirus outbreak could harm our business, results of operations, and financial condition.

In March 2020, the World Health Organization declared COVID-19 a global pandemic. This contagious outbreak, which has continued to spread, and the related adverse public health developments, including orders to shelter-in-place, travel restrictions and mandated business closures, have adversely affected workforces, organizations, customers, economies and financial markets globally, leading to an economic downturn and increased market volatility. It has also disrupted the normal operations of many businesses, including ours.

This outbreak, as well as intensified measures undertaken to contain the spread of COVID-19, could cause disruptions and severely impact our business, including, but not limited to:

- causing one or more of our clients to file for bankruptcy protection or shut down;
- reducing student demand for our degree programs, short courses and boot camps, whether due to funding constraints related to loss of employment or lack of interest in pursuing education during a period of uncertainty;
- impacting current and prospective clients' desire to launch new educational offerings with us;
- negatively impacting collections of accounts receivable;
- negatively impacting our ability to facilitate in-program placements for students in clinical graduate programs; and
- harming our business, results of operations and financial condition.

We cannot predict with any certainty whether and to what degree the disruption caused by the COVID-19 pandemic and reactions thereto will continue, and we expect to face difficulty accurately predicting our internal financial forecasts.

Our continued access to sources of liquidity also depend on multiple factors, including global economic conditions, the condition of global financial markets, the availability of sufficient amounts of financing and our operating performance. There is no guarantee that additional debt financing will be available in the future to fund our obligations, or that it will be available on commercially reasonable terms, in which case we may need to seek other sources of funding. In addition, the terms of future debt agreements could include more restrictive covenants, which could restrict our business operations.

The outbreak also presents challenges as our workforce is currently working remotely and shifting to assisting new and existing customers and their students who are also generally working remotely. We also transitioned our on-campus boot camp offerings to online, which could result in interruptions or disruptions in boot camp delivery. All of this could affect the anticipated launch dates of, and demand for, our degree programs, short courses and boot camps.

The COVID-19 pandemic may also have the effect of heightening many of the other risks identified in the "Risk Factors" section of our Annual Report on Form 10-K for the year ended December 31, 2019, such as those related to disruption or failures of our platform and the adoption by colleges and universities of online delivery of their educational offerings.

It is not possible for us to predict the duration or magnitude of the adverse results of the outbreak and its effects on our business, results of operations or financial condition at this time, but such effects may be material.

Our substantial indebtedness could adversely affect our ability to raise additional capital to fund our operations, limit our ability to react to changes in the economy or our industry, expose us to interest rate risk and prevent us from meeting our obligations with respect to our indebtedness.

As of June 30, 2020, we had approximately \$385.3 million of indebtedness on a consolidated basis. See Note 8 in the Notes to Condensed Consolidated Financial Statements included in Part I, Item 1 of this Quarterly Report on Form 10-Q.

Our substantial indebtedness could have important consequences. For example, it could:

- limit our ability to obtain additional financing for working capital, capital expenditures, acquisitions, investments and other general corporate purposes;
- require a substantial portion of our cash from operating activities to be dedicated to debt service payments and reduce the amount of cash available for working capital, capital expenditures, investments or acquisitions and other general corporate purposes;
- place us at a competitive disadvantage compared to certain of our competitors who have less debt;
- hinder our ability to adjust rapidly to changing market conditions;
- limit our ability to secure adequate bank financing in the future with reasonable terms and conditions; and
- increase our vulnerability to, and limit our flexibility in planning for or reacting to, a potential downturn in general economic conditions or in one or more of our businesses.

The Indenture and the Credit Agreement contain, and the agreements governing indebtedness we may incur in the future may contain, affirmative and negative covenants that limit our ability to engage in activities that may be in our long-term best interests. Our failure to comply with those covenants could result in an event of default which, if not cured or waived, could result in the acceleration of all of our debt.

In addition, any variable rate indebtedness under the revolving credit facility may use the London Interbank Offered Rate (“LIBOR”) as a benchmark for establishing the rate. On July 27, 2017, the authority that regulates LIBOR announced that it intends to stop compelling banks to submit rates for the calculation of LIBOR after 2021. It is unclear whether new methods of calculating LIBOR will be established such that it continues to exist after 2021. The U.S. Federal Reserve, in conjunction with the Alternative Reference Rates Committee, is considering replacing U.S. dollar LIBOR with a newly created index, calculated with a broad set of short-term repurchase agreements backed by treasury securities. It is not possible to predict the effect of these changes, other reforms or the establishment of alternative reference rates in the United Kingdom, the United States or elsewhere.

Despite current indebtedness levels, we may still incur additional indebtedness that could further exacerbate the risks associated with our substantial financial leverage.

We may incur significant additional indebtedness in the future under the agreements governing our indebtedness. We will not be restricted under the terms of the Indenture from incurring additional debt. Although the Credit Agreement contains, and any future indebtedness may contain, restrictions on the incurrence of additional indebtedness, these restrictions are subject to a number of thresholds, qualifications and exceptions, and the additional indebtedness incurred in compliance with these restrictions could be substantial. Additionally, these restrictions could permit us to incur obligations that, although preferential to our common stock in terms of payment, do not constitute indebtedness.

Furthermore, any future indebtedness may prohibit or otherwise restrict us from making any cash payments on the conversion or repurchase of the Notes. Our failure to make cash payments upon the conversion or repurchase of the Notes as required under the terms of the Notes would permit holders of the Notes to accelerate our obligations under the Notes. In addition, any future indebtedness that we may incur may contain financial and other restrictive covenants that limit our ability to operate our business, raise capital or make payments under our other indebtedness. If we fail to comply with such covenants or to make payments under our indebtedness when due, then we would be in default under that indebtedness, which could, in turn, result in that indebtedness becoming immediately payable in full.

The Credit Agreement contains financial covenants that may limit our operational flexibility.

The Credit Agreement requires us to comply with several customary financial and other restrictive covenants, such as maintaining leverage ratios in certain situations, maintaining insurance coverage, and restricting our ability to make certain investments. We are also required to maintain minimum Liquidity (as defined in the Credit Agreement) as of the last day of each fiscal quarter through the fiscal quarter ending on December 31, 2021, which may limit our ability to engage in new lines of business, make certain investments, pay dividends, or enter into various transactions. The Credit Agreement also includes covenants that require us to (i) meet certain minimum Consolidated EBITDA (as defined in the Credit Agreement) amounts through our fiscal quarter ending on December 31, 2021, (ii) not exceed certain maximum amounts for the Consolidated Secured Leverage Ratio (as defined in the Credit Agreement) as of the last day of any period of four consecutive fiscal quarters ending after (but not including) December 31, 2021 through maturity and (iii) maintain certain minimum amounts for the Consolidated Fixed Charge Coverage Ratio (as defined in the Credit Agreement) for any period of four consecutive fiscal quarters ending after (but not including) December 31, 2021 through maturity.

These covenants may limit the flexibility of our operations, and failure to meet any one of these financial covenants could result in a default under the Credit Agreement. If such a default were to occur, the lenders would have the right to terminate their commitments to provide loans under the Credit Agreement and declare any and all borrowings outstanding, together with accrued and unpaid interest and fees, to be immediately due and payable. In addition, the lenders would have the right to proceed against the collateral in which we granted a first priority security interest to them, which consists of substantially all our assets. If the debt under the Credit Agreement were to be accelerated, we may not have sufficient cash or be able to borrow sufficient funds to refinance the debt or sell sufficient assets to repay the debt, which could immediately materially and adversely affect our business, financial condition, and results of operations. See Note 8 in the Notes to Condensed Consolidated Financial Statements included in Part I, Item 1 of this Quarterly Report on Form 10-Q for additional details regarding our Credit Agreement.

To service our indebtedness, we will require a significant amount of cash, and our ability to generate cash depends on many factors beyond our control.

Our ability to make cash payments on and to refinance our indebtedness will depend upon our financial condition and operating performance, which are subject to prevailing economic and competitive conditions and to financial, business, legislative, regulatory and other factors beyond our control.

If we are unable to generate sufficient cash from operating activities or are otherwise unable to obtain funds necessary to meet required payments of principal, premium, if any, and interest on our indebtedness, or amounts paid in cash upon conversion of Notes, or if we fail to comply with the various covenants in the instruments governing our indebtedness and we

are unable to obtain waivers from the required lenders or noteholders, we could be in default under the terms of the agreements governing such indebtedness. In the event of such default, the holders of our indebtedness could elect to declare all the funds borrowed to be due and payable, together with accrued and unpaid interest. As a result, we could be forced into bankruptcy or liquidation.

We may be unable to raise the funds necessary to repurchase the Notes for cash following a “fundamental change,” or to pay any cash amounts due upon conversion, and our other indebtedness may limit our ability to repurchase the Notes or pay cash upon their conversion.

Holders of the Notes may, subject to certain exceptions, require us to repurchase their Notes following a “fundamental change” (as defined in the Indenture) at a cash repurchase price generally equal to the principal amount of the Notes to be repurchased, plus accrued and unpaid interest, if any. In addition, upon conversion, we will satisfy part or all of our conversion obligation in cash unless we elect to settle conversions solely in shares of our common stock. We may not have enough available cash or be able to obtain financing at the time we are required to repurchase the Notes or pay the cash amounts due upon conversion. In addition, applicable law, regulatory authorities and the agreements governing our other indebtedness may restrict our ability to repurchase the Notes or pay the cash amounts due upon conversion. Our failure to repurchase Notes or to pay the cash amounts due upon conversion when required will constitute a default under the Indenture. A default under the Indenture or the fundamental change itself could also lead to a default under agreements governing our other indebtedness, which may result in that other indebtedness becoming immediately payable in full. We may not have sufficient funds to satisfy all amounts due under the other indebtedness and the Notes.

Conversion of the Notes may dilute the ownership interest of existing stockholders or may otherwise depress the price of our common stock.

The conversion of some or all of the Notes may dilute the ownership interests of existing stockholders to the extent we deliver shares upon any conversion of the Notes. Any sales in the public market of the common stock issuable upon such conversion could adversely affect prevailing market prices of our common stock. In addition, the existence of the Notes may encourage short selling by market participants because the conversion of the Notes could be used to satisfy short positions. The anticipated conversion of the Notes into shares of our common stock could also depress the price of our common stock.

Provisions in the Indenture and in the Credit Agreement could delay or prevent an otherwise beneficial takeover of us.

Certain provisions in the Notes and the Indenture could make a third-party attempt to acquire us more difficult or expensive. For example, if a takeover constitutes a “fundamental change” (as defined in the Indenture), then noteholders will have the right to require us to repurchase their Notes for cash. In addition, if a takeover constitutes a “make-whole fundamental change” (as defined in the Indenture), then we may be required to temporarily increase the conversion rate. In either case, and in other cases, our obligations under the Notes and the Indenture, as well as the Credit Agreement, under which a “change of control” is an event of default resulting in acceleration of all indebtedness thereunder, could increase the cost of acquiring us or otherwise discourage a third party from acquiring us or removing incumbent management, including in a transaction that noteholders or holders of our common stock may view as favorable.

The accounting method for convertible debt securities that may be settled in cash, such as the Notes, could have a material effect on our reported financial results.

In May 2008, the Financial Accounting Standards Board (the “FASB”) issued FASB Staff Position No. APB 14-1, *Accounting for Convertible Debt Instruments That May Be Settled in Cash Upon Conversion (Including Partial Cash Settlement)*, which has subsequently been codified as Accounting Standards Codification Subtopic 470-20, *Debt with Conversion and Other Options* (“ASC 470-20”). Under ASC 470-20, an entity must separately account for the liability and equity components of the convertible debt instruments (such as the Notes) that may be settled entirely or partially in cash upon conversion in a manner that reflects the issuer’s economic interest cost. The effect of ASC 470-20 on the accounting for the Notes is that the equity component is required to be included in the additional paid-in capital section of stockholders’ equity on our consolidated balance sheet at the issuance date, and the value attributed to the equity component would be treated as original issue discount for purposes of accounting for the debt component of the Notes. As a result, we will be required to record a greater amount of non-cash interest expense in current periods presented as a result of the amortization of the discounted carrying value of the Notes to their face amount over the term of the Notes. We will report lower net income in our financial results because ASC 470-20 will require interest to include both the current period’s amortization of the debt discount and the instrument’s coupon interest rate, which could adversely affect our reported or future financial results or the trading price of our common stock.

In addition, under certain circumstances, convertible debt instruments (such as the Notes) that may be settled entirely or partly in cash are currently accounted for utilizing the treasury stock method, the effect of which is that the shares of common stock issuable upon conversion of the Notes are not included in the calculation of diluted earnings per share except to

the extent that the conversion value of the Notes exceeds their principal amount. Under the treasury stock method, for diluted earnings per share purposes, the transaction is accounted for as if the number of shares of common stock that would be necessary to settle such excess, if we elected to settle such excess in shares, are issued. We cannot be sure that the accounting standards in the future will continue to permit the use of the treasury stock method. For example, the FASB recently published an exposure draft proposing to amend these accounting standards to eliminate the treasury stock method for convertible instruments and instead require application of the “if-converted” method. Under that method, if it is adopted, diluted earnings per share would generally be calculated assuming that all the Notes were converted solely into shares of common stock at the beginning of the reporting period, unless the result would be anti-dilutive. If we are unable to use the treasury stock method in accounting for the shares issuable upon conversion of the Notes, then our diluted earnings per share would be adversely affected.

The capped call transactions may affect the value of our common stock.

In connection with the Notes, we entered into capped call transactions with certain option counterparties. The capped call transactions are expected generally to reduce the potential dilution upon any conversion of the Notes and/or offset any cash payments we are required to make in excess of the principal amount of converted Notes, as the case may be, with such reduction and/or offset subject to a cap.

The option counterparties or their respective affiliates may modify their hedge positions by entering into or unwinding various derivatives with respect to our common stock and/or purchasing or selling our common stock or other securities of ours in secondary market transactions from time to time (and are likely to do so following any conversion of the Notes, any repurchase of the Notes by us on any fundamental change repurchase date, any redemption date or any other date on which the Notes are retired by us, in each case, if we exercise our option to terminate the relevant portion of the capped call transactions). This activity could also cause or avoid an increase or a decrease in the market price of our common stock.

In addition, if any such capped call transactions are terminated for any reason, the option counterparties or their respective affiliates may unwind their hedge positions with respect to our common stock, which could adversely affect the value of our common stock.

Furthermore, the option counterparties are financial institutions, and we will be subject to the risk that any or all of them might default under the capped call transactions. Our exposure to the credit risk of the option counterparties will not be secured by any collateral. Past global economic conditions have resulted in the actual or perceived failure or financial difficulties of a number of financial institutions. If an option counterparty becomes subject to insolvency proceedings, we will become an unsecured creditor in those proceedings with a claim equal to our exposure at that time under the capped call transactions with such option counterparty. Our exposure will depend on many factors but, generally, an increase in our exposure will be correlated to an increase in the market price and in the volatility of our common stock. In addition, upon a default by an option counterparty, we may suffer adverse tax consequences and more dilution than we currently anticipate with respect to our common stock. We can provide no assurances as to the financial stability or viability of the option counterparties.

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds

(a) Sales of Unregistered Securities

None.

(b) Use of Proceeds from Public Offerings of Common Stock

None.

(c) Purchases of Equity Securities by the Issuer and Affiliated Purchasers

None.

Item 3. Defaults Upon Senior Securities

None.

Item 4. Mine Safety Disclosures

None.

Item 5. Other Information

None.

Item 6. Exhibits

<u>Exhibit Number</u>	<u>Description</u>	<u>Form</u>	<u>File No.</u>	<u>Exhibit Number</u>	<u>Filing Date</u>	<u>Filed/Furnished Herewith</u>
3.1	Amended and Restated Certificate of Incorporation of the Registrant.	8-K	001-36376	3.1	April 4, 2014	
3.2	Amended and Restated Bylaws of the Registrant.	8-K	001-36376	3.2	April 4, 2014	
4.1	Indenture, dated as of April 23, 2020, between 2U, Inc. and Wilmington Trust, National Association.	8-K	001-36376	4.1	April 27, 2020	X
4.2	Form of 2.25% Convertible Senior Note due May 1, 2025 (included as Exhibit A to Exhibit 4.1).	8-K	001-36376	4.1	April 27, 2020	X
10.1	Base Call Option Confirmation, dated as of April 20, 2020, between 2U, Inc. and Citibank, N.A.	8-K	001-36376	10.1	April 27, 2020	X
10.2	Base Call Option Confirmation, dated as of April 20, 2020, between 2U, Inc. and Morgan Stanley & Co. LLC.	8-K	001-36376	10.2	April 27, 2020	X
10.3	Base Call Option Confirmation, dated as of April 20, 2020, between 2U, Inc. and Credit Suisse Capital LLC.	8-K	001-36376	10.3	April 27, 2020	X
10.4	Additional Call Option Confirmation, dated as of April 29, 2020, between 2U, Inc. and Citibank, N.A.	8-K	001-36376	10.1	May 1, 2020	X
10.5	Additional Call Option Confirmation, dated as of April 29, 2020, between 2U, Inc. and Morgan Stanley & Co. LLC.	8-K	001-36376	10.2	May 1, 2020	X
10.6	Additional Call Option Confirmation, dated as of April 29, 2020, between 2U, Inc. and Credit Suisse Capital LLC.	8-K	001-36376	10.3	May 1, 2020	X
10.7*	Credit Agreement, dated as of June 25, 2020, between 2U, Inc. and Morgan Stanley Senior Funding, Inc.					X
10.8†	Summary of Non-Employee Director Compensation.					X
31.1	Certification of Chief Executive Officer of 2U, Inc. pursuant to Exchange Act Rule 13a-14(a)/15d-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.					X
31.2	Certification of Chief Financial Officer of 2U, Inc. pursuant to Exchange Act Rule 13a-14(a)/15d-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.					X
32.1	Certification of Chief Executive Officer of 2U, Inc. in accordance with 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.					X
32.2	Certification of Chief Financial Officer of 2U, Inc. in accordance with 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.					X
101.INS	XBRL Instance Document - The instance document does not appear in the interactive data file because its XBRL tags are embedded within the Inline XBRL document.					X
101.SCH	XBRL Taxonomy Extension Schema Document.					X
101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document.					X

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101.DEF	XBRL Taxonomy Extension Definition Linkbase Document.	X
101.LAB	XBRL Taxonomy Extension Label Linkbase Document.	X
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document.	X
104	Cover Page Interactive Data File (formatted as Inline XBRL with applicable taxonomy extension information contained in Exhibits 101).	X

* Schedules and exhibits have been omitted pursuant to Item 601(a)(5) of Regulation S-K. The Company hereby undertakes to supplementally furnish to the Securities and Exchange Commission copies of any of the omitted schedules and exhibits upon request by the Securities and Exchange Commission.

† Indicates 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.

July 31, 2020

2U, Inc.

By: /s/ Christopher J. Paucek

Christopher J. Paucek
Chief Executive Officer

July 31, 2020

By: /s/ Paul S. Lalljie

Paul S. Lalljie
Chief Financial Officer

CREDIT AGREEMENT

among

2U, INC.,
as Borrower,

The Several Lenders
from Time to Time Parties Hereto

and

MORGAN STANLEY SENIOR FUNDING, INC.,
as Administrative Agent and Collateral Agent

Dated as of June 25, 2020

MORGAN STANLEY SENIOR FUNDING, INC.
CREDIT SUISSE LOAN FUNDING LLC,
and
GOLDMAN SACHS BANK USA
as Joint Lead Arrangers and Bookrunners

CREDIT SUISSE LOAN FUNDING LLC,
and
GOLDMAN SACHS BANK USA
as Syndication Agents

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EXHIBITS:

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B	Form of Compliance Certificate
C	Form of Committed Loan Notice
D	Form of Guarantee and Collateral Agreement
E-1, E-2, E-3 and E-4	Forms of U.S. Tax Compliance Certificates
F-1	Form of Term Note
F-2	Form of Revolving Note
G	Form of Closing Certificate
H	Form of Intercompany Note
I	Form of Solvency Certificate

This CREDIT AGREEMENT (this “Agreement”), dated as of June 25, 2020, among 2U, INC., a Delaware corporation (the “Borrower”), the several banks and other financial institutions or entities from time to time parties to this Agreement (the “Lenders”), MORGAN STANLEY SENIOR FUNDING, INC., as administrative agent (in such capacity, and together with its successors and permitted assigns in such capacity, the “Administrative Agent”), MORGAN STANLEY SENIOR FUNDING, INC., as collateral agent (in such capacity, and together with its successors and permitted assigns in such capacity, the “Collateral Agent”) and MORGAN STANLEY SENIOR FUNDING, INC., as Issuing Lender.

WHEREAS, the Borrower has requested that the Lenders provide a new senior secured revolving credit facility which will be used to finance working capital and for other general corporate purposes of the Borrower and its Subsidiaries, and the Lenders have agreed to provide such facility on the terms and subject to the conditions set forth herein;

NOW THEREFORE, in consideration of the premises and the agreements, provisions and covenants contained herein, the parties hereto agree as follows:

SECTION 1. DEFINITIONS

1.1 Defined Terms.

As used in this Agreement, the terms listed in this Section 1.1 shall have the respective meanings set forth in this Section 1.1.

“Accrediting Body”: any non-governmental entity, including institutional and specialized accrediting agencies, which engages in the granting or withholding of accreditation of educational institutions, programs or courses in accordance with standards relating to the performance, operations, financial condition or academic standards of such institutions, programs or courses.

“Acquired Person”: as defined in Section 7.2(n).

“Administrative Agent”: as defined in the recitals to this Agreement.

“Administrative Agent Parties”: as defined in Section 10.2(c).

“Affected Financial Institution”: (a) any EEA Financial Institution or (b) any UK Financial Institution.

“Affiliate”: of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For purposes of this definition, “control” (including, with correlative meanings, the terms “controlling,” “controlled by” and “under common control with”), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities of the Borrower, by agreement or otherwise.

“Agent Related Parties”: the Administrative Agent, the Collateral Agent, the Issuing Lender and any of their respective Affiliates and the partners, officers, directors, employees, agents, trustees, advisors or representatives of the foregoing.

“Agents”: the collective reference to the Collateral Agent, the Administrative Agent, the Lead Arrangers and the Syndication Agents, which term shall include, for purposes of Sections 9 and 10.5 only, the Issuing Lender.

“Agreement”: as defined in the recitals to this Agreement.

“Agreement Currency”: as defined in Section 10.20.

“Alternate Currency”: means, (x) in the case of Revolving Loans, Sterling, (y) in the case of Letters of Credit, Sterling, and, in each case, each other currency that is approved in accordance with Section 1.7.

“Anti-Terrorism Laws”: Executive Order No. 13224, the Patriot Act, the laws comprising or implementing the Bank Secrecy Act, the laws administered by the United States Treasury Department’s Office of Foreign Asset Control, the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (Canada) and other applicable foreign anti-money laundering, anti-terrorist financing laws and sanctions of Governmental Authorities (each as from time to time in effect).

“Applicable Margin”: for each Type of Loan, the rate per annum set forth under the relevant column heading below:

	Eurodollar Loans	Base Rate Loans
Revolving Loans	3.75%	2.75%

“Applicable Percentage”: with respect to any Revolving Lender, the percentage of the total Revolving Commitments represented by such Revolving Lender’s Revolving Commitment. If the Revolving Commitments have terminated or expired, the Applicable Percentages shall be determined based upon the Revolving Commitments most recently in effect, giving effect to any assignments.

“Application”: an application and agreement for the issuance or amendment of a Letter of Credit in the form from time to time in use by an Issuing Lender.

“Approved Fund”: with respect to any Lender, any Person (other than a natural person) that is engaged in making, purchasing, holding or otherwise investing in commercial loans, or similar extensions of credit in the ordinary course and is administered or managed by (a) such Lender, (b) an Affiliate of such Lender, or (c) an entity or an Affiliate of an entity that administers or manages such Lender.

“Assignee”: as defined in Section 10.6(b).

“Assignment and Assumption”: an assignment and assumption entered into by a Lender and an Eligible Assignee and accepted by the Administrative Agent, and, if applicable, the Borrower and each Issuing Lender, substantially in the form of Exhibit A or any other form (including electronic documentation generated by use of an electronic platform) approved by the Administrative Agent.

“Assignment Effective Date”: as defined in Section 10.6(d).

“Authorized Collateral Agent”: as defined in the Guarantee and Collateral Agreement.

“Available Amount”: means, as of any date (the “Determination Date”), a cumulative amount equal to (without duplication): (a) an amount equal to \$25.0 million, plus (b) 50% of Consolidated Net Income beginning on June 1, 2020 to the end of the most recent fiscal quarter for which financial statements have been provided pursuant to Section 6.1(a) or (b), plus (c) the cash proceeds of new public or private equity issuances (other than Disqualified Capital Stock) of the Borrower or any parent of the Borrower, to the extent the proceeds thereof are contributed to the Borrower as Qualified Capital Stock (other than any such Qualified Capital Stock that is designated as a “Cure Amount” in accordance with the provisions of Section 8.2), plus (d) capital contributions to the Borrower made in cash or Cash Equivalents and the fair market value of assets (other than in respect of Disqualified Capital Stock and other than any Qualified Capital Stock that is designated as a “Cure Amount” in accordance with the provisions of Section 8.2), plus (e) returns, profits, distributions and similar amounts received in cash or Cash Equivalents and the fair market value of assets by the Borrower and its Restricted Subsidiaries on or proceeds of (i) dispositions of Investments and from repurchases and redemptions of such Investments from the Borrower and its Restricted Subsidiaries by any Person (other than the Borrower or any of its Restricted Subsidiaries) and from repayments of loans or advances that constituted Investments (other than intercompany Investments), (ii) the sale of its ownership interest in any joint venture that is not a Subsidiary or of an Unrestricted Subsidiary and (iii) any distribution from an Unrestricted Subsidiary plus (f) the aggregate amount of Indebtedness that has been converted into or exchanged for Capital Stock (other than Disqualified Capital Stock) of the Borrower, plus (g) in the event any Unrestricted Subsidiary has been redesignated as a Restricted Subsidiary or has been merged, consolidated or amalgamated with or into, or transfers or conveys its assets to, or is liquidated into, the Borrower or any Restricted Subsidiary, the fair market value of the Investments of the Borrower or any Restricted Subsidiary in such Unrestricted Subsidiary at the time of such redesignation, combination or transfer (or of the assets transferred or conveyed, as applicable), minus (h) any amounts thereof used to make Restricted Payments pursuant to Section 7.6(f) after the Closing Date and prior to the Determination Date, minus (i) any amounts thereof used to make Investments pursuant to Section 7.7(r) after the Closing Date and prior to the Determination Date and minus (j) any amounts thereof used to make payments in respect of any Junior Financing pursuant to Section 7.8 after the Closing Date and prior to the Determination Date.

“Available Incremental Amount”: as defined in Section 2.14(a).

“Available Revolving Commitment”: as to any Revolving Lender at any time, an amount equal to the excess, if any, of (a) such Lender’s Revolving Commitment then in effect over (b) such Lender’s Revolving Extensions of Credit then outstanding.

“Bail-In Action”: the exercise of any Write-Down and Conversion Powers by the applicable Resolution Authority in respect of any liability of an Affected Financial Institution.

“Bail-In Legislation”: (a) with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law, regulation, rule or requirement for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule and (b) with respect to the United Kingdom, Part I of the United Kingdom Banking Act 2009 (as amended from time to time) and any other law, regulation or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (other than through liquidation, administration or other insolvency proceedings).

“Base Rate”: for any day a fluctuating rate per annum equal to the highest of (a) the Federal Funds Rate plus 1/2 of 1%, (b) the prime commercial lending rate published by the Wall Street Journal as the “prime rate”, and (c) the Eurodollar Rate plus 1.00%.

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

“Benchmark” means, initially, LIBOR; provided that if a Benchmark Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date have occurred with respect to LIBOR or the then-current Benchmark, then “Benchmark” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has become effective pursuant to clause (i) of Section 3.7(b).

“Benchmark Replacement”: the sum of: (a) the alternate benchmark rate (which may include a SOFR-Based Rate) that has been selected by the Administrative Agent and the Borrower giving due consideration to (i) any selection or recommendation of a replacement rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a rate of interest as a replacement to LIBOR for U.S. dollar-denominated syndicated credit facilities and (b) the Benchmark Replacement Adjustment; provided that, if the Benchmark Replacement as so determined would be less than zero, the Benchmark Replacement will be deemed to be zero for the purposes of this Agreement.

“Benchmark Replacement Adjustment”: with respect to any replacement of LIBOR with an Unadjusted Benchmark Replacement for each applicable Interest Period, the spread adjustment, or method for calculating or determining such spread adjustment (which may be a positive or negative value or zero) that has been selected by the Administrative Agent and the Borrower giving due consideration to (i) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the

replacement of LIBOR with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of LIBOR with the applicable Unadjusted Benchmark Replacement for U.S. dollar-denominated syndicated credit facilities at such time.

“Benchmark Replacement Conforming Changes”: with respect to any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “Base Rate,” the definition of “Interest Period,” timing and frequency of determining rates and making payments of interest and other administrative matters) that the Administrative Agent decides may be appropriate to reflect the adoption and implementation of such Benchmark Replacement and to permit the administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Administrative Agent determines that no market practice for the administration of the Benchmark Replacement exists, in such other manner of administration as the Administrative Agent decides is reasonably necessary in connection with the administration of this Agreement).

“Benchmark Replacement Date”: the earlier to occur of the following events with respect to LIBOR:

(a) in the case of clause (a) or (b) of the definition of “Benchmark Transition Event,” the later of (i) the date of the public statement or publication of information referenced therein and (ii) the date on which the administrator of LIBOR permanently or indefinitely ceases to provide LIBOR; or

(b) in the case of clause (c) of the definition of “Benchmark Transition Event,” the date of the public statement or publication of information referenced therein.

“Benchmark Transition Event”: the occurrence of one or more of the following events with respect to LIBOR:

(a) a public statement or publication of information by or on behalf of the administrator of LIBOR announcing that such administrator has ceased or will cease to provide LIBOR, permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide LIBOR;

(b) a public statement or publication of information by the regulatory supervisor for the administrator of LIBOR, the U.S. Federal Reserve System, an insolvency official with jurisdiction over the administrator for LIBOR, a resolution authority with jurisdiction over the administrator for LIBOR or a court or an entity with similar insolvency or resolution authority over the administrator for LIBOR, which states that the administrator of LIBOR has ceased or will cease to provide LIBOR permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide LIBOR; or

(c) a public statement or publication of information by the regulatory supervisor for the administrator of LIBOR announcing that LIBOR is no longer representative.

“Benchmark Transition Start Date”: (a) in the case of a Benchmark Transition Event, the earlier of (i) the applicable Benchmark Replacement Date and (ii) if such Benchmark Transition Event is a public statement or publication of information of a prospective event, the 90th day prior to the expected date of such event as of such public statement or publication of information (or if the expected date of such prospective event is fewer than 90 days after such statement or publication, the date of such statement or publication) and (b) in the case of an Early Opt-in Election, the date specified by the Administrative Agent or the Required Lenders, as applicable, by notice to the Borrower, the Administrative Agent (in the case of such notice by the Required Lenders) and the Lenders.

“Benchmark Unavailability Period”: if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred with respect to LIBOR and solely to the extent that LIBOR has not been replaced with a Benchmark Replacement, the period (x) beginning at the time that such Benchmark Replacement Date has occurred if, at such time, no Benchmark Replacement has replaced LIBOR for all purposes hereunder in accordance with Section 3.7(b) and (y) ending at the time that a Benchmark Replacement has replaced LIBOR for all purposes hereunder pursuant to Section 3.7(b).

“Beneficial Ownership Certification”: a certification regarding beneficial ownership required by the Beneficial Ownership Regulation.

“Beneficial Ownership Regulation”: 31 C.F.R. § 1010.230.

“Benefit Plan”: any of (a) an “employee benefit plan” (as defined in ERISA) that is subject to Title I of ERISA, (b) a “plan” as defined in and subject to Section 4975 of the Code or (c) any Person whose assets include (for purposes of ERISA Section 3(42) or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) the assets of any such “employee benefit plan” or “plan”.

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

“BHC Act Affiliate” of a party means an “affiliate” (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

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

“Borrower”: as defined in the recitals to this Agreement.

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

“Building”: a building within the meaning of the Flood Laws or any structure with at least two walls and a roof or any such structure in the course of construction.

“Business Day”: a day other than a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law to close; provided, that with respect to notices and determinations in connection with, and payments of principal and interest on, Eurodollar Loans, such day is also a day for trading by and between banks in Dollar deposits or in deposits in the applicable Alternate Currency, as the case may be, in the interbank eurodollar market.

“Capital Expenditures”: for any period, with respect to any Person, (x) the aggregate of all expenditures by such Person and its Subsidiaries for the acquisition or leasing (pursuant to a lease under which obligations are Capital Lease Obligations but excluding any amount representing capitalized interest) of fixed or capital assets or additions to equipment (including replacements, capitalized repairs and improvements during such period) that should be capitalized under GAAP on a consolidated balance sheet of such Person and its Subsidiaries, and (y) the aggregate of all capitalized technology costs and all capitalized content development costs of the Borrower and its Subsidiaries, as reported in the Borrower’s financial statements consistent with past practice but excluding (a) expenditures made with the proceeds of a Recovery Event, (b) expenditures made in cash to fund the purchase price for assets acquired in Permitted Acquisitions or other Investment permitted hereunder or incurred by the Person acquired in the Permitted Acquisition or other Investment permitted hereunder prior to (but not in anticipation of) the closing of such Permitted Acquisition or other Investment permitted hereunder, (c) expenditures made with cash proceeds from any issuances of Capital Stock of the Borrower or any Restricted Subsidiary or contributions of capital made to the Borrower, (d) capitalized interest in respect of operating or capital leases; (e) the book value of any asset owned to the extent such book value is included as a non-cash capital expenditure as a result of reusing or beginning to reuse such asset during such period without a corresponding expenditure actually having been made in such period; and (f) any non-cash amounts reflected as additions to property, plant or equipment on such Person’s consolidated balance sheet.

“Capital Lease Obligations”: at the time any determination thereof is to be made, the amount of the liability in respect of a Capital Lease that would at such time be required to be capitalized and reflected as a liability on a balance sheet (excluding the footnotes thereto) prepared in accordance with GAAP as in effect on January 1, 2019.

“Capital Leases”: all leases that are required to be, in accordance with GAAP as in effect on January 1, 2019, recorded as capitalized leases; provided that the adoption or issuance of any accounting standards after such date will not cause any lease that was not or would not have been a Capital Lease prior to such adoption or issuance to be deemed a Capital Lease.

“Capital Stock”: any and all shares, interests, participations or other equivalents (however designated) of capital stock or shares 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 Capital Stock shall not include any debt

securities that are convertible into or exchangeable for any of the foregoing Capital Stock (including, for the avoidance of doubt, any Convertible Bond Indebtedness).

“Capped Call Transactions”: (a) one or more call options (or substantively equivalent derivative transaction) referencing the Borrower’s Capital Stock (or other securities or property following a merger event or other change of the Capital Stock of the Borrower) purchased by the Borrower (or a Restricted Subsidiary) with a strike or exercise price (howsoever defined) initially equal to the conversion price or exchange price (howsoever defined) of the related Convertible Bond Indebtedness (subject to rounding) (whether settled in shares, cash or a combination thereof) and limiting the amount deliverable to the Borrower (or a Restricted Subsidiary) upon exercise thereof based on a cap or upper strike price (howsoever defined) and (b) one or more call options (or substantively equivalent derivative transaction) referencing the Borrower’s Capital Stock (or other securities or property following a merger event or other change of the Capital Stock of the Borrower) sold by the Borrower (or a Restricted Subsidiary) substantially concurrently with any purchase by the Borrower (or a Restricted Subsidiary) of a related call option (or substantively equivalent derivative transaction) referencing the Borrower’s Capital Stock (or other securities or property following a merger event or other change of the Capital Stock of the Borrower), in each case, in connection with the issuance of Convertible Bond Indebtedness.

“Cash Collateralize”: (a) in respect of an obligation, provide and pledge cash collateral in Dollars (taking the Dollar Equivalent of any amount denominated in an Alternate Currency), pursuant to documentation in form and substance reasonably satisfactory to the Administrative Agent, and (b) in respect of L/C Obligations under Letters of Credit, either the deposit of cash collateral in an amount equal to 103% of such outstanding L/C Obligations (taking the Dollar Equivalent of any amount denominated in an Alternate Currency) or the delivery of a “backstop” Letter of Credit reasonably satisfactory to the relevant Issuing Lender (and “Cash Collateralization” has a corresponding meaning). “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 twenty-four (24) months from the date of acquisition; (b) certificates of deposit, time deposits, eurodollar time deposits or overnight bank deposits having maturities of one (1) year or less from the date of acquisition issued by any Lender, any Qualified Counterparty to a Specified Cash Management Agreement 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 \$500.0 million in the case of U.S. banks and \$100.0 million (or the U.S. dollar equivalent as of the date of determination) in the case of non-U.S. banks; (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 twenty-four (24) 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, with respect to securities issued or fully guaranteed or insured by the United States government or of the type described in clause (b) hereof; (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 investment grade by S&P or Moody's; (f) securities with maturities of twenty-four 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) shares of money market mutual or similar funds which invest assets satisfying the requirements of clauses (a) through (f) or (h), (i), or (j) of this definition or 90% of the money market funds that (i) comply with the criteria set forth in Securities and Exchange Commission Rule 2a-7 under the Investment Company Act of 1940, as amended, (ii) are rated AAA- (or the equivalent thereof) by S&P and Aaa3 (or the equivalent thereof) by Moody's and (iii) have portfolio assets of at least \$3,000,000,000; (h) marketable short-term money market and similar securities having a rating of at least P-2 or A-2 from either Moody's or S&P, respectively (or, if at any time neither Moody's nor S&P shall be rating such obligations, an equivalent rating from another rating agency) and in each case maturing within 24 months after the date of creation thereof; (i) Indebtedness or preferred capital stock issued by Persons with a rating of "A" or higher from S&P for "A2" or higher from Moody's with maturities of twenty-four months or less from the date of acquisition; (j) Investments with average maturities of twenty-four months or less from the date of acquisition in money market funds rated AAA- (or the equivalent thereof) or better by S&P or Aaa3 (or the equivalent thereof) or better by Moody's; or (k) in the case of any Foreign Subsidiary, liquid investments made by such Foreign Subsidiary in the ordinary course of managing its surplus cash position in investments of comparable terms and credit quality as those described in clauses (a) through (j) above.

"Cash Management Agreement": any agreement for the provision of Cash Management Services.

"Cash Management Services": (a) cash management services, including, without limitation, treasury, depository, overdraft, electronic funds transfer, treasury management services (including controlled disbursement services, overdraft automatic clearing house fund transfer services, return items and interstate depository network services), other demand deposit or operating account relationships, foreign exchange facilities and other cash management arrangements and (b) commercial credit, purchasing and debit card, non-card e-payable services and merchant card services.

"Change in Law": the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided that notwithstanding anything herein to the contrary, (x) the Dodd-Frank

Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change in Law”, regardless of the date enacted, implemented, adopted or issued.

“Change of Control”: an event or series of events by which:

(a) any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, 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) becomes the “beneficial owner” (as defined in Rules 13d-3 and 13d-5 under the Securities Exchange Act of 1934, except that a person or group shall be deemed to have “beneficial ownership” of all securities that such person or group has the right to acquire, whether such right is exercisable immediately or only after the passage of time (such right, an “option right”)), directly or indirectly, of thirty-five percent (35%) or more of the equity securities of the Borrower entitled to vote for members of the board of directors or equivalent governing body of the Borrower on a fully-diluted basis (and taking into account all such securities that such person or group has the right to acquire pursuant to any option right); or

(b) a “change of control” or similar provision as set forth in any indenture or other instrument evidencing any Material Indebtedness of the Borrower or any Restricted Subsidiary has occurred obligating the Borrower or any Restricted Subsidiary to repurchase, redeem or repay all or any part of the Indebtedness provided for therein (excluding, for the avoidance of doubt, any conversion obligations related thereto).

“Class”: means (i) with respect to Commitments or Loans, those of such Commitments or Loans that have the same terms and conditions (without regard to differences in the Type of Loan, Interest Period, upfront fees, OID or similar fees paid or payable in connection with such Commitments or Loans, or differences in tax treatment (*e.g.*, “fungibility”)) and (ii) with respect to Lenders, those of such Lenders that have Commitments or Loans of a particular Class.

“Closing Date”: June 25, 2020.

“Closing Date Revolving Commitment”: as to any Lender, the obligation of such Lender, if any, to make Revolving Loans and participate in Letters of Credit in an aggregate principal and/or face amount not to exceed the amount set forth on Schedule 1.1 or in the Assignment and Assumption pursuant to which such Lender became a party hereto, as the same may be changed from time to time pursuant to the terms hereof. As of the Closing Date, the aggregate amount of the Closing Date Revolving Commitments is \$50,000,000.

“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 Agent”: as defined in the recitals to this Agreement.

“Commitment”: any Term Commitment or Revolving Commitment of any Lender.

“Commitment Fee”: as defined in Section 2.3(a).

“Commitment Fee Rate”: a rate of 0.375% per annum.

“Committed Loan Notice”: a notice of (a) a borrowing consisting of simultaneous Term Loans of the same Type and, in the case of Eurodollar Loans, having the same Interest Period made by each of the Term Lenders pursuant to Section 2.14, (b) a borrowing consisting of simultaneous Revolving Loans of the same Type and, in the case of Eurodollar Loans, having the same Interest Period made by each of the Revolving Lenders pursuant to Section 2.1, (c) a conversion of Loans from one Type to the other, or (d) a continuation of Eurodollar Loans, pursuant to Section 3.3, which shall be substantially in the form of Exhibit C or such other form as may be approved by the Administrative Agent (including any form on an electronic platform or electronic transmission system as shall be approved by the Administrative Agent), appropriately completed and signed by a Responsible Officer of the Borrower.

“Commodity Exchange Act”: the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

“Commonly Controlled Entity”: an entity, whether or not incorporated, that is under common control with any Group Member within the meaning of Section 4001 of ERISA or is part of a group that includes any Group Member and that is treated as a single employer under Section 414 of the Code with any Group Member.

“Communications”: as defined in Section 10.2(b).

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

“Compounded SOFR” means the compounded average of SOFRs for the applicable Corresponding Tenor, with the rate, or methodology for this rate, and conventions for this rate (which may include compounding in arrears with a lookback and/or suspension period as a mechanism to determine the interest amount payable prior to the end of each Interest Period) being established by the Administrative Agent in accordance with: (1) the rate, or methodology for this rate, and conventions for this rate selected or recommended by the Relevant Governmental Body for determining compounded SOFR; provided that: (2) if, and to the extent that, the Administrative Agent determines that Compounded SOFR cannot be determined in accordance with clause (1) above, then the rate, or methodology for this rate, and conventions for this rate that the Administrative Agent determines are substantially consistent with prevailing

market convention for determining Compounded SOFR for U.S. dollar-denominated syndicated credit facilities at such time (as a result of amendment or as originally executed) that are publicly available for review; provided, further, that if the Administrative Agent decides that any such rate, methodology or convention determined in accordance with clause (1) or clause (2) is not administratively feasible for the Administrative Agent, then Compounded SOFR will be deemed unable to be determined for purposes of the definition of “Benchmark Replacement.”

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

“Consolidated EBITDA”: means, for any period, for the Borrower and its Restricted Subsidiaries on a consolidated basis, without duplication, an amount equal to Consolidated Net Income for such period plus:

(a) the following to the extent deducted (or not excluded) in calculating such Consolidated Net Income (other than in respect of clauses (xiii), (xv), (xvi) and (xix)):

(i) Consolidated Interest Expense, amortization or write-off of debt discount and debt issuance costs and commissions, discounts and other fees and charges associated with Indebtedness (including the Loans and commitment, letter of credit and administrative fees and charges with respect to the Facilities) for such period,

(ii) the provision for taxes based on income (or similar taxes in lieu of income taxes), profits, capital (or equivalents), including federal, state, local foreign, franchise, excise and similar taxes paid or accrued during such period,

(iii) depreciation and amortization expense,

(iv) [reserved],

(v) all extraordinary, unusual or nonrecurring losses, expenses and charges,

(vi) any restructuring charges, carve-out costs, severance costs, integration costs, retention, recruiting, relocation, signing bonuses and expenses, stock option and other equity-based compensation expenses, accruals or reserves (including restructuring costs related to Permitted Acquisitions and other Investments permitted hereunder and adjustments to existing reserves), any one time expense relating to enhanced accounting function and any losses on related sales of personal and real property, including any charges and losses incurred in connection with the closure and/or consolidation of any operational facilities and existing lines of business of the Borrower and its Restricted Subsidiaries and any optimization expense and Public Company Costs for such period,

(vii) [reserved],

(viii) costs and expenses incurred in connection with the Transactions,

(ix) all costs and expenses incurred or paid in connection with Investments (including Permitted Acquisitions) and Dispositions permitted hereunder whether or not such Investment or Disposition is consummated or occurs prior to or after the Closing Date,

(x) all costs and expenses incurred in connection with the issuance, prepayment or amendment or refinancing of Indebtedness permitted hereunder or issuance of Capital Stock,

(xi) other expenses of the Borrower and its Restricted Subsidiaries reducing such Consolidated Net Income which do not represent a cash item in such period or any future period,

(xii) the aggregate net loss on the Disposition of property (other than accounts (as defined in the Uniform Commercial Code) and inventory) outside the ordinary course of business,

(xiii) (x) pro forma adjustments in the Financial Model to the extent such amounts, or amounts of similar type and nature to those listed in the Financial Model, without duplication, continue to be applicable during such period; and (y) “run rate” cost savings, operating expense reductions, other operating improvements and initiatives and synergies that are reasonably anticipated by the Borrower (as reasonably determined by the Borrower in good faith and certified by a Responsible Officer of the Borrower) to be realized after any acquisition (including the commencement of activities constituting a business) or disposition (including the termination or discontinuance of activities constituting a business), in each case of business entities or of properties or assets constituting a division or line of business (including, without limitation, a product line), and/or any other operational change or similar initiatives or transactions within 12 months after such period, in each case, whether such action has been taken or is reasonably expected to be taken (which will be added to Consolidated EBITDA as so projected until fully realized and calculated on a *pro forma basis* as though such synergies, cost savings, operating expense reductions, other operating improvements and initiatives had been realized on the first day of such period), net of the amount of actual benefits realized during such period from such actions; provided that (i) for the avoidance of doubt, with respect to operational changes that are not associated with any acquisition or disposition, the “run rate” cost savings, operating expense reductions, other operating improvements and initiatives and synergies associated with such operational change shall be limited to those that are reasonably anticipated by the Borrower to be realized after the date on which such operational change is planned or otherwise identified by the Borrower in good faith within 12 months after such period, (ii) to the extent that such cost savings, operating expense reductions, other operating improvements and initiatives and synergies are no longer anticipated by the Borrower to be realized following the relevant acquisition, disposition or operational change or, in the case of operational changes that are not associated with an acquisition or disposition, after the date on which such operational change is planned or otherwise identified by the Borrower in good faith, in each case, within 12 months after such period, such amounts shall no longer be added back to Consolidated EBITDA and (iii) amounts added back to Consolidated EBITDA pursuant to subclause (y) of this clause (xiii) shall not, in the aggregate, exceed 25% of Consolidated EBITDA for any four fiscal quarter period (determined after giving effect thereto),

(xiv) (i) the amount of payments made to option holders, stock holders or restricted stock unit holders of Borrower in connection with, or as a result of, any distribution being made to shareholders of such person, which payments are being made to compensate such option holders as though they were shareholders at the time of, and entitled to share in, such distribution, in each case to the extent permitted in the Loan Documents, and (ii) directors' fees and expenses paid or accrued by Borrower or its Restricted Subsidiaries or, to the extent paid or accrued with respect to services that relate directly to Borrower or its Restricted Subsidiaries and paid for with amounts distributed by Borrower and its Restricted Subsidiaries, of any direct or indirect parent thereof,

(xv) solely for purposes of determining compliance with Section 7.1 (and solely to the extent made in compliance with Section 8.2), in respect of any period which includes a Cure Quarter, the Cure Amount in connection with an Equity Cure Contribution in respect of such Cure Quarter,

(xvi) other adjustments that are (i) determined on a basis consistent with Article 11 of Regulation S-X promulgated under the Exchange Act and as interpreted by the staff of the SEC (or any successor agency), (ii) approved by the Administrative Agent, or (iii) contained in the Financial Model,

(xvii) net realized losses from Hedge Agreements or embedded derivatives that require similar accounting treatment,

(xviii) any net loss included in Consolidated Net Income attributable to non-controlling interests in any non-Wholly Owned Subsidiary or any joint venture,

(xix) all cash actually received (or any netting arrangements resulting in reduced cash expenditures) during the relevant period and not included in Consolidated Net Income in respect of any non-cash gain deducted in the calculation of Consolidated EBITDA (including any component definition) for any previous period and not added back during such period,

(xx) (i) reasonable and documented costs, expenses and fees incurred in connection with the implementation of ASC 606 and (ii) any non-cash costs, expenses and fees and transitional adjustments resulting from the application of ASC 606, and

(xxi) Sales and Marketing Expense in an aggregate amount not to exceed (x) for any four-quarter period ending on or prior to December 31, 2020, \$10,000,000 and (y) for any four-quarter period ending on or prior to December 31, 2021, \$20,000,000 (such amounts referred to in sub-clause (x) and this sub-clause (y) the "Cap Amount"); provided, that, for the avoidance of doubt, amounts added back pursuant to this clause (xxi) for a particular applicable fiscal quarter shall be included in the calculation of "Consolidated EBITDA" for any applicable subsequent measurement period that includes such applicable fiscal quarter; provided that amounts added back pursuant to this clause (xxi) shall not be included in the calculation of "Consolidated EBITDA" for the purpose of determining compliance under any leverage-based Restricted Payment basket or carve-out; provided further that it is understood and agreed that Sales and Marketing Expense added back in any quarter may equal an amount up to the relevant Cap

Amount if the Sales and Marketing Expense during the four-quarter period of which that quarter is a part does not exceed the Cap Amount applicable to such four-quarter period, and less

(b) the following to the extent added in calculating such Consolidated Net Income

(A) all interest income for such period,

(B) all income tax benefits included in Consolidated Net Income for such period,

(C) any extraordinary, unusual or non-recurring gains increasing Consolidated Net Income for such period,

(D) the aggregate net gain from the Disposition of property (other than accounts (as defined in the Uniform Commercial Code) and inventory) outside the ordinary course of business, all as determined on a consolidated basis,

(E) all non-cash items increasing Consolidated Net Income which do not represent a cash item in such period or any future period,

(F) any net realized income or gains from any obligations under any Hedge Agreement or embedded derivatives that require similar accounting treatment,

(G) the amount of any minority interest net income attributable to non-controlling interests in any non-Wholly Owned Subsidiary or any joint venture, and

(H) any non-cash gains resulting from the application of ASC 606 and any positive transitional adjustments resulting therefrom.

For the purposes of calculating Consolidated EBITDA for any period of four consecutive fiscal quarters (each, a “Reference Period”) pursuant to any determination of the Consolidated Leverage Ratio or Consolidated Secured Leverage Ratio, (x) if at any time during such Reference Period the Borrower or any Restricted Subsidiary shall have made any Material Disposition, the Consolidated EBITDA for such Reference Period shall be reduced by an amount equal to the Consolidated EBITDA (if positive) attributable to the property that is the subject of such Material Disposition for such Reference Period or increased by an amount equal to the Consolidated EBITDA (if negative) attributable thereto for such Reference Period, in each case assuming the repayment of Indebtedness in connection therewith occurred as of the first day of such Reference Period and (y) if during such Reference Period the Borrower or any Restricted Subsidiary shall have made a Material Acquisition, Consolidated EBITDA for such Reference Period shall be calculated after giving *pro forma effect* thereto as if such Material Acquisition occurred on the first day of such Reference Period.

“Consolidated Fixed Charge Coverage Ratio”: for any period of four consecutive fiscal quarters, the ratio of (a) Consolidated EBITDA for such period to (b) Consolidated Fixed Charges for such period, in each case, calculated on a *pro forma basis*.

“Consolidated Fixed Charges”: for any period, the sum (without duplication) of (a) Consolidated Interest Expense for such period, (b) income taxes paid in cash during such period and (c) Capital Expenditures paid in cash during such period (excluding the principal amount of Indebtedness incurred during such period to finance such expenditures, but including any repayments of any Indebtedness incurred during such period or any prior period to finance such expenditures).

“Consolidated Funded Debt”: at any date, the aggregate principal amount of all Funded Debt of the Borrower and its Restricted Subsidiaries at such date, determined on a consolidated basis in accordance with GAAP. For the avoidance of doubt, it is understood that obligations (i) under Hedge Agreements and Cash Management Agreements and (ii) owed by Unrestricted Subsidiaries, do not constitute Consolidated Funded Debt.

“Consolidated Interest Expense”: for any period, the excess of (a) total cash interest expense (including that attributable to Capital Lease Obligations) of the Borrower and its Restricted Subsidiaries for such period with respect to all outstanding Indebtedness of the Borrower and its Restricted Subsidiaries (including all commissions, discounts and other fees and charges owed with respect to letters of credit and bankers’ acceptance financing), determined in accordance with GAAP, over (b) income (net of costs) and net costs under Hedge Agreements in respect of interest rates to the extent such net income is allocable to such period in accordance with GAAP, but excluding, to the extent related to the Transactions, debt issuance costs and debt discount or premium, properly classified as an interest expense under GAAP.

“Consolidated Leverage Ratio”: at any date, the ratio of (a) Consolidated Funded Debt as of such date minus unrestricted cash and Cash Equivalents of the Borrower and its Restricted Subsidiaries of up to \$50.0 million to (b) Consolidated EBITDA for the period of four consecutive fiscal quarters ended on such date (or, if such date is not the last day of any fiscal quarter, the most recently completed fiscal quarter for which financial statements are required to have been delivered pursuant to Section 6.1), in each case, calculated on a *pro forma basis*.

“Consolidated Net Income”: for any period, the consolidated net income (or loss) of the Borrower and its Restricted Subsidiaries, determined on a consolidated basis in accordance with GAAP; provided that

(a) the income (or deficit) of any Person accrued prior to the date it becomes a Restricted Subsidiary of the Borrower or is merged into or consolidated with the Borrower or any of its Restricted Subsidiaries shall be excluded;

(b) the income (or deficit) of any Person (other than a Restricted Subsidiary of the Borrower) in which the Borrower or any of its Restricted Subsidiaries has an ownership interest, except to the extent that any such income is actually received by the Borrower or such Restricted Subsidiary in the form of dividends or similar distributions or that (as reasonably determined by a Responsible Officer) could have been distributed by such Person during such period to the Borrower or a Restricted Subsidiary, shall be excluded;

(c) the undistributed earnings of any Restricted Subsidiary of the Borrower to the extent that the declaration or payment of dividends or similar distributions by such Restricted Subsidiary is not at the time permitted by the terms of any Contractual Obligation (other than under any Loan Document), its Organizational Documents or Requirement of Law applicable to such Restricted Subsidiary, shall be excluded;

(d) expenses and lost profits with respect to liability or casualty events or business interruption will be disregarded to the extent covered by insurance and actually reimbursed, or, so long as such Person has made a determination that there exists reasonable evidence that such amount will in fact be reimbursed by the insurer, but only to the extent that such amount (i) has not been denied by the applicable carrier in writing and (ii) is in fact reimbursed within 365 days of the date on which such liability was discovered or such casualty event or business interruption occurred (with a deduction for any amounts so added back that are not reimbursed within such 365-day period); provided that any proceeds of such reimbursement when received shall be excluded from the calculation of Consolidated Net Income to the extent the expense or lost profit reimbursed was previously disregarded pursuant to this clause (d);

(e) losses, charges and expenses that are covered by indemnification, reimbursement, guaranty, purchase price adjustment or other similar provisions in favor of Borrower or its Restricted Subsidiaries in any agreement entered into by Borrower or any of its Restricted Subsidiaries shall be excluded to the extent actually reimbursed, or, so long as such Person has made a determination that a reasonable basis exists for indemnification, reimbursement, guaranty or purchase price adjustment, but only to the extent that such amount is in fact indemnified, reimbursed, guaranteed or adjusted within 365 days of such determination (with a deduction in the applicable future period for any amount so added back to the extent not so indemnified or reimbursed within such 365 days);

(f) the effects of purchase accounting, fair value accounting or recapitalization accounting adjustments (including the effects of such adjustments pushed down to the referent Person and its Restricted Subsidiaries) resulting from the application of purchase accounting, fair value accounting or recapitalization accounting (including in the inventory property and equipment, software, goodwill, intangible assets, in-process research and development, deferred revenue and debt line items), and the amortization, write-down or write-off of any amounts thereof, net of taxes, shall be excluded;

(g) all non-cash impairment charges and asset write-ups, write-downs and write-offs, in each case pursuant to GAAP, and the amortization of intangibles arising from the application of GAAP shall be excluded;

(h) all non-cash expenses realized in connection with or resulting from equity or equity-linked compensation plans, employee benefit plans or agreements or post-employment benefit plans or agreements, or grants or sales of stock, stock appreciation or similar rights, stock options, restricted stock, preferred stock, stock appreciation or other similar rights shall be excluded; and

(i) any costs or expenses incurred in connection with the payment of dividend equivalent rights to holders of equity-based incentive awards pursuant to any management equity plan, stock option plan or any other management or employee benefit plan or agreement or post-employment benefit plan or agreement shall be excluded.

“Consolidated Secured Leverage Ratio”: at any date, the ratio of (a) Consolidated Funded Debt as of such date that is secured by any Lien minus unrestricted cash and Cash Equivalents of the Borrower and its Restricted Subsidiaries of up to \$50.0 million to (b) Consolidated EBITDA for the period of four consecutive fiscal quarters ended on such date (or, if such date is not the last day of any fiscal quarter, the most recently completed fiscal quarter for which financial statements are required to have been delivered pursuant to Section 6.1), in each case, calculated on a *pro forma basis*.

“Consolidated Total Assets”: the total amount of assets of the Borrower and its consolidated Restricted Subsidiaries, as set forth on the most recent financial statements delivered pursuant to Sections 6.1(a) and (b), in each case as may be expressly stated without giving effect to any amortization of the amount of intangible assets since the Closing Date, with such pro forma adjustments as are appropriate.

“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.

“Convertible Bond Indebtedness”: unsecured Indebtedness having a feature which entitles the holder thereof to convert or exchange all or a portion of such Indebtedness into or by reference to Capital Stock of the Borrower (or other securities or property following a merger event or other change of the Capital Stock of the Borrower).

“Corporate Family Rating”: an opinion issued by Moody’s of a corporate family’s ability to honor all of its financial obligations that is assigned to a corporate family as if it had a single class of debt and a single consolidated legal entity structure.

“Corporate Rating”: an opinion issued by S&P of an obligor’s overall financial capacity (its creditworthiness) to pay its financial obligations.

“Corresponding Tenor” with respect to a Benchmark Replacement means a tenor (including overnight) having approximately the same length (disregarding business day adjustment) as the applicable tenor for the applicable Interest Period with respect to the then-current Benchmark.

“Covered Entity”: any of the following:

- (a) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b);

(b) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or

(c) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

“Cure Amount”: as defined in Section 8.2.

“Cure Expiration Date”: as defined in Section 8.2.

“Cure Quarter”: as defined in Section 8.2.

“Debtor Relief Laws”: the Bankruptcy Code of the United States, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Requirements of 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 Right”: has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

“Defaulting Lender”: subject to Section 2.13(c), any Lender that (a) has failed to (i) fund all or any portion of its Loans within two Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies the Administrative Agent and the Borrower in writing that such failure is the result of such Lender’s good faith 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, any Issuing 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) within two Business Days of the date when due, (b) has notified the Borrower, the Administrative Agent or any Issuing 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 good faith 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 Business Days after written request by the Administrative Agent or the Borrower, to confirm in writing to the Administrative Agent and the Borrower that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and the Borrower), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, (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 or (iii) become the subject of a Bail-In Action; 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 2.13(c)) upon delivery of written notice of such determination to the Borrower, each Issuing Lender and each Lender.

“Disposition”: with respect to any Property, any sale, lease, sale and leaseback, assignment, conveyance, transfer or other disposition thereof. The terms “Dispose” and “Disposed of” shall have correlative meanings. For the avoidance of doubt, the settlement or early termination of any Capped Call Transaction shall not constitute a Disposition.

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

“Disqualified Institution”: each of (i) the competitors of the Borrower and its Subsidiaries specified by the Borrower to the Administrative Agent in writing from time to time, (ii) certain other Persons identified by the Borrower in writing to the Lead Arrangers and the Administrative Agent (x) prior to the initial syndication of the Facilities or (y) after the Closing Date, with the consent of the Administrative Agent (such consent not to be unreasonably withheld, conditioned or delayed) and (iii) as to any entity referenced in each case of clauses (i) through (ii) above (each, a “Primary Disqualified Lender”), any affiliates of such Primary Disqualified Lenders identified in writing by name or that are readily identifiable by name but excluding any affiliate 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 such Primary Disqualified Lender does not, directly or indirectly, possess the power to direct or cause the direction of the investment policies of such entity.

“Dollar Equivalent”: means, at any time, (a) with respect to any amount denominated in Dollars, such amount and (b) with respect to any amount denominated in any currency other than Dollars, the equivalent amount thereof in Dollars as determined by the Administrative Agent at such time on the basis of the Spot Rate (determined in respect of the most recent Revaluation Date or other relevant date of determination) for the purchase of Dollars with such other currency.

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

“Domestic Subsidiary”: any Subsidiary of the Borrower that is a U.S. Person.

“DQ List”: as defined in Section 10.6(k)(iv).

“Early Opt-in Election”: the occurrence of:

(a) (i) a determination by the Administrative Agent or (ii) a notification by the Required Lenders to the Administrative Agent (with a copy to the Borrower) that the Required Lenders have determined that U.S. dollar-denominated syndicated credit facilities being executed at such time, or that include language similar to that contained in Section 3.7(b) are being executed or amended, as applicable, to incorporate or adopt a new benchmark interest rate to replace LIBOR, and

(b) (i) the election by the Administrative Agent or (ii) the election by the Required Lenders to declare that an Early Opt-in Election has occurred and the provision, as applicable, by the Administrative Agent of written notice of such election to the Borrower and the Lenders or by the Required Lenders of written notice of such election to the Administrative Agent.

“Earn-Out Obligations”: those certain obligations of the Borrower or any Restricted Subsidiary arising in connection with any acquisition of assets or businesses permitted under Section 7.7 to the seller of such assets or businesses and the payment of which is dependent on the future earnings or performance of such assets or businesses and contained in the agreement relating to such acquisition or in an employment agreement delivered in connection therewith.

“ED”: the United States Department of Education and any successor agency administering student financial assistance under Title IV, HEA Programs.

“Educational Agency”: any entity or organization, whether governmental or non-governmental, that engages in granting or withholding educational approvals, administers student financial assistance to or for students of, or otherwise regulates educational institutions, programs or courses, in accordance with standards relating to the performance, operation, financial condition, privacy or academic standards of such institutions, programs or courses, including (i) ED, any Accrediting Body, any State Educational Agency, and (ii) any Governmental Authority with jurisdiction to enforce laws or regulations concerning misrepresentation, unfair, deceptive or abusive acts and practices, consumer fraud, or other consumer protection laws and regulations as such laws and regulations apply to educational institutions, programs and courses; provided, that the term Educational Agency does not include the data protection authority of any European Union member nation.

“Educational Law”: any federal, state, local or similar statute, law, regulation, ordinance, order, rule, official ED guidance or standard issued or administered by any Educational Agency.

“Educational Services Agreement”: an agreement between any Loan Party and any educational institution for the provision of any services supporting the operation of such institution or its educational programs or courses in any respect, including but not limited to, as applicable: marketing; student recruiting or admissions; enrollment management; course support

for online delivery of courses; the provision of technology; faculty recruiting or development, placement services for student internships, externships or clinical experiences; and student counseling.

“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 Assignee permitted by and consented to in accordance with Section 10.6(b); provided that notwithstanding the foregoing, “Eligible Assignee” shall not include (a) the Borrower or any of its Subsidiaries, (b) any natural person (or a holding company, investment vehicle or trust for, or owned and operated by or for the primary benefit of natural Person) or (c) any Disqualified Institution.

“Environmental Laws”: any and all applicable foreign, federal, state, provincial, 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 (in relation to the handling of or exposure to Materials of Environmental Concern) or the environment, as now or may at any time hereafter be in effect.

“Equity Cure Contribution”: as defined in Section 8.2.

“ERISA”: the Employee Retirement Income Security Act of 1974, as amended, and the rules and regulations promulgated thereunder.

“ERISA Event” means (a) a Reportable Event with respect to a Single Employer Plan or Multiemployer Plan; (b) any failure by any Single Employer Plan or Multiemployer Plan to satisfy the minimum funding standard (within the meaning of Section 412 of the Code or Section 303 of ERISA), whether or not waived; (c) the filing pursuant to Section 412(c) of the Code or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard with respect to any Single Employer Plan, the failure of any Group Member or Commonly Controlled Entity to make by its due date a required installment under Section 430(j) of the Code with respect to any Single Employer Plan or the failure of a Group Member or Commonly Controlled Entity to make any required contribution to a Multiemployer Plan; (d) a withdrawal by any Group Member or any Commonly Controlled Entity from a Single Employer

Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (e) a complete or partial withdrawal by any Group Member or any Commonly Controlled Entity from a Multiemployer Plan; (f) the filing of a notice of intent to terminate a Single Employer Plan or Multiemployer Plan, the treatment of a plan amendment as a termination of a Single Employer Plan or a Multiemployer Plan under Sections 4041 or 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate a Single Employer Plan or Multiemployer Plan; (g) an event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Single Employer Plan or Multiemployer Plan; (h) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon any Group Member or any Commonly Controlled Entity; (i) the determination that any Single Employer Plan is considered to be an “at-risk” plan, or that any Multiemployer Plan is considered to be in “endangered” or “critical” status within the meaning of Sections 430, 431 and 432 of the Code or Sections 303, 304 or 305 of ERISA; (j) the engagement by any Group Member or Commonly Controlled Entity in a transaction that would reasonably be expected to be subject to Sections 4069 or 4212(c) of ERISA; or (k) the imposition of a Lien upon any Group Member pursuant to Section 403(k) of the Code or Section 303(k) of ERISA.

“EU Bail-In Legislation Schedule”: the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

“Eurodollar Base Rate”: means, subject to the implementation of a Benchmark Replacement in accordance with Section 3.7(b),

(a) for any Interest Period with respect to a Eurodollar Rate Loan, the rate per annum equal to the London Interbank Offered Rate (“LIBOR”) or a comparable or successor rate, which rate is approved by the Administrative Agent, as published on the applicable Bloomberg screen page (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time) at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period, for Dollar deposits or deposits in the applicable Alternate Currency (in each case for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period; and

(b) for any interest calculation with respect to a Base Rate Loan on any date, the rate per annum equal to LIBOR, at or about 11:00 a.m., London time determined two Business Days prior to such date for U.S. Dollar deposits with a term of one month commencing that day; provided that to the extent a comparable or successor rate is approved by the Administrative Agent in connection herewith, the approved rate shall be applied in a manner consistent with market practice; provided, further that to the extent such market practice is not administratively feasible for the Administrative Agent, such approved rate shall be applied in a manner as otherwise reasonably determined by the Administrative Agent.

Notwithstanding the foregoing, for purposes of this Agreement, (x) in no event shall the Eurodollar Base Rate (including after giving effect to any Benchmark Replacement with respect to LIBOR) be less than 0% and (y) unless otherwise specified in any amendment to this Agreement entered into in accordance with Section 3.7(b), in the event that a Benchmark Replacement with respect to LIBOR is implemented then all references herein to the LIBOR shall be deemed references to such Benchmark Replacement.

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

“Eurodollar Rate”: with respect to each day during each Interest Period pertaining to a Eurodollar Loan (or to a Base Rate Loan bearing interest on the basis of the Eurodollar Rate), a rate per annum equal to a rate per annum determined by the Administrative Agent pursuant to the following formula:

$$\frac{\text{Eurodollar Base Rate}}{1.00 - \text{Eurodollar Reserve Percentage}}$$

“Eurodollar Reserve Percentage”: for any day during any Interest Period and with respect to any currency, the aggregate of the maximum reserve, liquid asset, fees or similar requirements (including any marginal, special, emergency or supplemental reserves or other requirements) established by any central bank, monetary authority, the FRB, the Prudential Regulation Authority, the Financial Conduct Authority, the Bank of England, the European Central Bank or other Governmental Authority for any category of deposits or liabilities customarily used to fund loans in such currency, expressed in the case of each such requirement as a decimal. Such reserve percentages shall, in the case of Dollar denominated Loans, include those imposed pursuant to Regulation D of the FRB. Eurodollar Loans shall be deemed to be subject to such reserve, liquid asset or similar requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to any Lender under any applicable law, rule or regulation, including Regulation D. The Eurodollar Reserve Percentage shall be adjusted automatically on and as of the effective date of any change in any reserve, liquid asset or similar requirement.

“Eurodollar Tranche”: the collective reference to Eurodollar Loans under a particular Facility the then current Interest Periods with respect to all of which begin on the same date and end on the same later date (whether or not such Loans shall originally have been made on the same day).

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

“Exchange Act”: as defined in Section 6.2(d).

“Excluded Property”: any Building that is located in a Special Flood Hazard Area. For the avoidance of doubt, at no time shall the Mortgaged Property include any Excluded Property.

“Excluded Subsidiary”: (a) Immaterial Subsidiaries and Unrestricted Subsidiaries, (b) any Subsidiary that is prohibited or restricted by applicable law, rule or regulation or by any contractual obligation existing on the Closing Date or at the time of acquisition thereof after the Closing Date, in each case, from guaranteeing or granting a Lien on its assets to secure the Obligations or which would require governmental (including regulatory) consent, approval, license or authorization to provide a bank guarantee unless such consent, approval, license or authorization has been received, (c) not-for-profit Subsidiaries, (d) (i) any direct or indirect Foreign Subsidiary that is a controlled foreign corporation within the meaning of Section 957 of the Code (a “CFC”), (ii) any direct or indirect subsidiary of a CFC, (iii) any direct or indirect Subsidiary of the Borrower or a Guarantor that owns no material assets other than Capital Stock or indebtedness in one or more CFCs (a “CFC Holdco”) or CFC Holdcos and (iv) any direct or indirect Subsidiary of a CFC Holdco, for long as such CFC or CFC Holdco, (e) special purpose entities (including any securitization vehicle (or similar entity)), (f) any Subsidiary acquired pursuant to an acquisition permitted under this Agreement financed with secured Indebtedness permitted to be incurred under Section 7.2(n) and any Subsidiary thereof that guarantees such Indebtedness (in each case to the extent such secured Indebtedness prohibits such Subsidiary from becoming a Guarantor), (g) any other Subsidiary with respect to which, in the reasonable judgment of the Administrative Agent and the Borrower, the cost or other consequences of guaranteeing the Revolving Facility would be excessive in view of the benefits to be obtained by the Lenders therefrom, (h) any captive insurance Subsidiary and (i) any other Subsidiary of the Borrower, for so long as such Subsidiary would not be able to execute a guaranty or pledge, as applicable, without giving rise to material adverse tax consequences (including as a result of any law or regulation in any non-U.S. jurisdiction similar to Section 956 of the Code).

“Excluded Swap Obligation”: with respect to any Subsidiary Guarantor, any Swap Obligation if, and to the extent that, all or a portion of the guarantee of such Subsidiary Guarantor of, or the grant by such Subsidiary Guarantor of a security interest 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 Subsidiary Guarantor’s failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act and the regulations thereunder at the time the guarantee of such Subsidiary Guarantor or the grant of such security interest becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such guarantee or security interest is or becomes illegal.

“Excluded Taxes”: any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes imposed on

amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by the Borrower under Section 3.13) or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 3.10, 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 paragraph (g) or paragraph (h) of Section 3.10 and (d) any withholding Taxes imposed under FATCA.

“Extended Revolving Commitment”: any Class of Revolving Commitments the maturity of which shall have been extended pursuant to Section 2.16.

“Extended Revolving Loan”: any Revolving Loans made pursuant to the Extended Revolving Commitments.

“Extension”: as defined in Section 2.16(a).

“Extension Amendment”: an amendment to this Agreement (which may, at the option of the Administrative Agent and the Borrower, be in the form of an amendment and restatement of this Agreement) among the Loan Parties, the applicable extending Lenders, the Administrative Agent and, to the extent required by Section 2.16, each Issuing Lender implementing an Extension in accordance with Section 2.16.

“Extension Offer”: as defined in Section 2.16(a).

“Facility”: each of (a) the Revolving Facility (including if applicable any Incremental Revolving Increase) and (b) any Term Facility (including if applicable any Incremental Term Facility) and “Facilities”, collectively, all of the foregoing.

“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 (or any amended or successor version described above), and any U.S. or non-U.S. fiscal or regulatory legislation, rules, guidance, notes or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities entered into in connection with the implementation of such sections of the Code or analogous provisions of non-U.S. law.

“Federal Funds Rate”: for any day, the rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business

Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) charged to the Administrative Agent on such day on such transactions as determined by the Administrative Agent.

“Federal Reserve Bank of New York’s Website”: the website of the Federal Reserve Bank of New York at <http://www.newyorkfed.org>, or any successor source.

“Fee Letter”: that certain Fee Letter, dated as of May 22, 2020 between the Borrower and the Administrative Agent.

“Financial Covenant Event of Default”: as defined in Section 8.1(c).

“Financial Covenants”: the financial condition covenants set forth in Section 7.1 hereof.

“Financial Model” the financial model and other financial information delivered by the Borrower to the Administrative Agent on May 18, 2020.

“Flood Laws”: the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, as revised by the National Flood Insurance Reform Act of 1994, and as the same may be further amended, modified or supplemented, and including the regulations issued thereunder.

“Foreign Lender”: (a) if the Borrower is a U.S. Person, a Lender that is not a U.S. Person, and (b) if the Borrower is not a U.S. Person, a Lender that is resident or organized under laws of a jurisdiction other than that in which the Borrower is resident for tax purposes. For purposes of this definition, the United States, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

“Foreign Subsidiary”: any Subsidiary of the Borrower that is not a U.S. Person.

“Fronting Exposure”: at any time there is a Defaulting Lender, with respect to any Issuing Lender, such Defaulting Lender’s Applicable Percentage of the outstanding L/C Obligations with respect to Letters of Credit issued by such Issuing Lender other than L/C Obligations as to which such Defaulting Lender’s participation obligation has been reallocated to other Lenders or Cash Collateralized in accordance with the terms hereof.

“Funded Debt”: as to any Person, without duplication, all Indebtedness (excluding (i) Indebtedness of the type described in clause (b) of the definition of such term, (ii) Indebtedness of the type described in clause (d) of the definition of such term, (iii) Indebtedness of the type described in clause (f) of the definition of such term, except to the extent of any unreimbursed drawings thereunder, (iv) Indebtedness of the type described in clause (g) of the definition of such term, (v) Indebtedness of the type described in clause (j) of the definition of such term, and (vi) to the extent related to Indebtedness of the types described in the preceding clauses, Indebtedness described in clauses (h) and (i) of the definition of such term) of such

Person that matures more than one (1) year from the date of its creation or matures within one year from such date but is renewable or extendible, at the option of such Person, to a date more than one (1) year from such date or arises under a revolving credit or similar agreement that obligates the lender or lenders to extend credit during a period of more than one (1) year from such date, including all current maturities and current sinking fund payments in respect of such Indebtedness whether or not required to be paid within one year from the date of its creation and, in the case of the Borrower, Indebtedness in respect of the Loans, in each case, to the extent reflected as indebtedness on such Person's balance sheet.

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

“GAAP”: generally accepted accounting principles in the United States as in effect on the date hereof or otherwise as provided in Section 1.2(e) and changes to these principles occurring after the date hereof that would not, in the reasonable determination of the Administrative Agent, cause adverse consequences to the Borrower in connection with the terms of this Agreement.

“Governmental Authority”: any nation or government, any state or provincial or other political subdivision thereof, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative functions of or pertaining to government (including any supranational bodies such as the European Union or the European Central Bank) and any securities exchange.

“Governmental Authorization”: all laws, rules, regulations, authorizations, consents, decrees, permits, licenses, waivers, privileges, approvals from and filings with all Governmental Authorities necessary in connection with any Group Member's business.

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

“Guarantee and Collateral Agreement”: the Guarantee and Collateral Agreement executed and delivered by the Borrower and each Subsidiary Guarantor, substantially in the form of Exhibit D.

“Guarantee Obligation”: as to any Person (the “guaranteeing person”), any obligation of (a) the guaranteeing person or (b) another Person (including any bank under any letter of credit) to induce the creation of which the guaranteeing person has issued a reimbursement, counterindemnity or similar obligation, in either case guaranteeing or in effect guaranteeing 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, however, that the term Guarantee Obligation shall not include endorsements of instruments for deposit or collection in the ordinary course of business. The amount of any Guarantee Obligation of any guaranteeing person shall be deemed to be the lower of (a) an amount equal to the stated or determinable amount of the primary obligation in respect of which such Guarantee Obligation is made and (b) the maximum amount for which such guaranteeing person may be liable pursuant to the terms of the instrument embodying such Guarantee Obligation, unless such primary obligation and the maximum amount for which such guaranteeing person may be liable are not stated or determinable, in which case the amount of such Guarantee Obligation shall be such guaranteeing person's maximum reasonably anticipated liability in respect thereof as determined by the Borrower in good faith.

"Guarantor": each of the Subsidiary Guarantors.

"Hedge Agreements": any agreement with respect to any cap, swap, forward, future or derivative transaction or option or similar 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 (x) no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees or consultants of the Borrower or the Subsidiaries shall be a Hedge Agreement and (y) no Capped Call Transaction shall be a Hedge Agreement.

"Immaterial Subsidiary": each Restricted Subsidiary of the Borrower now existing or hereafter acquired or formed and each successor thereto, (a) which accounts for not more than 5.0% of (i) the consolidated gross revenues (after intercompany eliminations) of the Borrower and its Restricted Subsidiaries or (ii) the consolidated assets (after intercompany eliminations) of the Borrower and its Restricted Subsidiaries, in each case, as of the last day of the most recently completed fiscal quarter as reflected on the financial statements for such quarter after giving *pro forma effect* to any acquisitions or dispositions of companies, divisions or lines of business since the start of such four quarter period and on or prior to the date of acquisition of such Subsidiary; and (b) if the Subsidiaries that constitute Immaterial Subsidiaries pursuant to clause (a) above account for, in the aggregate, more than 5% of such consolidated gross revenues and more than 5% of the consolidated assets, each as described in clause (a) above, then the term "Immaterial Subsidiary" shall not include each such Subsidiary (starting with the Subsidiary that accounts for the most consolidated gross revenues or consolidated assets and then in descending order) necessary to account for at least 95% of the consolidated gross revenues and 95% of the consolidated assets, each as described in clause (a) above.

"Incremental Equivalent Term Debt": means Indebtedness issued in accordance with Section 2.15 consisting of one or more series of junior lien term loans or notes, subordinated notes or senior unsecured notes, and, in the case of any issuance of notes, issued in a public offering, Rule 144A or other private placement transaction, a bridge facility in lieu of

the foregoing, or junior lien or subordinated loans, secured or unsecured mezzanine Indebtedness or debt securities, in each case subject to the terms set forth in Section 2.15 and, if secured, shall be secured on a junior lien basis to the Revolving Facility and shall be subject to customary intercreditor arrangements reasonably satisfactory to the Administrative Agent.

“Incremental Facility”: as defined in Section 2.14.

“Incremental Facility Effective Date”: as defined in Section 2.14.

“Incremental Lender”: any Person that makes a Loan pursuant to Section 2.14, or has a commitment to make a Loan pursuant to Section 2.14.

“Incremental Revolving Commitment”: as defined in Section 2.14.

“Incremental Revolving Increase”: as defined in Section 2.14.

“Incremental Revolving Joinder”: as defined in Section 2.14.

“Incremental Revolving Loans”: as defined in Section 2.14.

“Incremental Term Facility”: as defined in Section 2.14(a).

“Incremental Term Joinder”: as defined in Section 2.14(c).

“Incremental Term Loan Commitment”: as defined in Section 2.14(a).

“Incremental Term Loans”: as defined in Section 2.14(c).

“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 (including Earn-Out Obligations but excluding 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 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) the liquidation value of all Disqualified Capital Stock of such Person, (h) all Guarantee Obligations of such Person in respect of obligations of the kind referred to in clauses (a) through (g) above, (i) all obligations of the kind referred to in clauses (a) through (h) above secured by (or for which the holder of such obligation has an existing right, contingent or otherwise, to be secured by) any Lien on property (including accounts and contract rights) owned by such Person, whether or not such Person has assumed or become liable for the payment of such obligation, and (j) for the purposes of Sections 7.2 and 8.1(e) only, all obligations of such Person in respect of Hedge Agreements; provided that Indebtedness shall not include (A) prepaid or deferred revenue arising in the

ordinary course of business and (B) purchase price holdbacks arising in the ordinary course of business in respect of a portion of the purchase price of an asset to satisfy unperformed obligations of the seller of such asset. 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. For purposes of clause (j) above (including as such clause applies to Section 8.1(e)), the principal amount of Indebtedness in respect of Hedge Agreements shall equal the amount that would be payable (giving effect to netting) at such time if such Hedge Agreement were terminated. Notwithstanding anything in this Agreement to the contrary, Capped Call Transactions shall not constitute Indebtedness.

“Indemnified Liabilities”: as defined in Section 10.5.

“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 the Borrower under any Loan Document and (b) to the extent not otherwise described in (a), Other Taxes.

“Indemnitee”: as defined in Section 10.5.

“Intellectual Property”: collectively, all United States and foreign (a) patents, patent applications, certificates of inventions, (whether established or registered or recorded in the United States or any other country or any political subdivision thereof), together with any and all inventions described and claimed therein, and reissues, divisions, continuations, renewals, extensions and continuations-in-part thereof and amendments thereto; (b) trademarks, service marks, certification marks, tradenames, slogans, logos, trade dress, Internet Domain Names, and other source identifiers, whether statutory or common law, whether registered or unregistered, and whether established or registered in the United States or any other country or any political subdivision thereof, together with any and all registrations and applications for any of the foregoing, goodwill connected with the use thereof and symbolized thereby, and reissues, continuations, extensions and renewals thereof and amendments thereto; (c) copyrights (whether statutory or common law, whether established, registered or recorded in the United States or any other country or any political subdivision thereof, and whether published or unpublished) and copyrightable subject matter, together with any and all registrations and applications therefor, and renewals and extensions thereof and amendments thereto; (d) rights in computer programs (whether in source code, object code, or other form), algorithms, databases, compilations and data, technology supporting the foregoing, and all documentation, including user manuals and training materials, related to any of the foregoing (“Software”); (e) trade secrets and proprietary or confidential information, data and databases, know-how and proprietary processes, designs, inventions, and any other similar intangible rights, to the extent not covered by the foregoing, whether statutory or common law, whether registered or unregistered, and whether established or registered in the United States or any other country or any political subdivision thereof; (f) income, fees, royalties, damages and payments now and hereafter due and/or payable under or with respect to any of the foregoing, including, without limitation, damages, claims and payments for past, present or future infringements, misappropriations or other violations thereof;

(g) rights and remedies to sue for past, present and future infringements, misappropriations and other violations of any of the foregoing; and (h) rights, priorities, and privileges corresponding to any of the foregoing or other similar intangible assets throughout the world.

“Intellectual Property Security Agreements”: an intellectual property security agreement or such other similar agreement, as applicable, pursuant to which each Loan Party that owns any material Intellectual Property that is required to be pledged in accordance with the Guarantee and Collateral Agreement grants to the Collateral Agent, for the benefit of the Secured Parties a security interest in such Intellectual Property, in form and substance reasonably satisfactory to the Administrative Agent.

“Intercompany Note”: the Intercompany Note executed and delivered by the Borrower and certain Restricted Subsidiaries, substantially in the form of Exhibit H, or such other form as the Administrative Agent may reasonably agree.

“Interest Payment Date”: (a) as to any Base Rate Loan, the last day of each March, June, September and December to occur while such Loan is outstanding and the final maturity date of such Loan, (b) as to any Eurodollar Loan having an Interest Period of three (3) months or less, the last day of such Interest Period, (c) as to any Eurodollar Loan having an Interest Period longer than three (3) months, each day that is three (3) months, or a whole multiple thereof, after the first day of such Interest Period and the last day of such Interest Period and (d) as to any Loan (other than any Revolving Loan that is a Base Rate Loan), the date of any repayment or prepayment made in respect thereof.

“Interest Period”: as to any Eurodollar Loan, (a) initially, the period commencing on the borrowing or conversion date, as the case may be, with respect to such Eurodollar Loan and ending one, two, three or six months (or if available to all Lenders under the relevant Facility, twelve months) thereafter, as selected by the Borrower in its Committed Loan Notice; and (b) thereafter, each period commencing on the last day of the next preceding Interest Period applicable to such Eurodollar Loan and ending one, two, three or six months (or if available to all Lenders under the relevant Facility, twelve months) thereafter, as selected by the Borrower in its Committed Loan Notice to the Administrative Agent no later than 12:00 Noon, New York City time, on the date that is three (3) Business Days prior to the last day of the then current Interest Period with respect thereto; provided that, all of the foregoing provisions relating to Interest Periods are subject to the following:

(i) any Interest Period that would otherwise end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless, in the case of a Eurodollar Loan, such Business Day falls in another calendar month, in which case such Interest Period shall end on the next preceding Business Day;

(ii) no Interest Period shall extend beyond the Revolving Termination Date or beyond the applicable Term Loan Maturity Date, as the case may be; and

(iii) any Interest Period pertaining to a Eurodollar Loan that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding

day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period.

“Internet Domain Names”: all Internet domain names and associated URL addresses.

“Investments”: as defined in Section 7.7.

“IRS”: the United States Internal Revenue Service.

“ISP”: with respect to any Letter of Credit, the “International Standby Practices 1998” published by the Institute of International Banking Law & Practice, Inc. (or such later version thereof as may be in effect at the time of issuance).

“Issuer Documents”: with respect to any Letter of Credit, the Application, and any other document, agreement and instrument entered into by an Issuing Lender and the Borrower (or any Subsidiary) or in favor of such Issuing Lender and relating to such Letter of Credit.

“Issuing Lender”: Morgan Stanley Senior Funding, Inc. in its capacity as issuer of any Letter of Credit and/or such other Lender or Affiliate of a Lender as the Borrower may select and such Lender or Affiliate of a Lender shall agree to act in the capacity of Issuing Lender hereunder pursuant to this Agreement.

“Judgment Currency”: as defined in Section 10.20.

“Junior Financing”: any Junior Indebtedness or any other Indebtedness of the Borrower or any Restricted Subsidiary that is required to be subordinated in payment, lien priority or any other manner to the Obligations. For the avoidance of doubt, Convertible Bond Indebtedness shall not be deemed to be Junior Financing unless such Convertible Bond Indebtedness is expressly subordinated in right of payment to the Obligations.

“Junior Financing Documentation”: any documentation governing any Junior Financing.

“Junior Indebtedness”: Indebtedness of any Person so long as (a) such Indebtedness is either unsecured, Subordinated Indebtedness or Second Lien Indebtedness; and (b) if such Indebtedness is Subordinated Indebtedness or Second Lien Indebtedness, the other terms and conditions contained in the relevant definitions thereof shall be satisfied.

“L/C Commitment”: \$25,000,000.

“L/C Exposure”: as to any Lender, its pro rata portion of the L/C Obligations.

“L/C Fee”: as defined in Section 2.7(a).

“L/C Fee Payment Date”: the fifth Business Day following the last day of each March, June, September and December and the last day of the Revolving Availability Period.

“L/C Obligations”: as at any date of determination, an amount equal to the sum of (a) the aggregate then undrawn and unexpired amount of the then outstanding Letters of Credit and (b) the aggregate amount of drawings under Letters of Credit that have not then been reimbursed pursuant to Section 2.9. For purposes of computing the amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.3. For all purposes of this Agreement, if on any date of determination a Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of Rule 3.14 of the ISP, such Letter of Credit shall be deemed to be “outstanding” in the amount so remaining available to be drawn.

“L/C Participants”: the collective reference to all the Revolving Lenders other than an Issuing Lender.

“LCA Election”: Borrower’s election to treat a Permitted Acquisition or other Investment permitted hereunder as a Limited Condition Acquisition.

“LCA Test Date”: as defined in Section 1.2(g).

“Lead Arrangers”: collectively, Morgan Stanley Senior Funding Inc., Credit Suisse Loan Funding LLC and Goldman Sachs Bank USA, in each case, in its respective capacity as a joint lead arranger and bookrunner under this Agreement.

“Lenders”: each Revolving Lender, any Term Lender and any Incremental Lender.

“Letters of Credit”: as defined in Section 2.5(a).

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

“Lien”: any mortgage, deed of trust, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge or other security interest or any preference, priority or other security agreement or preferential arrangement (including any conditional sale or other title retention agreement and any capital lease having substantially the same economic effect as any of the foregoing), provided that in no event shall an operating lease be deemed to be a Lien. For the avoidance of doubt, Convertible Bond Indebtedness and Capped Call Transactions, in each case, shall not constitute Liens.

“Limited Condition Acquisition” any Permitted Acquisition or other Investment permitted hereunder by Borrower or one or more of its Restricted Subsidiaries whose consummation is not conditioned on the availability of, or on the obtaining of, third party financing.

“Liquidity”: at any time, for the Borrower and its Restricted Subsidiaries, an amount equal to the sum of (x) all unrestricted cash of the Borrower and its Restricted Subsidiaries at such time plus (y) the aggregate Available Revolving Commitment at such time.

“Loan”: any loans and advances made by the Lenders pursuant to this Agreement or any Incremental Term Joinder or Incremental Revolving Joinder.

“Loan Documents”: this Agreement, the Security Documents, the Notes, the Fee Letter, and each Issuer Document.

“Loan Party”: each of the Borrower and the Guarantors.

“Majority Facility Lenders”: the holders of more than 50% of (a) with respect to any Term Facility, the aggregate unpaid principal amount of the outstanding Term Loans under such Term Facility plus the aggregate principal amount of any unused Term Commitments under such Term Facility and (b) with respect to the Revolving Facility, the Total Revolving Extensions of Credit outstanding under the Revolving Facility (or, prior to any termination of the Revolving Commitments, the holders of more than 50% of the Total Revolving Commitments).

“Margin Stock”: shall have the meaning provided in Regulation U of the Board as from time to time in effect and any successor to all or a portion thereof.

“Material Acquisition”: any acquisition of property or series of related acquisitions of property that (1) constitutes assets comprising all or substantially all of an operating unit of a business or constitutes all or substantially all of the equity interests of a Person and (2) involves the payment of consideration by the Borrower and its Restricted Subsidiaries in excess of \$5,000,000.

“Material Adverse Effect”: means (a) a material adverse change in, or a material adverse effect upon, the operations, business, properties, assets, liabilities (actual or contingent) or condition (financial or otherwise) of the Borrower and its Restricted Subsidiaries taken as a whole; (b) a material adverse effect on the rights and remedies of the Administrative Agent, the Collateral Agent or any Lender under this Agreement or any other Loan Document; or (c) a material adverse effect upon the legality, validity, binding effect or enforceability against any Loan Party of any Loan Document to which it is a party.

“Material Disposition”: any Disposition of property or series of related Dispositions of property that yields gross proceeds to the Borrower or any of its Restricted Subsidiaries in excess of \$5,000,000.

“Material Indebtedness”: of any Person at any date, Indebtedness the outstanding principal amount of which exceeds in the aggregate \$30,000,000.

“Material Real Property”: any Real Property owned in fee in the United States by any Loan Party, in each case, with a fair market value of \$5,000,000 or more; provided that, “Material Real Property” shall not include any Excluded Property.

“Materials of Environmental Concern”: any gasoline or petroleum (including crude oil or any fraction thereof) or petroleum products or any hazardous or toxic substances, materials or wastes, defined or regulated as such in or under any Environmental Law, including asbestos, polychlorinated biphenyls and urea-formaldehyde insulation.

“Maximum Rate”: as defined in Section 3.5(e).

“Minimum Collateral Amount” (i) with respect to Cash Collateral consisting of cash or deposit account balances, an amount equal to 103% of the Fronting Exposure of all Issuing Lenders with respect to Letters of Credit issued and outstanding at such time and (ii) otherwise, an amount determined by the Administrative Agent and the Issuing Lenders in their sole discretion.

“Moody’s”: Moody’s Investors Service, Inc. or any successor to the rating agency business thereof.

“Mortgaged Properties”: the Material Real Properties (or, if applicable, the portions thereof) as to which the Collateral Agent for the benefit of the Secured Parties shall be granted a Lien pursuant to the Mortgages.

“Mortgages”: any mortgages and deeds of trust made by any Loan Party in favor of, or for the benefit of, the Collateral Agent for the benefit of the Secured Parties, in a form reasonably satisfactory to the Administrative Agent and the Collateral Agent.

“Multiemployer Plan”: a Plan that is a multiemployer plan as defined in Section 4001(a)(3) of ERISA.

“Non-Consenting Lenders”: as defined in Section 10.1.

“Non-Defaulting Lender”: at any time, a Lender that is not a Defaulting Lender.

“Non-Extension Notice Date”: as defined in Section 2.6(b).

“Notes”: the collective reference to any promissory note evidencing Loans.

“Notice of Intent to Cure”: as defined in Section 8.2.

“Obligations”: the unpaid principal of and interest on (including interest accruing after the maturity of the Loans and Reimbursement Obligations and interest accruing after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding, relating to the Borrower, whether or not a claim for post-filing or post-petition interest is allowed in such proceeding) the Loans and all other obligations and liabilities of the Loan Parties to any Agent or to any Lender (or, in the case of Specified Hedge Agreements or Specified Cash Management Agreements, any Qualified Counterparty) or any Affiliate of any Agent or any Lender, 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, the Letters of Credit, any Specified Hedge Agreement,

Specified Cash Management Agreement or any other document made, delivered or given in connection herewith or therewith, whether on account of principal, interest, reimbursement obligations, fees, indemnities, costs, expenses (including all fees, charges and disbursements of counsel to any Agent or to any Lender that are required to be paid by the Borrower pursuant hereto) or otherwise; provided, that (a) notwithstanding the foregoing or anything to the contrary contained in any Specified Hedge Agreement, Specified Cash Management Agreement or in this Agreement or any other Loan Document, Obligations of the Borrower or any other Loan Party under or in respect of any Specified Hedge Agreement or any Specified Cash Management Agreement shall constitute Obligations secured and guaranteed pursuant to the Security Documents only to the extent that, and for so long as, the other Obligations are so secured and guaranteed and (b) any release of Collateral or Subsidiary Guarantors effected in the manner permitted by this Agreement shall not require the consent of holders of obligations under Specified Hedge Agreements or Specified Cash Management Agreements; provided, however, subject to the foregoing, nothing herein shall limit the rights of any Qualified Counterparty set forth in such Specified Hedge Agreement; provided, further, that in no event shall “Obligations” include any Excluded Swap Obligation.

“OID”: original issue discount.

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

“Open Source License”: any license meeting the Open Source Definition (as promulgated by the Open Source Initiative) or the Free Software Definition (as promulgated by the Free Software Foundation).

“Organizational Documents”: as to any Person, the Certificate of Incorporation, Certificate of Formation, Bylaws, Limited Liability Company Agreement, Partnership Agreement or other similar organizational or governing documents of such Person.

“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”: any and all present or future stamp, court or documentary, intangible, recording filing or similar Taxes or any other excise or property Taxes, charges or similar levies arising from any payment made hereunder or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement or any other 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 3.13).

“Parent Company”: with respect to a Lender, the bank holding company (as defined in Board Regulation Y), if any, of such Lender, and/or any Person owning, beneficially or of record, directly or indirectly, a majority of the shares of such Lender.

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

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

“Patriot Act”: the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001).

“PBGC”: the Pension Benefit Guaranty Corporation established pursuant to Subtitle A of Title IV of ERISA (or any successor thereto).

“Permitted Acquisition”: any acquisition, whether by purchase, merger or otherwise, of all or substantially all of the assets of, all of the Capital Stock of, or a business line or unit or a division of, any Person; provided:

(a) immediately prior to, and after giving effect thereto, no Event of Default shall have occurred and be continuing or would result immediately therefrom;

(b) all transactions in connection therewith shall be consummated, in all material respects, in accordance with all applicable laws and in conformity with all applicable Governmental Authorizations;

(c) in the case of the acquisition of Capital Stock, all of the Capital Stock (except for any such Capital Stock in the nature of directors’ qualifying shares required pursuant to applicable law) acquired or otherwise issued by such Person or any newly formed Restricted Subsidiary in connection with such acquisition shall be owned 100% by the Borrower or a Restricted Subsidiary or the Borrower or a Restricted Subsidiary shall have offered to purchase 100% of such Capital Stock, and the Borrower shall take, or cause to be taken, each of the actions set forth in Sections 6.10 and 6.11, as applicable, within the time period(s) set forth therein;

(d) the Borrower and its Restricted Subsidiaries shall be in compliance with each of the then applicable Financial Covenants on a *pro forma basis* after giving effect to such acquisition as if such acquisition had occurred on the first day of the most recent period of four (4) consecutive fiscal quarters (or of one (1) fiscal quarter, as the case may be) in respect of which the applicable Financial Covenant has been tested in accordance with Section 7.1;

(e) the Borrower shall have delivered to the Administrative Agent at least five (5) Business Days prior to such proposed acquisition, a Compliance Certificate evidencing compliance with Section 7.1 to the extent such compliance is required under clause (d) above, and, if the total consideration paid in connection with such Permitted Acquisition (including any Earn-Out Obligations and any Indebtedness of any Acquired Person that is assumed by the Borrower or any of its Restricted Subsidiaries following such acquisition) exceeds \$50,000,000, appropriate revisions to the projections delivered to the Administrative Agent prior to the Closing Date, or, if Projections have been provided pursuant to Section 6.2(c), appropriate revisions to such Projections, in each case after giving effect to such acquisition;

(f) any Person or assets or division as acquired in accordance herewith shall be in substantially the same business or lines of business in which the Borrower and/or its Subsidiaries are engaged, or are permitted to be engaged as provided in Section 7.15, as of the time of such acquisition; and

(g) the total consideration (exclusive of any consideration (i) consisting of common stock of the Borrower or (ii) permitted under the Available Amount) paid in connection with all Permitted Acquisitions of Persons that do not become Loan Parties or assets that are not acquired by a Loan Party (including any Earn-Out Obligations but excluding any Indebtedness of any Acquired Person that is assumed by the Borrower or any of its Restricted Subsidiaries following such acquisitions to the extent permitted under Section 7.2(n)) shall not exceed, from the Closing Date, the greater of (x) \$30,000,000 and (y) 75% of Consolidated EBITDA for the most recent period of four fiscal quarters for which financial statements have been provided pursuant to Section 6.1(a) or (b).

“Permitted Refinancing”: as to any Indebtedness, the incurrence of other Indebtedness to refinance, extend, renew, defease, restructure, replace or refund (collectively, “refinance”) such existing Indebtedness; provided that, in the case of such other Indebtedness, the following conditions are satisfied: (a) the weighted average life to maturity of such refinancing Indebtedness shall be greater than or equal to the weighted average life to maturity of the Indebtedness being refinanced; (b) the principal amount of such refinancing Indebtedness shall be less than or equal to the principal amount (including any accreted or capitalized amount) then outstanding of the Indebtedness being refinanced, plus any required premiums and other reasonable amounts paid, and fees and expenses reasonably incurred, in connection with such modification, refinancing, refunding, renewal or extension and by any amount equal to any existing commitments unutilized thereunder; (c) the respective obligor or obligors shall be the same on the refinancing Indebtedness as on the Indebtedness being refinanced (it being understood that the roles of such obligors as a borrower or a guarantor with respect to such obligations may be interchanged); (d) if secured by Liens on the Collateral, the security, if any, for the refinancing Indebtedness shall be substantially the same as that for the Indebtedness being refinanced (except to the extent that less security is granted to holders of refinancing Indebtedness); (e) if the Indebtedness being refinanced, extended, renewed, defeased, restricted, replaced or refunded, is subordinated in right of payment to the Obligations, the refinancing Indebtedness is subordinated to the Obligations on terms that are at least as favorable in all material respects, taken as a whole, as the Indebtedness being refinanced and the holders of such refinancing Indebtedness have entered into any subordination or intercreditor agreements reasonably requested by the Administrative Agent evidencing such subordination; and (f) no material terms (other than interest rate and, if applicable, conversion rate and other provisions customary for convertible Indebtedness) applicable to such refinancing Indebtedness or, if applicable, the related security or guarantees of such refinancing Indebtedness (including covenants, events of default, remedies, acceleration rights) shall be, taken as a whole, materially more favorable to the refinancing lenders than the terms that are applicable under the instruments and documents governing the Indebtedness being refinanced.

“Person”: an individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, Governmental Authority or other entity of whatever nature.

“Plan”: each “employee benefit plan” (as such term is defined in Section 3(3) of ERISA) which is maintained or contributed to by (or is required to be contributed to by) the Borrower or any Restricted Subsidiary or with respect to which the Borrower or any Restricted Subsidiary has any liability (including on account of a Commonly Controlled Entity).

“Platform”: as defined in Section 10.2(b).

“Pledged Company”: any direct or indirect Subsidiary of the Borrower the Capital Stock of which is pledged to the Collateral Agent pursuant to any Security Document.

“Pledged Equity Interests”: as defined in the Guarantee and Collateral Agreement.

“Primary Disqualified Lender”: as defined in the definition of “Disqualified Institution”.

“Privacy, Data Security and Consumer Protection Laws”: all applicable laws, regulations, and legally binding guidelines concerning the collection, receiving, processing, handling, disposal, privacy, protection, accessing, using, disclosing, electronically transmitting, securing, sharing, transferring and storing of Protected Information.

“*pro forma basis*” or “*pro forma effect*” means, with respect to compliance with any test, financial ratio, basket or covenant, compliance with such test or covenant after giving effect to (i) any Material Acquisition, (ii) any issuance, incurrence, assumption or repayment or redemption of Indebtedness (including Indebtedness issued, incurred, assumed or repaid or redeemed as a result of, or to finance, any relevant transaction and for which any such test, financial ratio, basket or covenant is being calculated), (iii) any Material Disposition or (iv) designations of Unrestricted Subsidiaries or Restricted Subsidiaries (including (a) pro forma adjustments arising out of events which are directly attributable to any proposed Material Acquisition, any issuance, incurrence, assumption or repayment or redemption of Indebtedness, any Material Disposition or any designation of Unrestricted Subsidiaries or Restricted Subsidiaries, are factually supportable and are expected to have a continuing impact, in each case as determined on a basis consistent with Article 11 of Regulation S-X of the Securities Act of 1933, as amended, as interpreted by the staff of the Securities and Exchange Commission and (b) such other adjustments as determined in good faith by the Borrower that are consented to by the Administrative Agent (such consent not to be unreasonably withheld), in each case as certified by an officer of the Borrower, using, for purposes of determining such compliance, the historical financial statements of all entities or assets so acquired and the consolidated financial statements of the Borrower and its subsidiaries and assuming that all Material Acquisitions that have been consummated during the period, any Material Disposition and any Indebtedness or other liabilities repaid in connection therewith had been consummated and incurred or repaid at the beginning of such period (and assuming that such Indebtedness to be incurred bears interest

during any portion of the applicable measurement period prior to the relevant acquisition at the interest rate which is or would be in effect with respect to such Indebtedness as at the relevant date of determination).

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

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

“Property”: any right or interest in or to property of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible, including, without limitation, Capital Stock and Real Property.

“Protected Information”: any information that: (i) identifies (or in combination with other information may identify), relates to, describes, is capable of being associated with, or can be reasonably linked, directly or indirectly, to a natural person, including an individual’s name, address, telephone number, e-mail address, date of birth, photograph, social security number or tax identification number, credit card number, bank account number, biometric identifiers, persistent identifiers including IP address; as well as medical, health or insurance information; or (ii) is “personal information”, “personal data” or similar defined term protected by one or more of the applicable Privacy, Security and Consumer Protection Laws.

“PTE”: a prohibited transaction class exemption issued by the U.S. Department of Labor, as any such exemption may be amended from time to time.

“Public Company Costs”: any costs, fees and expenses associated with, in anticipation of, or in preparation for, compliance with the requirements of the Sarbanes-Oxley Act of 2002 and the rules and regulations promulgated in connection therewith and costs, fees and expenses relating to compliance with the provisions of the Securities Act and the Exchange Act (as applicable to companies with equity or debt securities held by the public), the rules of national securities exchanges for companies with listed equity or debt securities, directors’ or managers’ compensation, fees and expense reimbursements, any charges, expenses, costs, accruals, reserves, payments, fees and expenses or loss of any kind relating to investor relations, shareholder meetings and reports to shareholders and debtholders, directors’ and officers’ insurance and other executive costs, legal and other professional fees and listing fees.

“QFC”: the meaning assigned to the term “qualified financial contract” in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

“QFC Credit Support”: has the meaning assigned to such term in Section 10.20.

“Qualified Capital Stock”: means any Capital Stock (other than warrants, rights or options referenced in the definition thereof) that (a) does not have a maturity and is not mandatorily redeemable; (b) by its terms (or by the terms of any employee stock option, incentive stock or other equity-based plan or arrangement under which it is issued or by the terms of any security into which it is convertible or for which it is exchangeable), or upon the happening of any event, (x) matures (excluding any maturity as the result of an optional

redemption by the issuer thereof) or is mandatorily redeemable (excluding any mandatory redemption resulting from an asset sale or change in control so long as no payments in respect thereof are due or owing, or otherwise required to be made, until all Obligations have been paid in full), pursuant to a sinking fund obligation or otherwise, or is redeemable at the option of the holder thereof, in whole or in part, or requires the payment of any cash dividend or any other scheduled payment constituting a return of capital, in each case, at any time on or after the ninety-first (91st) day following the later to occur of (i) the Revolving Termination Date and (ii) the latest Term Loan Maturity Date, or (y) is convertible into or exchangeable (unless at the sole option of the issuer thereof) for (i) debt securities or (ii) any Capital Stock referred to in clause (x) above, in each case, at any time on or after the ninety-first (91st) day following the later to occur of (i) the Revolving Termination Date and (ii) the latest Term Loan Maturity Date; or (c) is preferred stock, so long as (x) no holder thereof can require the issuer to redeem any such stock for cash prior to the later to occur of (i) the Revolving Termination Date and (ii) the latest Term Loan Maturity Date and (y) any redemption feature of such stock is available only if permitted under this Agreement.

“Qualified Counterparty”: with respect to any Specified Hedge Agreement or Specified Cash Management Agreement, any counterparty thereto that is, or that at the time such Specified Hedge Agreement or Specified Cash Management Agreement was entered into, was, a Lender, an Affiliate of a Lender, an Agent or an Affiliate of an Agent; provided that, in the event a counterparty to a Specified Hedge Agreement or Specified Cash Management Agreement at the time such Specified Hedge Agreement or Specified Cash Management Agreement was entered into was a Qualified Counterparty, such counterparty shall constitute a Qualified Counterparty hereunder and under the other Loan Documents.

“Real Property”: any right, title or interest (including any leasehold, mineral or other estate) in and to any parcel of or interest in real property owned, leased or operated by any Person, whether by lease, license or other means, together with, in each case, all easements, hereditaments and appurtenances relating thereto, all improvements and appurtenant fixtures and equipment, all general intangibles and contract rights and other property and rights incidental to the ownership, lease or operation thereof.

“Recipient”: (a) the Administrative Agent, (b) any Lender or (c) any Issuing Lender, as applicable.

“Recovery Event”: any settlement of or payment in respect of any property or casualty insurance claim or any condemnation proceeding relating to any asset of the Borrower or any Restricted Subsidiary.

“Reference Period”: as defined in the definition of “Consolidated EBITDA”.

“Refinanced Facility”: as defined in Section 10.1.

“Refinancing Facility”: as defined in Section 10.1.

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

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

“Reimbursement Obligation”: the obligation of the Borrower to reimburse an Issuing Lender pursuant to Section 2.9 for amounts drawn under Letters of Credit.

“Related Party Register”: as defined in Section 10.6(d).

“Relevant Governmental Body”: the Federal Reserve Board and/or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Federal Reserve Board and/or the Federal Reserve Bank of New York or any successor thereto.

“Reportable Event”: any of the events set forth in Section 4043(c) of ERISA, other than those events as to which the thirty (30) day notice period is waived by regulation.

“Required Lenders”: at any time, the holders of more than 50% of the sum of (a) the aggregate unpaid principal amount of any Term Loans then outstanding, (b) any Total Term Commitments then in effect, and (c) the Total Revolving Commitments then in effect or, if the Revolving Commitments have been terminated, the Total Revolving Extensions of Credit then outstanding.

“Requirement of Law”: as to any Person, 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.

“Resolution Authority”: an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

“Responsible Officer”: the chief executive officer, president, chief financial officer, treasurer or assistant treasurer of the Borrower (unless otherwise specified), but in any event, with respect to financial matters, the chief financial officer, treasurer or assistant treasurer of the Borrower, and, solely for purposes of notices given pursuant to Section 2, any other officer of the applicable Loan Party so designated by any of the foregoing officers in a notice to the Administrative Agent or any other officer or employee of the applicable Loan Party designated in or pursuant to an agreement between the applicable Loan Party and the Administrative Agent.

“Restricted Payments”: as defined in Section 7.6.

“Restricted Subsidiary”: means any subsidiary of the Borrower other than an Unrestricted Subsidiary.

“Revaluation Date”: means (a) with respect to any Revolving Loan denominated in an Alternate Currency, each of the following: (i) each date of any Borrowing of such Revolving Loan, (ii) each date of any continuation of such Revolving Loan pursuant to the terms of this Agreement, (iii) the last day of each fiscal quarter and (iv) the date of any voluntary reduction of a Revolving Commitment pursuant to Section 2.4; (b) with respect to any Letter of Credit denominated in an Alternate Currency, each of the following: (i) each date of issuance of

such a Letter of Credit, (ii) each date of an amendment of such a Letter of Credit that would have the effect of increasing the face amount thereof and (iii) the last day of each fiscal quarter; and (c) with respect to the unused Revolving Commitment of any Lender pursuant to Section 2.3(a), each day of the applicable period during which such unused Revolving Commitment is in effect.

“Revolving Availability Period”: the period from the first Business Day to occur after the Closing Date to the Revolving Termination Date.

“Revolving Commitments”: collectively, the Closing Date Revolving Commitments and any Incremental Revolving Commitments.

“Revolving Credit Exposure”: as to any Revolving Lender, the amount of such Revolving Lender’s Revolving Commitment then in effect or, if the Revolving Commitments have been terminated, the amount of such Revolving Lender’s Revolving Extensions of Credit then outstanding, giving effect to any assignments.

“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 and (b) such Lender’s Revolving Percentage of the L/C Obligations then outstanding.

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

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

“Revolving Loans”: as defined in Section 2.1(a), together with any Incremental Revolving Loans.

“Revolving Percentage”: as to any Revolving Lender at any time, the percentage (carried out to the ninth decimal place) which such Lender’s Revolving Commitment then constitutes of the Total Revolving Commitments, subject to adjustment as provided in Section 2.13; provided that if the Revolving Commitments have expired or been terminated, the Revolving Percentage shall be determined based on each Revolving Lender’s Revolving Percentage immediately prior to the termination of the Revolving Commitments.

“Revolving Termination Date”: December 26, 2023.

“S&P”: Standard & Poor’s Ratings Services, a Standard & Poor’s Financial Services LLC business or any successor to the rating agency business thereof.

“Sales and Marketing Expense”: expenses incurred in connection with new degree program launches.

“Sanctioned Country”: at any time, a country, region or territory that is, or whose government is, the subject or target of comprehensive Sanctions (currently, Cuba, Iran, North Korea, Syria, and the Crimea region of Ukraine).

“Sanctioned Person”: at any time and in each case insofar as dealings with the Person are prohibited pursuant to Sanctions, (a) any Person listed in any Sanctions-related list of designated Persons maintained by OFAC, the U.S. Department of State, the United Nations Security Council or the European Union, (b) any Person located, organized or resident in a Sanctioned Country or (c) any Person controlled or fifty percent or more owned, individually or in the aggregate, by any such Person, whether directly or indirectly.

“Sanctions”: economic or financial sanctions or trade embargoes administered or enforced from time to time by (a) the U.S. government, including those administered by OFAC or the U.S. Department of State or (b) the United Nations Security Council, the European Union or Her Majesty’s Treasury of the United Kingdom.

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

“Second Lien Indebtedness”: Junior Indebtedness of any Person that is secured by a junior Lien on the Collateral; provided that the holder of such Indebtedness executes and delivers an intercreditor agreement in form and substance reasonably satisfactory to the Administrative Agent.

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

“Secured Parties”: the collective reference to the Lenders, the Agents, the Qualified Counterparties and each Issuing Lender, and each of their successors and permitted assigns.

“Security Documents”: the collective reference to the Guarantee and Collateral Agreement, the Mortgages (if any), the Intellectual Property Security Agreements and all other security documents hereafter delivered to the Administrative Agent or the Collateral Agent granting a Lien on any property of any Person to secure the Obligations of any Loan Party under any Loan Document, Specified Hedge Agreement or Specified Cash Management Agreement.

“Senior Notes”: the Borrower’s convertible senior notes due 2025 issued pursuant to the Senior Notes Indenture.

“Senior Notes Indenture”: that certain indenture governing the Senior Notes, dated April 23, 2020, between the Borrower and Wilmington Trust, National Association, as trustee.

“Single Employer Plan”: any Plan that is covered by Title IV of ERISA, but that is not a Multiemployer Plan.

“SOFR”: with respect to any day, the secured overnight financing rate published for such day by the Federal Reserve Bank of New York, as the administrator of the benchmark (or a successor administrator) on the Federal Reserve Bank of New York’s Website.

“SOFR-Based Rate” means SOFR, Term SOFR or Compounded SOFR.

“Software”: as defined in the definition of Intellectual Property.

“Solvent”: means, as to any Person at any time, that (a) the fair value of the property of such Person is greater than the amount of such Person’s liabilities (including contingent liabilities) as such value is established and liabilities evaluated for purposes of Section 101(32) of the United States Bankruptcy Code; (b) the fair valuation of the property of such Person is not less than the aggregate amount that will be required to pay the probable liability of such Person on its then existing debts (including Guarantees and other contingent obligations) as they become absolute and matured; (c) such Person is able to pay its debts and other liabilities (including contingent liabilities) as they mature in the normal course of business; (d) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person’s ability to pay as such debts and liabilities mature; and (e) such Person is not engaged in a business or a transaction for which such Person’s property would constitute unreasonably small capital. The amount of contingent liabilities at any time shall be computed as the amount that, in the light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability or, if a different methodology is prescribed by applicable laws, as prescribed by such laws.

“Special Flood Hazard Area”: an area identified by the Federal Emergency Management Agency (or any successor agency) as an area subject to special flood or mud slide hazards.

“Specified Cash Management Agreement”: any Cash Management Agreement entered into by (a) any Loan Party and (b) any Qualified Counterparty, as counterparty; provided, that any release of Collateral or Guarantors effected in the manner permitted by this Agreement shall not require the consent of holders of obligations under Specified Cash Management Agreements. No Specified Cash Management Agreement shall create in favor of any Qualified Counterparty thereof that is a party thereto any rights in connection with the management or release of any Collateral or of the obligations of any Guarantor under the Guarantee and Collateral Agreement.

“Specified Event of Default”: any Event of Default under Section 8.1(a) or (f).

“Specified Hedge Agreement”: any Hedge Agreement entered into by (a) the Borrower and (b) any Qualified Counterparty, as counterparty; provided, that any release of Collateral or Subsidiary Guarantors effected in the manner permitted by this Agreement shall not require the consent of holders of obligations under Specified Hedge Agreements. No Specified Hedge Agreement shall create in favor of any Qualified Counterparty thereof that is a party thereto any rights in connection with the management or release of any Collateral or of the obligations of any Subsidiary Guarantor under the Guarantee and Collateral Agreement;

provided, however, nothing herein shall limit the rights of any such Qualified Counterparty set forth in such Specified Hedge Agreement.

“Specified Representations”: means each of the representations and warranties made solely with respect to the Loan Parties set forth in Sections 4.3(a) and (b), 4.4, 4.5(a), 4.11, 4.14, 4.19, 4.20, 4.22, 4.23 and 4.24.

“Spot Rate” means, for any currency, on any Revaluation Date or other relevant date of determination, the rate determined by the Administrative Agent to be the rate quoted by the Administrative Agent as the spot rate for the purchase by the Administrative Agent of such currency with another currency through its principal foreign exchange trading office at approximately 11:00 a.m. on the date that is two Business Days prior to the date as of which the foreign exchange computation is made; provided that the Administrative Agent may obtain such spot rate from another financial institution designated by the Administrative Agent if the Administrative Agent does not have as of the date of determination a spot buying rate for any such currency.

“State Educational Agency”: any state or local educational licensing body that provides a license, permit, authorization or other approval necessary for an educational institution or other entity to operate or to provide educational programs or courses in that state.

“Sterling” or “£”: the lawful currency of the United Kingdom.

“Stock Certificates”: Collateral consisting of certificates representing Capital Stock of any Subsidiary Guarantor for which a security interest can be perfected by delivering such certificates.

“Subordinated Indebtedness”: any unsecured Junior Indebtedness of the Borrower the payment of principal and interest of which and other obligations of the Borrower in respect thereof are subordinated to the prior payment in full of the Obligations on terms and conditions reasonably satisfactory to the Administrative Agent.

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

“Subsidiary Guarantor”: any Subsidiary of the Borrower that guarantees the Obligations.

“Supported QFC”: has the meaning assigned to such term in Section 10.20.

“Swap Obligation”: with respect to any Subsidiary Guarantor, any obligation to pay or perform under any agreement, contract or transaction that constitutes a “swap” within the meaning of section 1a(47) of the Commodity Exchange Act.

“Syndication Agent” means each of Credit Suisse Loan Funding LLC and Goldman Sachs Bank USA.

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

“Term Commitments”: any Incremental Term Commitments.

“Term Facility”: the Term Commitments and the Term Loans.

“Term Lender”: each Lender that has a Term Commitment or that holds a Term Loan.

“Term Loan”: any Incremental Term Loan.

“Term Loan Maturity Date”: with respect to any Incremental Term Loans, the date set forth in the applicable Incremental Term Joinder applicable to such Incremental Term Loans.

“Term Percentage”: as to any Term Lender at any time, the percentage (carried out to the ninth decimal place) which the aggregate principal amount of such Lender’s Term Loans then outstanding plus such Lender’s Term Commitment then in effect constitutes of the aggregate principal amount of the Term Loans then outstanding plus the Term Commitments then in effect.

“Term SOFR”: the forward-looking term rate based on SOFR that has been selected or recommended by the Relevant Governmental Body.

“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 of the Revolving Lenders outstanding at such time.

“Total Term Commitments”: at any time, the aggregate amount of the Term Commitments then in effect.

“Transactions”: collectively, the execution, delivery and performance by the Loan Parties of the Loan Documents and the borrowings and other transactions contemplated hereby and thereby.

“Transferee”: any Assignee or Participant.

“Type”: as to any Loan, its nature as a Base Rate Loan or a Eurodollar Loan.

“UCP”: with respect to any Letter of Credit, the Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce (“ICC”) Publication No. 600 (or such later version thereof as may be in effect at the time of issuance).

“UK Financial Institution”: any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

“UK Resolution Authority”: the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

“Unadjusted Benchmark Replacement”: the Benchmark Replacement excluding the Benchmark Replacement Adjustment.

“Unasserted Contingent Obligations”: as defined in the Guarantee and Collateral Agreement.

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

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

“U.S. Special Resolution Regimes”: has the meaning assigned to such term in Section 10.20.

“Unrestricted Subsidiary”: means (i) each Subsidiary of the Borrower listed on Schedule 1.2(b) on the Closing Date, (ii) any Subsidiary of the Borrower designated by the Borrower as an Unrestricted Subsidiary pursuant to Section 6.14 subsequent to the date hereof and (iii) any Subsidiary of an Unrestricted Subsidiary.

“Wholly Owned Restricted Subsidiary”: a Wholly Owned Subsidiary of the Borrower that is a Restricted Subsidiary.

“Wholly Owned Subsidiary”: as to any Person, any other Person all of the Capital Stock of which (other than directors’ qualifying shares required by law) is owned by such Person directly and/or through other Wholly Owned Subsidiaries.

“Withholding Agent”: any Loan Party and the Administrative Agent.

“Write-Down and Conversion Powers”: (a) 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, and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

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 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 or, in the case of any Foreign Subsidiary, other accounting standards, if applicable, (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, (v) references to agreements or other Contractual Obligations shall, unless otherwise specified, be deemed to refer to such agreements or Contractual Obligations as amended, supplemented, restated or otherwise modified from time to time (subject to any applicable restrictions hereunder), (vi) 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 and (vii) any references herein to any Person shall be construed to include such Person’s successors and permitted assigns.

(c) The words “hereof”, “herein” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, and Section, Schedule and Exhibit references are to this Agreement unless otherwise specified.

(d) The meanings given to terms defined herein shall be equally applicable to both the singular and plural forms of such terms.

(e) Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP; provided that, if either the

Borrower notifies the Administrative Agent that such Borrower requests an amendment to any provision hereof to eliminate the effect of any change occurring after the date hereof in GAAP or in the application thereof on the operation of such provision (or if the Administrative Agent notifies the Borrowers that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then the Administrative Agent, the Borrower and the Lenders shall negotiate in good faith to amend such provision to preserve the original intent in light of the change in GAAP; provided that such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith. Notwithstanding anything to the contrary, for all purposes under this Agreement and the other Loan Documents, including negative covenants, financial covenants and component definitions, GAAP will be deemed to treat operating leases and Capital Leases in a manner consistent with their treatment under GAAP as in effect on January 1, 2019, notwithstanding any modifications or interpretive changes thereto that may occur thereafter. Notwithstanding any other provision contained herein, all computations of amounts and ratios referred to in this Agreement shall be made without giving effect to any election under FASB ASC Topic 825 “Financial Instruments” (or any other financial accounting standard having a similar result or effect) to value any Indebtedness of Company at “fair value” as defined therein.

(f) When the payment of any obligation or the performance of any covenant, duty or obligation is stated to be due or performance required on a day which is not a Business Day, the date of such payment or performance shall extend to the immediately succeeding Business Day and such extension of time shall be reflected in computing interest or fees, as the case may be; provided that, with respect to any payment of interest on or principal of Eurodollar Loans, if such extension would cause any such payment to be made in the next succeeding calendar month, such payment shall be made on the immediately preceding Business Day.

(g) Notwithstanding anything to the contrary in this Agreement, for purposes of (i) measuring the relevant financial ratios and basket availability with respect to the incurrence of any Indebtedness (including any Incremental Term Facilities or Incremental Revolving Increase) or Liens or the making of any Investments or Restricted Payments or (ii) determining compliance with the representations and warranties or the occurrence of any Default or Event of Default, in each case, in connection with a Limited Condition Acquisition, if Borrower has made an LCA Election with respect to such Limited Condition Acquisition, the date of determination of whether any such action is permitted hereunder shall be deemed to be the date on which the definitive documentation with respect to such Limited Condition Acquisition is entered into (the “LCA Test Date”) and, if, after giving *pro forma effect* to the Limited Condition Acquisition and the other transactions to be entered into in connection therewith as if they had occurred at the beginning of the most recent fiscal quarter ending prior to the LCA Test Date, a Default or Event of Default shall not then have occurred and be continuing and Borrower could have taken such action on the relevant LCA Test Date in compliance with such financial ratio, basket, representation or warranty, such financial ratio, basket, representation or warranty and such condition with respect to the lack of Default or Event of Default shall be deemed to have been complied with. For the avoidance of doubt, such ratios and other provisions shall not be tested at

the time of the consummation of such Limited Condition Acquisition and, if Borrower has made an LCA Election for any Limited Condition Acquisition, then in connection with any subsequent calculation of any financial ratio or basket availability on or following the relevant LCA Test Date and prior to the earlier of (x) the date on which such Limited Condition Acquisition is consummated or (y) the date the definitive agreement for such Limited Condition Acquisition is terminated or expires without consummation of such Limited Condition Acquisition, any such financial ratio or basket availability shall be calculated (and tested) on a *pro forma basis* assuming such Limited Condition Acquisition and other transactions in connection therewith (including any incurrence of Indebtedness and the use of proceeds thereof) have been consummated until such time as the applicable Limited Condition Acquisition has actually closed or the definitive agreement with respect thereto has been terminated.

1.3 Letter of Credit Amounts. Unless otherwise specified herein, the amount of a Letter of Credit at any time shall be deemed to be the stated amount of such Letter of Credit in effect at such time; provided, however, that with respect to any Letter of Credit that, by its terms or the terms of any Issuer Document related thereto, provides for one or more automatic increases in the stated amount thereof, the amount of such Letter of Credit shall be deemed to be the maximum stated amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum stated amount is in effect at such time.

1.4 Divisions. For all purposes under the Loan Documents, in connection with any division or plan of division under Delaware law (or any comparable event under a different jurisdiction's laws): (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized on the first date of its existence by the holders of its Capital Stock at such time.

1.5 Rates. The Administrative Agent does not warrant or accept responsibility for, and shall not have any liability with respect to, (i) the administration, submission or any other matter related to the rates in the definition of "Eurodollar Base Rate" or with respect to any rate that is an alternative or replacement for or successor to any such rate (including, without limitation, any Benchmark Replacement) (ii) any Benchmark Replacement Conforming Changes or (iii) the effect of any of the foregoing.

1.6 Currency Equivalents Generally. (a) The Administrative Agent shall determine the Spot Rate as of each Revaluation Date to be used for calculating the Dollar Equivalent amount of any Revolving Loan, and/or Letter of Credit that is denominated in any Alternate Currency. The Spot Rate shall become effective as of such Revaluation Date and shall be the Spot Rate employed in converting any amount between any Alternate Currency and Dollars until the next occurring Revaluation Date.

(b) If any basket is exceeded solely as a result of fluctuations in applicable currency exchange rates after the last time such basket was utilized, such basket will not be deemed to have been exceeded solely as a result of such fluctuations in currency exchange rates. For purposes of determining the Consolidated Fixed Charge Coverage Ratio, Consolidated Leverage

Ratio and the Consolidated Secured Leverage Ratio, amounts denominated in a currency other than Dollars will be converted to Dollars for the purposes of (A) testing the Financial Covenants, at the Spot Rate as of the last day of the fiscal quarter for which such measurement is being made, and (B) calculating any Consolidated Fixed Charge Coverage Ratio, Consolidated Leverage Ratio and the Consolidated Secured Leverage Ratio (other than for the purposes of determining compliance with Section 7.1), at the Spot Rate as of the date of calculation, and will, in the case of Indebtedness, reflect the currency translation effects, determined in accordance with GAAP, of Hedge Agreements permitted hereunder for currency exchange risks with respect to the applicable currency in effect on the date of determination of the Dollar Equivalent of such Indebtedness.

(c) Each provision of this Agreement shall be subject to such reasonable changes of construction as the Administrative Agent may from time to time specify with the Borrower's consent to appropriately reflect a change in currency of any country and any relevant market convention or practice relating to such change in currency.

1.7 Additional Alternate Currencies. (a) The Borrower may from time to time request that Revolving Loans be made and/or Letters of Credit be issued in a currency other than those specifically listed in the definition of "Alternate Currency"; provided that the relevant requested currency is a lawful currency (other than Dollars) that is readily available and freely transferable and convertible into Dollars. In the case of any such request with respect to the making of Revolving Loans, such request shall be subject to the approval of the Administrative Agent and the Revolving Lenders; and, in the case of any such request with respect to the issuance of Letters of Credit, such request shall be subject to the approval of the Administrative Agent and the applicable Issuing Lender.

(b) Any such request shall be made to the Administrative Agent not later than 11:00 a.m. 10 Business Days prior to the date of the desired Borrowing Date (or such other time or date as may be agreed by the Administrative Agent and, in the case of any such request pertaining to Letters of Credit, the relevant Issuing Lender, in its or their sole discretion). In the case of any such request pertaining to Revolving Loans, the Administrative Agent shall promptly notify each Revolving Lender thereof, in the case of any such request pertaining to Letters of Credit, the Administrative Agent shall promptly notify the relevant Issuing Lender thereof. Each such Revolving Lender (in the case of any such request pertaining to Revolving Loans), the relevant Issuing Lender (in the case of any such request pertaining to Letters of Credit) shall notify the Administrative Agent, not later than 11:00 a.m., 10 Business Days after receipt of such request whether it consents, in its sole discretion, to the making of Revolving Loans or the issuance of Letters of Credit, as the case may be, in such requested currency.

(c) Any failure by any Revolving Lender or the relevant Issuing Lender, as the case may be, to respond to such request within the time period specified in the preceding paragraph (b) shall be deemed to be a refusal by such Revolving Lender or Issuing Lender, as the case may be, to permit Revolving Loans to be made or Letters of Credit to be issued, as applicable, in such requested currency. If the Administrative Agent and all the Revolving Lenders that would be obligated to make Revolving Loans denominated in such requested currency consent to making

Revolving Loans in such requested currency, the Administrative Agent shall so notify the Borrower, and such currency shall thereupon be deemed for all purposes to be an Alternate Currency hereunder for purposes of any borrowing of Revolving Loans; and if the Administrative Agent and the relevant Issuing Lender consent to the issuance of Letters of Credit in such requested currency, the Administrative Agent shall so notify the Borrower and such currency shall thereupon be deemed for all purposes to be an Alternate Currency hereunder for purposes of any Letter of Credit issuances. If the Administrative Agent fails to obtain the requisite consent to any request for an additional currency under this Section 1.7, the Administrative Agent shall promptly so notify the Borrower.

SECTION 2. AMOUNT AND TERMS OF REVOLVING COMMITMENTS

2.1 Revolving Commitments. (a) Subject to the terms and conditions hereof, each Revolving Lender severally agrees to make revolving credit loans (“Revolving Loans”) to the Borrower from time to time in Dollars or any Alternate Currency during the Revolving Availability Period in an aggregate principal amount at any one time outstanding which, when added to such Lender’s Revolving Percentage of the L/C Obligations then outstanding does not exceed the amount of such Lender’s Revolving Commitment. During the Revolving Availability Period the Borrower may use the Revolving Commitments by borrowing, prepaying and reborrowing the Revolving Loans in whole or in part, all in accordance with the terms and conditions hereof. Within the foregoing limits and subject to the terms, conditions and limitations set forth herein, (x) Revolving Loans denominated in Dollars may consist of Eurodollar Loans or Base Rate Loans, and (y) Revolving Loans denominated in any Alternate Currency shall consist of Eurodollar Loans, in each case, as determined by the Borrower and notified to the Administrative Agent in accordance with Sections 2.2 and 3.3.

(b) The Borrower shall repay in Dollars or the relevant Alternate Currency all outstanding Revolving Loans on the Revolving Termination Date, except to the extent extended by individual Lenders as to such Lender’s Revolving Commitment.

2.2 Procedure for Revolving Loan Borrowing. The Borrower may borrow under the Revolving Commitments during the Revolving Availability Period on any Business Day; provided that the Borrower shall give the Administrative Agent its irrevocable notice, which may be given by (A) telephone or (B) a Committed Loan Notice; provided that any telephone notice must be confirmed immediately by delivery to the Administrative Agent of a Committed Loan Notice (which notice must be received by the Administrative Agent for any Revolving Loans requested to be made after the Closing Date, prior to 12:00 Noon, New York City time, (i) three (3) Business Days prior to the requested Borrowing Date, in the case of Eurodollar Loans, or (ii) one (1) Business Day prior to the requested Borrowing Date, in the case of Base Rate Loans) (provided that any such notice of a borrowing of Base Rate Loans to finance payments required to be made pursuant to Section 2.3 may be given not later than 12:00 Noon, New York City time, on the date of the proposed borrowing), specifying (x) the amount, currency (which shall be Dollars or an Alternate Currency) and Type of Revolving Loans to be borrowed, (y) the requested Borrowing Date and (z) in the case of Eurodollar Loans, the respective amounts of each such Type of Loan and the respective lengths of the initial Interest Period therefor;

provided, each Revolving Loan denominated in any Alternate Currency shall be a Eurodollar Loan. Each borrowing under the Revolving Commitments shall be in an amount equal to (x) in the case of Base Rate Loans, \$500,000 or a multiple of \$100,000 in excess thereof (or, if the then aggregate Available Revolving Commitments are less than \$500,000, such lesser amount) and (y) in the case of Eurodollar Loans, \$500,000 or a whole multiple of \$100,000 in excess thereof (or the Dollar Equivalent thereof in the case of any borrowing of Eurodollar Loans denominated in any Alternate Currency); provided, that borrowings of Base Rate Loans pursuant to Section 2.9 shall not be subject to the foregoing minimum amounts. Upon receipt of any such notice from the Borrower, the Administrative Agent shall promptly notify each Revolving Lender thereof. Each Revolving Lender will make the amount of its pro rata share of each borrowing available to the Administrative Agent for the account of the Borrower at the Funding Office prior to 12:00 Noon, New York City time, on the Borrowing Date requested by the Borrower in funds immediately available to the Administrative Agent. The Administrative Agent shall make the proceeds of such Revolving Loan available to the Borrower on such Borrowing Date by wire transfer of immediately available funds to a bank account designated in writing by the Borrower to the Administrative Agent.

2.3 Fees. (a) The Borrower agrees to pay to the Administrative Agent for the account of each Revolving Lender a commitment fee (the "Commitment Fee") for the period from and including the Closing Date to the last day of the Revolving Availability Period, computed at the Commitment Fee Rate on the average daily amount of the Available Revolving Commitment of such Lender during the period for which payment is made payable quarterly in arrears on the last Business Day of each fiscal quarter, commencing with the last Business Day of the first full fiscal quarter ending after Closing Date, and on the Revolving Termination Date.

(b) The Borrower agrees to pay to the Administrative Agent the fees in the amounts and on the dates previously agreed to in the Fee Letter. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever.

2.4 Termination or Reduction of Revolving Commitments. The Borrower shall have the right, upon not less than three (3) Business Days' notice to the Administrative Agent, to terminate the Revolving Commitments or, from time to time, to reduce the amount of the Revolving Commitments; provided that no such termination or reduction of Revolving Commitments shall be permitted if, after giving effect thereto and to any prepayments of the Revolving Loans made on the effective date thereof, the Total Revolving Extensions of Credit would exceed the Total Revolving Commitments; provided, further that such notice may be contingent on the occurrence of a refinancing or the consummation of a sale, transfer, lease or other disposition of assets and may be revoked or the termination date deferred if the refinancing or sale, transfer, lease or other disposition of assets does not occur. Any such reduction shall be in an amount equal to \$1,000,000, or a multiple of \$500,000 in excess thereof, and shall reduce permanently the Revolving Commitments then in effect.

2.5 L/C Commitment. (a) Subject to the terms and conditions hereof, each Issuing Lender, in reliance on the agreements of the other Revolving Lenders set forth in Section 2.8(a), agrees to issue standby letters of credit ("Letters of Credit") for the account of the Borrower or

any Restricted Subsidiary on any Business Day during the Revolving Availability Period as may be approved from time to time by such Issuing Lender, with the face amount of any outstanding Letters of Credit (and, without duplication, any unpaid drawing in respect thereof) reducing the Available Revolving Commitments on a Dollar-for-Dollar basis; provided that no Issuing Lender shall have any obligation to issue any Letter of Credit if, after giving effect to such issuance, (i) the L/C Obligations would exceed the L/C Commitment or (ii) the aggregate amount of such Issuing Lender's Available Revolving Commitments would be less than zero. Each Letter of Credit shall (i) be denominated in Dollars or in an Alternate Currency, (ii) have a face amount of at least \$100,000 (unless otherwise agreed by such Issuing Lender) and (iii) expire no later than the earlier of (x) the first anniversary of its date of issuance (unless otherwise agreed by the applicable Issuing Lender) and (y) the date that is five (5) Business Days prior to the Revolving Termination Date (unless cash collateralized or backstopped or otherwise supported, in each case in a manner agreed to by the Borrower and the Issuing Lender); provided that any Letter of Credit may provide for automatic renewals and extensions pursuant to Section 2.6(b). Each Letter of Credit shall be governed by laws of the State of New York (unless the laws of another jurisdiction is agreed to by the respective Issuing Lender). Notwithstanding anything herein to the contrary, no Issuing Lender shall have any obligation under this Agreement to issue a commercial letter of credit.

(b) No Issuing Lender shall at any time be obligated to issue any Letter of Credit hereunder if (i) such issuance would conflict with, or cause such Issuing Lender or any L/C Participant 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 such Issuing Lender from issuing the Letter of Credit, or any Requirements of Law applicable to such Issuing Lender or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over such Issuing Lender shall prohibit, or request that such Issuing Lender refrain from, the issuance of letters of credit generally or the Letter of Credit in particular or shall impose upon such Issuing Lender with respect to the Letter of Credit any restriction, reserve or capital requirement (for which such Issuing Lender is not otherwise compensated hereunder) not in effect on the Closing Date, or shall impose upon such Issuing Lender any unreimbursed loss, cost or expense which was not applicable on the Closing Date and which such Issuing Lender in good faith deems material to it and (iii) the issuance of the Letter of Credit would violate one or more policies of such Issuing Lender applicable to letters of credit generally for the account of similarly situated borrowers.

2.6 Procedure for Issuance, Amendment, Renewal, Extension of Letters of Credit; Certain Conditions. (a) The Borrower may from time to time request that an Issuing Lender issue a Letter of Credit. To request the issuance of a Letter of Credit (or the amendment, renewal or extension of an outstanding Letter of Credit), the Borrower shall hand deliver or telecopy (or transmit by electronic communication, if arrangements for doing so have been approved by the relevant Issuing Lender) to such Issuing Lender an Application requesting the issuance of the Letter of Credit and specifying the requested date of issuance of such Letter of Credit (which shall be a Business Day) and, as applicable, specifying the date of amendment, renewal or extension (which shall be a Business Day), the date on which such Letter of Credit is to expire (which shall comply with Section 2.5(a)(iii)), the amount and currency (which shall be Dollars or

an Alternate Currency) of such Letter of Credit, the name and address of the beneficiary thereof and such other information and documents, including any Issuer Documents, as shall be necessary to prepare, amend, renew or extend such Letter of Credit. Such Application shall be accompanied by documentary and other evidence of the proposed beneficiary's identity as may reasonably be requested by such Issuing Lender to enable such Issuing Lender to verify the beneficiary's identity or to comply with any applicable laws or regulations, including, without limitation, Section 326 of the USA Patriot Act of 2001, 31 U.S.C. Section 5318. Provided such Issuing Lender has determined that the issuance, amendment, renewal or extension of the requested Letter of Credit in favor of the identified beneficiary is in compliance with U.S. Treasury and U.S. Department of Commerce regulations and other applicable governmental laws, rules and regulations (including, without limitation, the U.S. Office of Foreign Asset Control regulations), upon receipt of all required approvals, such Issuing Lender will issue, amend, renew or extend the requested Letter of Credit for the account of the Borrower in such form as may be approved by such Issuing Lender, which shall have been approved by the Borrower, within (x) in the case of an issuance, five (5) Business Days of the date of the receipt of the Application and all related information and (y) in the case of an amendment, renewal or extension, three (3) Business Days of the date of the receipt of the Application and all related information. Each Issuing Lender shall furnish a copy of such Letter of Credit to the Borrower (with a copy to the Administrative Agent) promptly following the issuance thereof. An Issuing Lender shall promptly furnish to the Administrative Agent, which shall in turn promptly furnish to the Lenders, notice of the issuance (or, amendment, extension or renewal, as applicable) of each Letter of Credit (including the amount thereof) issued by such Issuing Lender.

(b) If the Borrower so requests in any applicable Application, an Issuing Lender may, in its sole discretion, agree to issue a Letter of Credit that has automatic extension provisions (each, an "Auto-Extension Letter of Credit"); provided that any such Auto-Extension Letter of Credit must permit such Issuing Lender to prevent any such extension at least once in each twelve-month period (commencing with the date of issuance of such Letter of Credit) by giving prior notice to the beneficiary thereof not later than a day (the "Non-Extension Notice Date") in each such twelve-month period to be agreed upon at the time such Letter of Credit is issued. Unless otherwise directed by an Issuing Lender, the Borrower shall not be required to make a specific request to such Issuing Lender for any such extension. Once an Auto-Extension Letter of Credit has been issued, the Lenders shall be deemed to have authorized (but may not require) such Issuing Lender to permit the extension of such Letter of Credit at any time to an expiry date not later than the date that is five (5) Business Days prior to the Revolving Termination Date (unless cash collateralized or backstopped or otherwise supported, in each case in a manner agreed to by the Borrower and the Issuing Lender); provided, however, that an Issuing Lender shall not permit any such extension if (A) such Issuing Lender has determined in good faith that it would not be permitted, or would have no obligation, at such time to issue such Letter of Credit in its revised form (as extended) under the terms hereof (by reason of the provisions of Section 2.5(a) or (b) or otherwise) or (B) it has received notice (which may be by telephone or in writing) on or before the day that is seven Business Days before the Non-Extension Notice Date (1) from the Administrative Agent that the Majority Facility Lenders under the Revolving Facility have elected not to permit such extension or (2) from the Administrative Agent, any Lender or the Borrower that one or more of the applicable conditions specified in Section 5.2 is

not then satisfied, and in each such case directing such Issuing Lender not to permit such extension.

2.7 Fees and Other Charges; Role of Issuing Lender; Applicability of ISP and UCP. (a) The Borrower will pay a fee (the “L/C Fee”) on all outstanding Letters of Credit at a per annum rate equal to the Applicable Margin then in effect with respect to Eurodollar Loans under the Revolving Facility on the face amount of such Letter of Credit, shared ratably among the Revolving Lenders and payable quarterly in arrears on each L/C Fee Payment Date after the issuance date of such Letter of Credit. In addition, the Borrower shall pay to each Issuing Lender for its own account a fronting fee of 0.125% per annum (or such lesser amount as may be agreed in writing by the Borrower the applicable Issuing Lender) on the undrawn and unexpired amount of each Letter of Credit issued by such Issuing Lender, payable quarterly in arrears on each L/C Fee Payment Date after the issuance date of such Letter of Credit.

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

(c) Role of Issuing Lender. Each Lender and the Borrower agree that, in paying any drawing under a Letter of Credit, an Issuing Lender shall not have any responsibility to obtain any document (other than any sight draft, certificates and documents expressly required by the Letter of Credit) or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering any such document. None of the Issuing Lenders, the Administrative Agent, any of their respective Agent Related Parties nor any correspondent, participant or assignee of any Issuing Lender shall be liable to any Lender for (i) any action taken or omitted in connection herewith at the request or with the approval of the Revolving Lenders or the Required Lenders, as applicable; (ii) any action taken or omitted in the absence of gross negligence or willful misconduct (as determined by a final and nonappealable decision of a court of competent jurisdiction); or (iii) the due execution, effectiveness, validity or enforceability of any document or instrument related to any Letter of Credit or Issuer Document. The Borrower hereby assumes all risks of the acts or omissions of any beneficiary or transferee with respect to its use of any Letter of Credit; provided, however, that this assumption is not intended to, and shall not, preclude the Borrower’s pursuing such rights and remedies as it may have against the beneficiary or transferee at law or under any other agreement. None of the Issuing Lenders, the Administrative Agent, any of their respective Agent Related Parties nor any correspondent, participant or assignee of any Issuing Lender shall be liable or responsible for any of the matters described in Section 2.10; provided, however, that anything in such Section to the contrary notwithstanding, the Borrower may have a claim against an Issuing Lender, and an Issuing Lender may be liable to the Borrower, to the extent, but only to the extent, of any direct, as opposed to consequential or exemplary, damages suffered by the Borrower which were caused by such Issuing Lender’s willful misconduct or gross negligence or such Issuing Lender’s willful failure to pay under any Letter of Credit after the presentation to it by the beneficiary of a sight draft and certificate(s) strictly complying with the terms and conditions of a Letter of Credit (in each case, as determined by a final and nonappealable decision of a court of competent

jurisdiction). In furtherance and not in limitation of the foregoing, an Issuing Lender may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, and an Issuing Lender shall not be responsible for the validity or sufficiency of any instrument transferring or purporting to transfer a Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason. An Issuing Lender may send a Letter of Credit or conduct any communication to or from the beneficiary via the Society for Worldwide Interbank Financial Telecommunication (“SWIFT”) message or overnight courier, or any other commercially reasonable means of communicating with a beneficiary.

(d) Applicability of ISP and UCP. Unless otherwise expressly agreed by the relevant Issuing Lender and the Borrower when a Letter of Credit is issued, (i) the rules of the ISP shall apply to each standby Letter of Credit, and (ii) the rules of the UCP shall apply to each commercial Letter of Credit. Notwithstanding the foregoing, an Issuing Lender shall not be responsible to the Borrower for, and such Issuing Lender’s rights and remedies against the Borrower shall not be impaired by, any action or inaction of such Issuing Lender required or permitted under any law, order, or practice that is required or permitted to be applied to any Letter of Credit or this Agreement, including the Law or any order of a jurisdiction where such Issuing Lender or the beneficiary is located, the practice stated in the ISP or UCP, as applicable, or in the decisions, opinions, practice statements, or official commentary of the ICC Banking Commission, the Bankers Association for Finance and Trade – International Financial Services Association (BAFT-IFSA), or the Institute of International Banking Law & Practice, whether or not any Letter of Credit chooses such law or practice.

2.8 L/C Participations. (a) Each Issuing Lender irrevocably agrees to grant and hereby grants to each L/C Participant, and, to induce the Issuing Lenders to issue Letters of Credit hereunder, each L/C Participant irrevocably agrees to accept and purchase and hereby accepts and purchases from the Issuing Lenders, on the terms and conditions set forth below, for such L/C Participant’s own account and risk an undivided interest equal to such L/C Participant’s Revolving Percentage in the Issuing Lenders’ obligations and rights (though, in the case of rights, subject to such L/C Participant’s satisfaction of its reimbursement obligation set forth in the following sentence) under and in respect of each Letter of Credit issued hereunder and the amount of each draft paid by the Issuing Lenders thereunder (in respect of any Letter of Credit issued in an Alternate Currency, with such participation expressed in the Dollar Equivalent thereof). Each L/C Participant unconditionally and irrevocably agrees with each Issuing Lender that, if a draft is paid under any Letter of Credit for which such Issuing Lender is not reimbursed in full by the Borrower in accordance with the terms of this Agreement, such L/C Participant shall pay to the Administrative Agent upon demand of such Issuing Lender an amount equal to such L/C Participant’s Revolving Percentage of the amount of such draft, or any part thereof, that is not so reimbursed. The L/C Participants’ obligations to make such payment shall be absolute and unconditional under any and all circumstances and irrespective of any setoff, counterclaim or defense to payment that any L/C Participant may have or have had against an Issuing Lender, the Borrower or any other Person. The Administrative Agent shall promptly forward such amounts to such Issuing Lender.

(b) If any amount required to be paid by any L/C Participant to the Administrative Agent for the account of an Issuing Lender pursuant to Section 2.8(a) in respect of any unreimbursed portion of any payment made by such Issuing Lender under any Letter of Credit is paid to the Administrative Agent for the account of such Issuing Lender within three (3) Business Days after the date such payment is due, such L/C Participant shall pay to the Administrative Agent for the account of such Issuing Lender on demand an amount equal to the product of (i) such amount, times (ii) the daily average Federal Funds Rate (or, in the case of any Letter of Credit denominated in any Alternate Currency, the Administrative Agent's customary rate for interbank advances in such Alternate Currency) during the period from and including the date such payment is required to the date on which such payment is immediately available to such Issuing Lender, times (iii) a fraction the numerator of which is the number of days that elapse during such period and the denominator of which is 360. If any such amount required to be paid by any L/C Participant pursuant to Section 2.8(a) is not made available to the Administrative Agent for the account of such Issuing Lender by such L/C Participant within three (3) Business Days after the date such payment is due, such Issuing Lender shall be entitled to recover from such L/C Participant, on demand, such amount with interest thereon calculated from such due date at the rate per annum applicable to Base Rate Loans under the Revolving Facility. A certificate of an Issuing Lender submitted to any L/C Participant with respect to any amounts owing under this Section shall be conclusive in the absence of manifest error.

(c) Whenever, at any time after an Issuing Lender has made payment under any Letter of Credit and has received from any L/C Participant its pro rata share of such payment in accordance with Section 2.8(a), the Administrative Agent or such Issuing Lender receives any payment related to such Letter of Credit (whether directly from the Borrower or otherwise, including proceeds of collateral applied thereto by such Issuing Lender), or any payment of interest on account thereof, the Administrative Agent or such Issuing Lender, as the case may be, will distribute to such L/C Participant its pro rata share thereof; provided, however, that in the event that any such payment received by Administrative Agent or such Issuing Lender, as the case may be, shall be required to be returned by the Administrative Agent or such Issuing Lender, such L/C Participant shall return to the Administrative Agent for the account of such Issuing Lender the portion thereof previously distributed by the Administrative Agent or such Issuing Lender, as the case may be, to it.

2.9 Reimbursement Obligation of the Borrower. An Issuing Lender shall notify the Borrower of the date and amount of a drawing presented under any Letter of Credit and paid by such Issuing Lender. The Borrower agrees to reimburse such Issuing Lender for the amount of (a) such drawing so paid and (b) any fees, charges or other costs or expenses (other than taxes or similar amounts) incurred by such Issuing Lender in connection with such payment on the Business Day after the Borrower receives such notice. Each such payment shall be made to such Issuing Lender at its address for notices referred to herein in Dollars or in the applicable Alternate Currency and in immediately available funds. Interest shall be payable on any such amounts from the date on which the relevant drawing is paid until payment in full at the rate set forth in (i) until the Business Day next succeeding the date of the relevant notice, Section 3.5(b) in respect of Revolving Loans (or, in the case of any Letter of Credit denominated in any Alternate Currency, Section 3.5(a)) and (ii) thereafter, Section 3.5(c). Each drawing under any

Letter of Credit shall (unless an event of the type described in clause (i) or (ii) of Section 8.1(f) shall have occurred and be continuing with respect to the Borrower, in which case the procedures specified in Section 2.8 for funding by L/C Participants shall apply) constitute a request by the Borrower to the Administrative Agent for a borrowing pursuant to Section 2.2 of Base Rate Loans in the amount of such drawing (or, in the case of a Letter of Credit denominated in an Alternate Currency, a borrowing pursuant to Section 2.2 of Eurodollar Loans in the amount of such drawing). The Borrowing Date with respect to such borrowing shall be the first date on which a borrowing of Revolving Loans could be made, pursuant to Section 2.2, if the Administrative Agent had received a notice of such borrowing at the time the Administrative Agent receives notice from an Issuing Lender of such drawing under such Letter of Credit.

2.10 Obligations Absolute. The Borrower's obligations under Section 2.9 shall be absolute and unconditional under any and all circumstances and irrespective of any setoff, counterclaim or defense to payment that the Borrower may have or have had against an Issuing Lender, any beneficiary of a Letter of Credit or any other Person. The Borrower also agrees with the Issuing Lenders that the Issuing Lenders and any Issuing Lender's Agent Related Parties shall not be responsible for, and the Borrower's Reimbursement Obligations under Section 2.9 shall not be affected by, among other things, the validity or genuineness of documents or of any endorsements thereon, even though such documents shall in fact prove to be invalid, fraudulent or forged, or any dispute between or among the Borrower and any beneficiary of any Letter of Credit or any other party to which such Letter of Credit may be transferred or any claims whatsoever of the Borrower against any beneficiary of such Letter of Credit or any such transferee. No Issuing Lender or any Agent Related Party of any Issuing Lender shall 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, omissions, interruptions or delays found by a final and nonappealable decision of a court of competent jurisdiction to have resulted from the gross negligence or willful misconduct of such Issuing Lender or its Agent Related Parties, as applicable. The parties hereto agree that any action taken or omitted by an Issuing Lender or its Agent Related Parties under or in connection with any Letter of Credit or the related drafts or documents, if done in the absence of their respective gross negligence or willful misconduct (as determined by a final and nonappealable decision of a court of competent jurisdiction), shall be binding on the Borrower and the parties hereto and shall not result in any liability of such Issuing Lender or its Agent Related Parties to the Borrower.

2.11 Letter of Credit Payments. If any drawing shall be presented for payment under any Letter of Credit, the relevant Issuing Lender shall promptly notify the Borrower of the date of payment and amount paid by such Issuing Lender in respect thereof. The responsibility of an Issuing Lender to the Borrower in connection with any drawing presented for payment under any Letter of Credit shall, in addition to any payment obligation expressly provided for in such Letter of Credit, and subject to the limitations on liability set forth in Section 2.7(c) and 2.10 hereof, be limited to determining that the documents (including each drawing) delivered under such Letter of Credit in connection with such presentment are substantially in conformity with such Letter of Credit.

2.12 Applications; Issuer Documents. To the extent that any provision of any Application related to any Letter of Credit is inconsistent with the provisions of this Section 2, the provisions of this Section 2 shall apply. In the event of any conflict between the terms hereof and the terms of any Issuer Document, the terms hereof shall control.

2.13 Defaulting Lenders. (a) 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) 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 the final paragraph of Section 10.1.

(ii) 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) or received by the Administrative Agent from a 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 any Issuing Lender hereunder; *third*, to Cash Collateralize the Issuing Lenders' Fronting Exposure with respect to such Defaulting Lender in accordance with Section 2.13(b); *fourth*, as the Borrower may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; *fifth*, if so determined by the Administrative Agent and the Borrower, to be held in a deposit account and released pro rata in order to (x) satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement and (y) Cash Collateralize the Issuing Lenders' future Fronting Exposure with respect to such Defaulting Lender with respect to future Letters of Credit issued under this Agreement, in accordance with Section 2.13(b); *sixth*, to the payment of any amounts owing to the Lenders or the Issuing Lenders as a result of any judgment of a court of competent jurisdiction obtained by any Lender or the Issuing 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 exists, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and *eighth*, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (x) such payment is a payment of the principal amount of any Loans or Letter of Credit disbursements in respect of which such Defaulting Lender has not fully funded its appropriate share, and (y) such Loans were made or the related Letters of Credit were issued 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 Letter of Credit disbursements owed to, all Non-Defaulting Lenders on a pro rata basis prior to

being applied to the payment of any Loans of, or Letter of Credit disbursements owed to, such Defaulting Lender until such time as all Loans and funded and unfunded participations in L/C Obligations are held by the Lenders pro rata in accordance with the Commitments under the applicable Facility without giving effect to Section 2.13(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 2.13(a)(ii) shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) No Defaulting Lender shall be entitled to receive any Commitment Fees for any period during which that Lender is a Defaulting Lender (and the Borrower shall not be required to pay any such Commitment Fee that otherwise would have been required to have been paid to that Defaulting Lender).

(iv) Each Defaulting Lender shall be entitled to receive L/C Fees for any period during which that Lender is a Defaulting Lender only to the extent allocable to its Applicable Percentage of the stated amount of Letters of Credit for which it has provided Cash Collateral pursuant to Section 2.13(b); provided that with respect to any L/C Fee not required to be paid pursuant to this Section 2.13(a)(iv), the Borrower shall (x) pay to each Non-Defaulting Lender that portion of any such L/C Fee otherwise payable to such Defaulting Lender with respect to such Defaulting Lender's participation in L/C Obligations that has been reallocated to such Non-Defaulting Lender pursuant to clause (v) below, (y) pay to each Issuing Lender the amount of any such fee otherwise payable to such Defaulting Lender to the extent allocable to such Issuing Lender's Fronting Exposure to such Defaulting Lender, and (z) not be required to pay the remaining amount of any such fee.

(v) All or any part of such Defaulting Lender's participation in L/C Obligations shall be reallocated among the Non-Defaulting Lenders in accordance with their respective Applicable Percentages (calculated without regard to such Defaulting Lender's Commitment) but only to the extent that such reallocation does not cause the aggregate Revolving Credit Exposure of any Non-Defaulting Lender to exceed such Non-Defaulting Lender's Revolving Commitment. Subject to Section 10.19, 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.

(vi) If the reallocation described in clause (v) above cannot, or can only partially, be effected, the Borrower shall, within two Business Days following the written request of the Administrative Agent, without prejudice to any right or remedy available to it hereunder or under law, Cash Collateralize the Issuing Lenders' Fronting Exposure in accordance with the procedures set forth in Section 2.13(b).

(b) At any time that there shall exist a Defaulting Lender, within three Business Days following the written request of the Administrative Agent or any Issuing Lender (with a copy to

the Administrative Agent) the Borrower shall Cash Collateralize the Issuing Lenders' Fronting Exposure with respect to such Defaulting Lender (determined after giving effect to Section 2.13(a)(v) and any Cash Collateral provided by such Defaulting Lender) in an amount not less than the Minimum Collateral Amount:

(i) The Borrower, and to the extent provided by any Defaulting Lender, such Defaulting Lender, hereby grants to the Administrative Agent, for the benefit of the Issuing Lenders, and agrees to maintain, a first priority security interest in all such Cash Collateral as security for the Defaulting Lenders' obligation to fund participations in respect of L/C Obligations, to be applied pursuant to clause (ii) below. 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 and the Issuing Lenders as herein provided (other than Lien permitted pursuant to Section 7.3), or that the total amount of such Cash Collateral is less than the Minimum Collateral Amount, the Borrower 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 the Defaulting Lender).

(ii) Notwithstanding anything to the contrary contained in this Agreement, Cash Collateral provided under this Section 2.13(b) in respect of Letters of Credit shall be applied to the satisfaction of the Defaulting Lender's obligation to fund participations in respect of L/C Obligations (including, as to Cash Collateral provided by a Defaulting Lender, any interest accrued on such obligation) for which the Cash Collateral was so provided, prior to any other application of such property as may otherwise be provided for herein.

(iii) Cash Collateral (or the appropriate portion thereof) provided to reduce any Issuing Lender's Fronting Exposure shall no longer be required to be held as Cash Collateral pursuant to this Section 2.13(b) following (i) the elimination of the applicable Fronting Exposure (including by the termination of Defaulting Lender status of the applicable Lender), or (ii) the determination by the Administrative Agent and each Issuing Lender that there exists excess Cash Collateral.

(c) If the Borrower, the Administrative Agent and each Issuing Lender agree in writing that a Lender is no longer a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), that 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 to be held pro rata by the Lenders in accordance with the Commitments under the applicable Facility (without giving effect to Section 2.13(a)(v), whereupon such Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while that 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 that Lender's having been a Defaulting Lender.

(d) So long as any Lender is a Defaulting Lender, 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 after giving effect thereto.

2.14 Incremental Facilities.

(a) Borrower Request. The Borrower may at any time and from time to time after the Closing Date by written notice to the Administrative Agent elect to request the establishment of (i) one or more new term loan facilities or an increase in any existing tranche of Term Loans (each, an "Incremental Term Facility") with new term loan commitments (each, an "Incremental Term Loan Commitment") or (ii) an increase to the existing Revolving Commitments (such increase, an "Incremental Revolving Increase" and the commitments thereunder, an "Incremental Revolving Commitment"; and, together with the Incremental Term Facilities, collectively referred to as the "Incremental Facility") in an aggregate principal amount not in excess of the sum of: (i) the lesser of (x) \$50,000,000 and (y) an amount such that, after giving effect to the establishment of any Incremental Revolving Commitment, the aggregate principal amount of the Revolving Commitments does not exceed \$100,000,000 plus (ii) the aggregate amount of all voluntary prepayments of Revolving Loans with a corresponding permanent reduction of the Revolving Commitments (to the extent not financed with the proceeds from the incurrence of long-term Indebtedness) plus (iii) an unlimited amount of additional Loans that could be incurred by the Borrower at such time without causing the Consolidated Secured Leverage Ratio to be greater than 4.00 to 1.00, calculated after giving *pro forma effect* to the incurrence of such additional amount and the use of proceeds thereof, excluding the cash proceeds of any Incremental Term Loans or Incremental Revolving Commitments and assuming the full amount of any Incremental Revolving Commitments are borrowed (whether or not funded or outstanding); provided, for purposes of this clause (iii), if Consolidated EBITDA is negative for the applicable Reference Period for purposes of calculating the Consolidated Secured Leverage Ratio, no amount shall be available under this clause (iii) for any purpose, minus the aggregate initial principal amount of any Incremental Equivalent Term Debt incurred pursuant to Section 2.15 (it being understood and agreed that unless notified by the Borrower, (I) the Borrower shall be deemed to have utilized, amounts of the type described in clause (iii) above prior to the utilization of amounts under clauses (i) or (ii) above and (II) Loans may be incurred in respect of any or all of clauses (i), (ii) and (iii) above, and the proceeds from any such incurrence in respect of clauses (i), (ii) and (iii) above, may be utilized in a single transaction by, first, calculating the incurrence in respect of clause (iii) above (without giving effect to any incurrence in respect of clause (i) or (ii)), second, calculating the incurrence in respect of clause (ii) above and, third, calculating the incurrence in respect of clause (i) above); provided that the Borrower may redesignate any such Indebtedness originally designated as incurred pursuant to clause (i) above if, at the time of such redesignation, the Borrower would be permitted to incur under clause (iii) the aggregate principal amount of Indebtedness being so redesignated (for purposes of clarity, with any such redesignation having the effect of increasing the Borrower's ability to incur

indebtedness under clause (i) above as of the date of such redesignation by the amount of such Indebtedness so redesignated); and in minimum increments of \$10,000,000 (or such lesser minimum increments as the Administrative Agent shall agree in its sole discretion) (the foregoing amount, the “Available Incremental Amount”). Notwithstanding anything in this Agreement to the contrary, any Incremental Term Loans the proceeds of which are used to repay or otherwise redeem, repurchase or retire Term Loans shall not utilize any portion of the Available Incremental Amount and shall not reduce the Available Incremental Amount. Each such notice shall specify (i) the date (each, an “Incremental Facility Effective Date”) on which the Borrower proposes that commitments under the applicable Incremental Facility shall be effective, which shall be a date not less than ten (10) Business Days after the date on which such notice is delivered to the Administrative Agent (or such earlier date as the Administrative Agent shall agree in its sole discretion) and (ii) the identity of each Person to whom the Borrower proposes any portion of such Incremental Term Loan Commitment or Incremental Revolving Commitment, as applicable, be allocated and the amounts of such allocations.

(b) Conditions. Any Incremental Term Loan Commitment or Incremental Revolving Commitment, as applicable, shall become effective as of its Incremental Facility Effective Date; provided that:

(i) the condition set forth in Section 5.2(c) shall be satisfied (except as otherwise set forth in the applicable Incremental Term Joinder or Incremental Revolving Joinder, as applicable);

(ii) each of the representations and warranties made by any Loan Party in or pursuant to the Loan Documents shall be true and correct in all material respects (unless qualified by materiality, in which case they shall be true and correct in all respects) on and as of such date as if made on and as of such date (except to the extent made as of a specific date, in which case such representation and warranty shall be true and correct in all material respects (unless qualified by materiality, in which case they shall be true and correct in all respects) on and as of such specific date); provided that, if the primary purpose of such Incremental Facility is to finance a Permitted Acquisition or an Investment permitted under Section 7.7, the foregoing shall be limited to the Specified Representations (other than Section 4.19 with respect to the target in such Permitted Acquisition and its Subsidiaries);

(iii) no Event of Default shall have occurred and be continuing or would result from the borrowings to be made on the Incremental Facility Effective Date (except as otherwise set forth in the Incremental Term Joinder or Incremental Revolving Joinder, as applicable); provided that, if the primary purpose of such Incremental Facility is to finance a Permitted Acquisition or an Investment permitted under Section 7.7, the foregoing shall be limited to no Specified Event of Default; and

(iv) the Borrower shall deliver or cause to be delivered any customary legal opinions or other documents reasonably requested by the Administrative Agent in connection with any such transaction.

(c) Terms of Incremental Facilities. The terms and provisions of the Incremental Term Loans made pursuant to an Incremental Term Loan Commitment (the “Incremental Term Loans”) and the Incremental Revolving Commitments made pursuant to an Incremental Revolving Increase (the “Incremental Revolving Loans”) shall be as follows:

(i) any Incremental Revolving Increase shall be on the same terms and subject to the same documentation applicable to the existing Revolving Facility (except as otherwise set forth herein) and, to the extent not consistent with such existing Revolving Facility, on terms reasonably acceptable to the Administrative Agent (except as otherwise set forth herein);

(ii) the maturity date of Incremental Revolving Loans and Incremental Term Loans shall not be earlier than the Revolving Termination Date;

(iii) any Incremental Revolving Loan shall have no scheduled amortization or mandatory commitment reduction prior to the Revolving Termination Date;

(iv) any Incremental Term Facility may provide for the ability to participate on a *pro rata basis*, or on a less than *pro rata basis* (but not on a greater than *pro rata basis*), in any voluntary or mandatory prepayments of existing Incremental Term Loans hereunder;

(v) the Incremental Term Loans may from time to time be Eurodollar Loans or Base Rate Loans, as determined by the Borrower and notified to the Administrative Agent in accordance with Sections 2.2 and 3.3;

(vi) the applicable yield for the Incremental Term Loans or the Incremental Revolving Loans, as applicable, shall be determined by the Borrower and the applicable new Lenders;

(vii) the pricing, weighted average life to maturity, prepayment provisions, amortization schedule and pricing protection (if any) for any Incremental Term Facility shall be determined by the Borrower and the lenders thereunder and, except as otherwise provided herein, all other terms of such Incremental Term Facility will be as agreed between the Borrower and the lenders providing such Incremental Term Facility;

(viii) the Incremental Term Loans and Incremental Revolving Increase, as applicable, shall rank *pari passu* in right of payment with other Loans; and

(ix) the Incremental Revolving Increase shall rank *pari passu* in right of security with other Revolving Loans and shall be senior in right of security to the Incremental Term Loans, and the Incremental Term Loans, if secured, shall be secured on a junior lien basis to the Revolving Facility and shall be subject to customary intercreditor arrangements reasonably satisfactory to the Administrative Agent.

Incremental Term Loans and Incremental Revolving Increases may be provided by any existing Lender (but no existing Lender shall have an obligation to make any Incremental Term Loan Commitment or Incremental Revolving Commitment, nor will the Borrower have any obligation to approach any existing Lenders to provide any Incremental Term Loan Commitment or Incremental Revolving Commitment) and additional banks, financial institutions and other institutional lenders who will become Lenders in connection with such Incremental Term Facility; provided that the consent of the Administrative Agent and Issuing Lenders (in each case not to be unreasonably withheld, conditioned or delayed) shall be required with respect to any additional Lender to the same extent such consent would for an assignment of an existing Loan to such Lender pursuant to Section 10.6(b). The Incremental Term Loan Commitments or the Incremental Revolving Commitments, as applicable, shall be effected by a joinder agreement (the “Incremental Term Joinder” or “Incremental Revolving Joinder”, as applicable) executed by the Borrower, the Administrative Agent and each Lender making such Incremental Term Loan Commitment or Incremental Revolving Commitment, as applicable, in form and substance reasonably satisfactory to each of them. Incremental Term Loans and Incremental Revolving Increases may be used for the Borrower’s and its Subsidiaries’ working capital and other general corporate purposes, including for capital expenditures, acquisitions, Restricted Payments, refinancing of Indebtedness and any other transactions not prohibited under this Agreement. The Incremental Term Joinder or the Incremental Revolving Joinder may, without the consent of any other Lenders, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the opinion of the Administrative Agent, to effect the provisions of this Section 2.14 (including without limitation to implement the relative lien priority contemplated hereby of any Incremental Term Loans). In addition, unless otherwise specifically provided herein, all references in the Loan Documents to Term Loans, Term Commitments, Revolving Commitments and Revolving Loans, as applicable, shall be deemed, unless the context otherwise requires, to include references to Incremental Term Loans, Incremental Term Loan Commitments, Incremental Revolving Commitments and Incremental Revolving Loans, respectively, that are made pursuant to this Agreement.

(d) Equal and Ratable Benefit; Lien Priority. The Incremental Revolving Loans and Incremental Revolving Commitments, as applicable, established pursuant to this Section 2.14 shall constitute Loans, Commitments, Revolving Loans and Revolving Commitments under, and shall be entitled to all the benefits afforded by, this Agreement and the other Loan Documents, and without limiting the foregoing, if secured, in any case, shall be secured on a senior basis to the Liens securing any Incremental Term Loans and subject to the foregoing shall otherwise benefit equally and ratably from security interests created by the Security Documents and the guarantees of the Subsidiary Guarantors. The Incremental Term Loans and Incremental Term Loan Commitments, as applicable, established pursuant to this Section 2.14 shall constitute Loans, Commitments, Term Loans and Term Commitments under, and, subject to the relative Lien Priority contemplated hereby, shall be entitled to all the benefits afforded by, this Agreement and the other Loan Documents, and, if secured, shall be secured on a junior lien basis to the Revolving Facility and shall be subject to customary intercreditor arrangements reasonably satisfactory to the Administrative Agent and shall benefit equally and ratably from the guarantees of the Subsidiary Guarantors. The Loan Parties shall take any actions reasonably required by the Administrative Agent to ensure and/or demonstrate that the Lien and security interests granted by

the Security Documents are subject to the relative Lien priority contemplated hereby and shall otherwise continue to be perfected under the Uniform Commercial Code or otherwise after giving effect to the establishment of any such Class of Incremental Term Loans or Incremental Revolving Loans, as applicable, or any such Incremental Term Loan Commitments or Incremental Revolving Increase, as applicable.

2.15 Incremental Equivalent Term Debt. (a) At any time and from time to time, subject to the terms and conditions set forth herein, the Borrower may issue one or more series of Incremental Equivalent Term Debt in an aggregate principal amount not to exceed, as of the date of and after giving effect to the issuance of any such Incremental Equivalent Term Debt when combined with the aggregate amount of all Incremental Term Loans, Incremental Term Loan Commitments and Incremental Revolving Commitments under Section 2.14, the Available Incremental Amount.

(b) The issuance of any Incremental Equivalent Term Debt pursuant to this Section 2.16 (i) shall in all cases, be subject to the terms and conditions applicable to Incremental Term Loan Commitments set forth under Section 2.14(b) (other than clause (ii) thereof), the maturity date of such Incremental Equivalent Term Debt shall be no earlier than the Revolving Facility Termination Date, and, if such Incremental Equivalent Term Debt is unsecured, in lieu of compliance with the Consolidated Secured Leverage Ratio referred to clause (iii) of the definition of Available Incremental Amount, the incurrence thereof shall instead be subject to *pro forma* compliance with a Consolidated Leverage Ratio of 5.50:1.00 (it being understood that cash proceeds of any such Incremental Equivalent Term Debt shall not be netted for the purpose of testing such Consolidated Leverage Ratio); provided, for purposes of this Section 2.15(b), if Consolidated EBITDA is negative for the applicable Reference Period for purposes of calculating the Consolidated Leverage Ratio, no amount shall be available under clause (iii) of the definition of Available Incremental Amount for any purpose under this Section 2.15 and (ii) the covenants, events of default, guarantees and other terms of such Incremental Equivalent Term Debt shall be customary for similar debt instruments in light of then-prevailing market conditions at the time of issuance, it being understood that a certificate of an Responsible Officer of the Borrower delivered to the Administrative Agent prior to or at the incurrence of such Incremental Equivalent Term Debt, together with a reasonably detailed description of the material terms and conditions of such Incremental Equivalent Term Debt or drafts of the documentation relating thereto, stating that the Borrower has determined in good faith that such terms and conditions of the Incremental Equivalent Term Debt satisfy the requirement set forth in this clause (ii), shall be conclusive evidence that such terms and conditions have been satisfied.

2.16 Extensions of Loans.

(a) The Borrower may, by written notice to the Administrative Agent from time to time, request an extension (each, an “Extension”) of the maturity date of any Class of Revolving Commitments to the extended maturity date specified in such notice. Such notice shall (i) set forth the amount of the applicable Class of Revolving Commitments that will be subject to the Extension (which shall be in minimum increments of \$1,000,000 and a minimum amount of

\$10,000,000), (ii) set forth the date on which such Extension is requested to become effective (which shall be not less than ten (10) Business Days after the date of such Extension notice (or such shorter period as the Administrative Agent shall agree in its sole discretion)) and (iii) identify the relevant Class of Revolving Commitments to which such Extension relates. Each Revolving Lender of the applicable Class of Revolving Commitments shall be offered (an “Extension Offer”) an opportunity to participate in such Extension on a *pro rata basis* and on the same terms and conditions as each other Revolving Lender of such Class pursuant to procedures established by, or reasonably acceptable to, the Administrative Agent and the Borrower. If the aggregate principal amount of Revolving Commitments in respect of which Revolving Lenders shall have accepted the relevant Extension Offer shall exceed the maximum aggregate principal amount of Revolving Commitments subject to the Extension Offer as set forth in the Extension notice, then the Revolving Commitments of Revolving Lenders of the applicable Class shall be extended ratably up to such maximum amount based on the respective principal amounts with respect to which such Revolving Lenders have accepted such Extension Offer.

(b) The following shall be conditions precedent to the effectiveness of any Extension: (i) no Event of Default shall have occurred and be continuing immediately prior to and immediately after giving effect to such Extension, (ii) each of the representations and warranties made by any Loan Party in or pursuant to the Loan Documents shall be true and correct in all material respects (unless qualified by materiality, in which case they shall be true and correct in all respects) on and as of the date of such Extension (except to the extent made as of a specific date, in which case such representation and warranty shall be true and correct in all material respects (unless qualified by materiality, in which case they shall be true and correct in all respects) on and as of such specific date), and (iii) the Issuing Lenders shall have consented to such Extension of the Revolving Commitments, to the extent that such Extension provides for the issuance or extension of Letters of Credit at any time during the extended period.

(c) The terms of each Extension shall be determined by the Borrower and the applicable extending Revolving Lenders and set forth in an Extension Amendment; provided that (i) the final maturity date of any Extended Revolving Commitment shall be no earlier than the Revolving Termination Date, (ii) there shall be no scheduled amortization of the loans or reductions of commitments under any Extended Revolving Commitments, (iii) the Extended Revolving Loans will rank *pari passu* in right of payment and with respect to security with the existing Revolving Loans and any existing Term Loans and the borrower and guarantors of the Extended Revolving Commitments shall be the same as the Borrower and Guarantors with respect to the existing Revolving Loans, (iv) the interest rate margin, rate floors, fees, OID and premium applicable to any Extended Revolving Commitment (and the Extended Revolving Loans thereunder) shall be determined by the Borrower and the applicable extending Lenders, (v) borrowing and prepayment of Extended Revolving Loans, or reductions of Extended Revolving Commitments, and participation in Letters of Credit, shall be on a *pro rata* basis with the other Revolving Commitments (other than upon the maturity of the non-extended Revolving Loans and Revolving Commitments) and (vi) the terms of the Extended Revolving Commitments shall be substantially identical to the terms set forth herein (except as set forth in clauses (i) through (v) above).

(d) In connection with any Extension, the Borrower, the Administrative Agent and each applicable extending Revolving Lender shall execute and deliver to the Administrative Agent an Extension Amendment and such other documentation as the Administrative Agent shall reasonably specify to evidence the Extension. The Administrative Agent shall promptly notify each Lender as to the effectiveness of each Extension. Any Extension Amendment may, without the consent of any other Lender, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent and the Borrower, to implement the terms of any such Extension, including any amendments necessary to establish Extended Revolving Commitments as a new Class or tranche of Revolving Commitments, and such other technical amendments as may be necessary or appropriate in the reasonable opinion of the Administrative Agent and the Borrower in connection with the establishment of such new Class or tranche (including to preserve the *pro rata* treatment of the extended and non-extended Classes or tranches and to provide for the reallocation of Revolving Credit Exposure upon the expiration or termination of the commitments under any Class or tranche), in each case, on terms consistent with this Section 2.16.

SECTION 3. GENERAL PROVISIONS APPLICABLE

TO LOANS AND LETTERS OF CREDIT

3.1 Optional Prepayments. The Borrower may at any time and from time to time prepay the Loans, in whole or in part, without premium or penalty, upon irrevocable notice delivered to the Administrative Agent no later than 12:00 Noon, New York City time, three (3) Business Days prior thereto, in the case of Eurodollar Loans, and no later than 12:00 Noon, New York City time, one (1) Business Day prior thereto, in the case of Base Rate Loans, which notice shall specify the date and amount of prepayment and whether the prepayment is of Eurodollar Loans or Base Rate Loans and if such payment is to be applied to prepay any Term Loans, the manner in which such prepayment is to be applied thereto (and if not specified such prepayment shall be applied to any Term Loans in direct order of maturity thereof); provided, that if a Eurodollar Loan is prepaid on any day other than the last day of the Interest Period applicable thereto, the Borrower shall also pay any amounts owing pursuant to Section 3.11; provided, further that such notice may be contingent on the occurrence of a refinancing or the consummation of a sale, transfer, lease or other disposition of assets and may be revoked or the termination date deferred if the refinancing or sale, transfer, lease or other disposition of assets does not occur. Upon receipt of any such notice the Administrative Agent shall promptly notify each relevant Lender thereof. If any such notice is given, the amount specified in such notice shall be due and payable on the date specified therein, together with (except in the case of Revolving Loans that are Base Rate Loans) accrued interest to such date on the amount prepaid. Partial prepayments of Eurodollar Loans shall be in an aggregate principal amount of \$500,000 or integral multiples of \$100,000 in excess thereof. Partial prepayments of Base Rate Loans shall be in an aggregate principal amount of \$500,000 or integral multiples of \$100,000 in excess thereof.

3.2 Mandatory Prepayments. If on any date (including any Revaluation Date) the Total Revolving Extensions of Credit exceed the Total Revolving Commitments, the Borrower shall, within five Business Days after notice thereof to the Borrower from the Administrative Agent, Cash Collateralize L/C Obligations and/or prepay Revolving Loans in an aggregate amount equal to such excess (in each case, taking the Dollar Equivalent of any amount denominated in an Alternate Currency); provided, that if a Eurodollar Loan is prepaid on any day other than the last day of the Interest Period applicable thereto, the Borrower shall also pay any amounts owing pursuant to Section 3.11. Nothing set forth in this Section 3.2 shall be construed to require the Administrative Agent to calculate compliance under this Section 3.2. The application of any prepayment pursuant to this Section 3.2 shall be made, first, to Base Rate Loans and, second, to Eurodollar Loans. Each prepayment of the Loans under this Section 3.2 shall be accompanied by accrued interest to the date of such prepayment on the amount prepaid.

3.3 Conversion and Continuation Options. (a) The Borrower may elect from time to time to convert Eurodollar Loans (other than Eurodollar Loans denominated in an Alternate Currency) to Base Rate Loans by giving the Administrative Agent prior irrevocable notice of such election, which may be given by (A) telephone, or (B) a Committed Loan Notice (provided that any telephone notice must be confirmed immediately by delivery to the Administrative Agent of a Committed Loan Notice) no later than 12:00 Noon, New York City time, on the Business Day preceding the proposed conversion date; provided that any such conversion of Eurodollar Loans may only be made on the last day of an Interest Period with respect thereto. The Borrower may elect from time to time to convert Base Rate Loans to Eurodollar Loans by giving the Administrative Agent prior irrevocable notice of such election which may be given by (A) telephone, or (B) a Committed Loan Notice (provided that any telephone notice must be confirmed immediately by delivery to the Administrative Agent of a Committed Loan Notice) no later than 12:00 Noon, New York City time, on the third Business Day preceding the proposed conversion date (which notice shall specify the length of the initial Interest Period therefor); provided that no Base Rate Loan under a particular Facility may be converted into a Eurodollar Loan when any Event of Default has occurred and is continuing and the Administrative Agent has or the Majority Facility Lenders in respect of such Facility have determined in its or their sole discretion not to permit such conversions. Upon receipt of any such notice the Administrative Agent shall promptly notify each relevant Lender thereof. It is understood and agreed that only a Loan denominated in Dollars may be made in the form of, or converted into, a Base Rate Loan.

(b) Any Eurodollar Loan may be continued as such upon the expiration of the then current Interest Period with respect thereto by the Borrower giving irrevocable notice to the Administrative Agent, in accordance with the applicable provisions of the term "Interest Period" set forth in Section 1.1, of the length of the next Interest Period to be applicable to such Loans; provided that no Eurodollar Loan under a particular Facility may be continued as such when any Event of Default has occurred and is continuing and the Administrative Agent has or the Majority Facility Lenders in respect of such Facility have determined in its or their sole discretion not to permit such continuations; provided, that if such continuation is not permitted pursuant to the preceding proviso such Eurodollar Loans shall be automatically converted to Base Rate Loans on the last day of such then expiring Interest Period and provided, further, that

if the Borrower shall fail to give any required notice as described above in this paragraph (b), such Eurodollar Loans shall be automatically converted to Eurodollar Loans having an Interest Period of one (1) month on the last day of such then expiring Interest Period. Upon receipt of any such notice the Administrative Agent shall promptly notify each relevant Lender thereof.

3.4 Limitations on Tranches. Notwithstanding anything to the contrary in this Agreement, all borrowings, conversions and continuations of Loans hereunder and all selections of Interest Periods hereunder shall be in such amounts and be made pursuant to such elections so that, (a) in the case of Eurodollar Loans, after giving effect thereto, the aggregate principal amount of the Eurodollar Loans comprising each Eurodollar Tranche shall be equal to \$500,000 or integral multiples of \$100,000 in excess thereof and (b) the total number of outstanding Eurodollar Tranches and tranches of Base Rate Loans, when taken together, shall not exceed ten (10) tranches at any one time.

3.5 Interest Rates and Payment Dates. (a) Each Eurodollar Loan shall bear interest for each day during each Interest Period with respect thereto at a rate per annum equal to the Eurodollar Rate determined for such day plus the Applicable Margin.

(b) Each Base Rate Loan shall bear interest at a rate per annum equal to the Base Rate plus the Applicable Margin.

(c) If an Event of Default specified in Sections 8.1(a) or 8.1(f) shall have occurred and be continuing, all overdue Loans, Reimbursement Obligations, commitment fees and other overdue amounts payable hereunder shall bear interest at a rate per annum equal to (i) in the case of payments of overdue principal of the Loans, the rate that would otherwise be applicable thereto pursuant to the foregoing provisions of this Section 3.5 plus 2% per annum and (ii) in the case of any other overdue amounts under the Loan Documents, the non-default rate then applicable to Base Rate Loans under the applicable Facility plus 2% per annum,.

(d) Interest shall be payable in arrears on each Interest Payment Date; provided that interest accruing pursuant to paragraph (c) of this Section 3.5 shall be payable from time to time on demand and shall accrue from the date on which such Event of Default occurred until such Event of Default is no longer continuing.

(e) 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 any Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the interest contracted for, charged, or received by an Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable law, (i) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (ii) exclude voluntary prepayments of the Loans and the effects thereof, and (iii) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

3.6 Computation of Interest and Fees; Failure to Satisfy Conditions Precedent; Obligations of Lenders Several. (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 Base Rate Loans the rate of interest on which is calculated on the basis of clause (a) or (b) of the definition of Base Rate, the interest thereon shall be calculated on the basis of a 365- (or 366-, as the case may be) day year for the actual days elapsed. The Administrative Agent shall as soon as practicable notify the Borrower and the relevant Lenders of each determination of a Eurodollar Rate. Any change in the interest rate on a Loan resulting from a change in the Base Rate or the Eurodollar Reserve Percentage shall become effective as of the opening of business on the day on which such change becomes effective. The Administrative Agent shall as soon as practicable notify the Borrower and the relevant Lenders of the effective date and the amount of each such change in interest rate.

(b) Each determination of an interest rate by the Administrative Agent pursuant to any provision of this Agreement shall be conclusive and binding on the Borrower and the Lenders in the absence of manifest error. The Administrative Agent shall, at the request of the Borrower, promptly deliver to the Borrower a statement showing the quotations used by the Administrative Agent in determining any interest rate pursuant to Section 3.6(a).

(c) 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 3, and such funds are not made available to the Borrower by the Administrative Agent because the conditions to the applicable extension of credit set forth in Section 5 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.

(d) The obligations of the Lenders hereunder to make Term Loans (if any) and Revolving Loans, to fund participations in Letters of Credit and to make payments pursuant to Section 9.7 and 9.12 are several and not joint. The failure of any Lender to make any Loan, to fund any such participation or to make any payment under Section 9.7 or 9.12 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 or 9.12.

3.7 Changed Circumstances.

(a) Inability to Determine Interest Rate. Subject to clause (b) below, if prior to the first day of any Interest Period:

(i) the Administrative Agent shall have reasonably determined (which determination shall be conclusive and binding upon the Borrower) that, by reason of circumstances affecting the relevant market, adequate and reasonable means do not exist for ascertaining the Eurodollar Rate for such Interest Period,

(ii) deposits in the relevant amount, in the relevant currency and for the relevant Interest Period are not available to it in the London interbank market; or

(iii) the Administrative Agent shall have received notice from the Majority Facility Lenders in respect of the relevant Facility that the Eurodollar Rate determined or to be determined for such Interest Period will not adequately and fairly reflect the cost to such Lenders (as reasonably determined and conclusively certified by such Lenders) of making or maintaining their affected Loans during such Interest Period,

then the Administrative Agent shall give telecopy or telephonic notice thereof to the Borrower and the relevant Lenders as soon as practicable thereafter but at least two (2) Business Days prior to the first day of such Interest Period. If such notice is given (x) any Eurodollar Loans under the relevant Facility requested to be made on the first day of such Interest Period shall be made as Base Rate Loans (or, in the case of a Revolving Loan denominated in any Alternate Currency, the Borrower and the Revolving Lenders shall establish a mutually acceptable alternative rate), (y) any Loans under the relevant Facility that were to have been converted on the first day of such Interest Period to Eurodollar Loans shall be continued as Base Rate Loans (or, in the case of a Revolving Loan denominated in any Alternate Currency, the Borrower and the Revolving Lenders shall establish a mutually acceptable alternative rate) and (z) any outstanding Eurodollar Loans under the relevant Facility shall be converted, on the last day of the then-current Interest Period, to Base Rate Loans (or, in the case of a Revolving Loan denominated in any Alternate Currency, the Borrower and the Revolving Lenders shall establish a mutually acceptable alternative rate). Until such notice has been withdrawn by the Administrative Agent (which notice the Administrative Agent agrees to withdraw promptly upon a determination that the condition or situation which gave rise to such notice no longer exists), no further Eurodollar Loans under the relevant Facility shall be made or continued as such, nor shall the Borrower have the right to convert Loans under the relevant Facility to Eurodollar Loans.

(b) Effect of Benchmark Transition Event.

(i) Benchmark Replacement. Notwithstanding anything to the contrary herein or in any other Loan Document, upon the occurrence of a Benchmark Transition Event or an Early Opt-in Election, as applicable, the Administrative Agent and the Borrower may amend this Agreement to replace LIBOR with a Benchmark Replacement. Any such amendment with respect to a Benchmark Transition Event will become effective at 5:00 p.m. on the fifth (5th) Business Day after the Administrative Agent has posted such proposed amendment to all Lenders and the Borrower so long as the Administrative Agent has not received, by such time, written notice of objection to such amendment from Lenders comprising the Required Lenders; provided that, to the extent LIBOR is replaced with a SOFR-Based Rate, Lenders shall be entitled to object only to the Benchmark Replacement Adjustments with respect thereto. Any such amendment with respect to an Early Opt-in Election will become effective on the date that Lenders comprising the Required Lenders have delivered to the Administrative Agent written notice that such Required Lenders accept such amendment. No replacement of LIBOR with a Benchmark Replacement pursuant to this Section 3.7(b) will occur prior to the applicable Benchmark Transition Start Date.

(ii) Benchmark Replacement Conforming Changes. In connection with the implementation of a Benchmark Replacement, the Administrative Agent will have the right to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of any other party to this Agreement.

(iii) Notices; Standards for Decisions and Determinations. The Administrative Agent will promptly notify the Borrower and the Lenders of (1) any occurrence of a Benchmark Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date and Benchmark Transition Start Date, (2) the implementation of any Benchmark Replacement, (3) the effectiveness of any Benchmark Replacement Conforming Changes and (4) the commencement or conclusion of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Administrative Agent or Lenders pursuant to this Section 3.7(b) including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party hereto, except, in each case, as expressly required pursuant to this Section 3.7(b).

(iv) Benchmark Unavailability Period. Upon the Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period, the Borrower may revoke any request for a Borrowing of Eurodollar Loans of, conversion to or continuation of Eurodollar Loans to be made, converted or continued during any Benchmark Unavailability Period and, failing that, the Borrower will be deemed to have converted any such request into a request for a Borrowing of or conversion to Base Rate Loans. During any Benchmark Unavailability Period, the component of the Base Rate based upon LIBOR will not be used in any determination of the Base Rate.

3.8 Pro Rata Treatment; Application of Payments; Payments. (a) Except as set forth in Section 3.13, each borrowing by the Borrower from the Lenders hereunder, each payment by the Borrower on account of any commitment fee and any reduction of the Commitments of the Lenders shall be made pro rata according to the respective Term Percentages or Revolving Percentages, as the case may be, of the relevant Lenders.

(b) Except as set forth in Section 3.13, each payment (including each prepayment) on account of principal of and interest on the Term Loans shall be made pro rata according to the respective outstanding principal amounts of the Term Loans then held by the Term Lenders. Except as expressly set forth in Sections 3.1 and 3.2, the amount of each principal prepayment of the Term Loans shall be applied to reduce the then remaining installments of the Term Loans pro

rata based upon the then remaining principal amount thereof. Amounts repaid or prepaid on account of the Term Loans may not be reborrowed.

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

(d) All payments (including prepayments) to be made by the Borrower hereunder, whether on account of principal, interest, fees or otherwise, shall be made without setoff or counterclaim and shall be made prior to 12:00 noon, New York City time, on the due date thereof to the Administrative Agent, for the account of the Lenders, at the 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. If any payment hereunder (other than payments on the Eurodollar Loans) becomes due and payable on a day other than a Business Day, such payment shall be extended to the next succeeding Business Day. If any payment on a Eurodollar Loan becomes due and payable on a day other than a Business Day, the maturity thereof shall be extended to the next succeeding Business Day unless the result of such extension would be to extend such payment into another calendar month, in which event such payment shall be made on the immediately preceding Business Day. In the case of any extension of any payment of principal pursuant to the preceding two sentences, interest thereon shall be payable at the then applicable rate during such extension.

(e) Unless the Administrative Agent shall have been notified in writing by any Lender prior to a 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, and the Administrative Agent may (but shall not be required to), in reliance upon such assumption, make available to the Borrower a corresponding amount. If such amount is not made available to the Administrative Agent by the required time on the Borrowing Date therefor, such Lender shall pay to the Administrative Agent, on demand, such amount with interest thereon at a rate equal to the greater of (i) the Federal Funds Rate and (ii) a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation for the period until such Lender makes such amount immediately available to the Administrative Agent. A certificate of the Administrative Agent submitted to any Lender with respect to any amounts owing under this paragraph (e) shall be conclusive in the absence of manifest error. If such Lender's share of such borrowing is not made available to the Administrative Agent by such Lender within three (3) Business Days of such Borrowing Date, the Administrative Agent shall also be entitled to recover such amount with interest thereon at the rate per annum applicable to Base Rate Loans under the relevant Facility, on demand, from the Borrower.

(f) Unless the Administrative Agent shall have been notified in writing by the Borrower prior to the date of any payment due to be made by the Borrower hereunder that the Borrower will not make such payment to the Administrative Agent, the Administrative Agent may assume that the Borrower is making such payment, and the Administrative Agent may, but shall not be required to, in reliance upon such assumption, make available to the Lenders their

respective pro rata shares of a corresponding amount. If such payment is not made to the Administrative Agent by the Borrower within three (3) Business Days after such due date, the Administrative Agent shall be entitled to recover, on demand, from each Lender to which any amount which was made available pursuant to the preceding sentence, such amount with interest thereon at the rate per annum equal to the daily average Federal Funds Rate. Nothing herein shall be deemed to limit the rights of the Administrative Agent or any Lender against the Borrower.

(g) Notwithstanding anything to the contrary contained herein, the provisions of this Section 3.8 shall be subject to the express provisions of this Agreement which require or permit differing payments to be made to Non-Defaulting Lenders as opposed to Defaulting Lenders.

3.9 Requirements of Law. (a) If any Change in Law shall:

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

(ii) 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; or

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

and the result of any of the foregoing shall be to increase the cost to such Lender or such other Recipient of making, converting to, continuing or maintaining any Loan or of maintaining its obligation to make any such Loan, or to increase the cost to such Lender, such Issuing Lender or such other Recipient of participating in, issuing or maintaining any Letter of Credit (or of maintaining its obligation to participate in or to issue any Letter of Credit), or to reduce the amount of any sum received or receivable by such Lender, Issuing Lender or other Recipient hereunder (whether of principal, interest or any other amount) then, upon request of such Lender, Issuing Lender or other Recipient, the Borrower will pay to such Lender, Issuing Lender or other Recipient, as the case may be, such additional amount or amounts as will compensate such Lender, Issuing Lender or other Recipient, as the case may be, for such additional costs incurred or reduction suffered.

(b) If any Lender or Issuing Lender determines that any Change in Law affecting such Lender or Issuing Lender or any lending office of such Lender or such Lender's or Issuing 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 or Issuing Lender's capital or on the capital of such Lender's or Issuing Lender's holding company, if any, as a consequence of this

Agreement, the Commitments of such Lender or the Loans made by, or participations in Letters of Credit held by, such Lender, or the Letters of Credit issued by any Issuing Lender, to a level below that which such Lender or Issuing Lender or such Lender's or Issuing Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or Issuing Lender's policies and the policies of such Lender's or Issuing Lender's holding company with respect to capital adequacy), then from time to time the Borrower will pay to such Lender or Issuing Lender, as the case may be, such additional amount or amounts as will compensate such Lender or Issuing Lender or such Lender's or Issuing Lender's holding company for any such reduction suffered.

(c) A certificate of a Lender or Issuing Lender setting forth the amount or amounts necessary to compensate such Lender or Issuing Lender or its holding company, as the case may be, as specified in paragraph (a) or (b) of this Section 3.9 and delivered to the Borrower, shall be conclusive absent manifest error. The Borrower shall pay such Lender or Issuing Lender, as the case may be, the amount shown as due on any such certificate within 10 days after receipt thereof.

(d) Failure or delay on the part of any Lender or Issuing Lender to demand compensation pursuant to this Section 3.9 shall not constitute a waiver of such Lender's or Issuing Lender's right to demand such compensation; provided that the Borrower shall not be required to compensate a Lender or Issuing Lender pursuant to this Section 3.9 for any increased costs incurred or reductions suffered more than nine months prior to the date that such Lender or Issuing Lender, as the case may be, notifies the Borrower of the Change in Law giving rise to such increased costs or reductions, and of such Lender's or Issuing Lender's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine-month period referred to above shall be extended to include the period of retroactive effect thereof). Increased costs because of a Change in Law resulting from the Dodd-Frank Wall Street Reform and Consumer Protection Act and Basel III may only be requested by a Lender imposing such increased costs on borrowers similarly situated to the Borrowers under syndicated credit facilities comparable to those provided hereunder.

3.10 Taxes. (a) For purposes of this Section 3.10 and Section 3.13, the term "Lender" includes any Issuing Lender and the term "applicable law" includes FATCA.

(b) Any and all payments by or on account of any obligation of any Loan Party under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by applicable law. If any applicable law (as determined in the good faith discretion of an applicable Withholding Agent) requires the deduction or withholding of any Tax from any such payment by a Withholding Agent, then the applicable Withholding Agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law and, if such Tax is an Indemnified Tax, then the sum payable by the applicable Loan Party shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section 3.10) the

applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(c) The Borrower shall timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of the Administrative Agent timely reimburse it for the payment of, any Other Taxes.

(d) The Borrower shall 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 3.10) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate setting forth in reasonable detail the reason for and amount of such payment or liability delivered to the Borrower by a Lender or Agent (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender or Agent, as applicable, shall be conclusive absent manifest error.

(e) Each Lender shall severally indemnify the Administrative Agent, within 10 days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that the Borrower has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Borrower to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 10.6(f) 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) As soon as practicable after any payment of Taxes by the Borrower to a Governmental Authority pursuant to this Section 3.10, the Borrower shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(g) (i) Any Lender (including solely for purposes of this subparagraph (g) and Section 3.10(h) each Agent) that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made

without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Sections 3.10(g)(ii)(A), (ii)(B) and (ii)(D) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

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

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

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

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

- (3) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit E-1 to the effect that such Foreign Lender is not a “bank” within the meaning of Section 881(c)(3)(A) of the Code, a “10 percent shareholder” of the Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Code (a “U.S. Tax Compliance Certificate”) and (y) properly completed and duly executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E (as applicable); or
- (4) to the extent a Foreign Lender is not the beneficial owner, properly completed and duly executed copies of IRS Form W-8IMY, accompanied by properly completed and duly executed copies of IRS Form W-8ECI, IRS Form W-8BEN or IRS Form W-8BEN-E (as applicable), a U.S. Tax Compliance Certificate substantially in the form of Exhibit E-2 or Exhibit E-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 E-4 on behalf of each such direct and indirect partner.

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

(B) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the

Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(iii) On or before the date the Administrative Agent (or any successor Administrative Agent) becomes the Administrative Agent hereunder, it shall deliver to the Borrower two duly executed copies of either (A) IRS Form W-9 (or any successor forms) certifying that it is exempt from U.S. federal backup withholding Tax or (B) a U.S. branch withholding certificate on IRS Form W-8IMY (or any successor forms) evidencing its agreement with the Borrower to be treated as a U.S. Person (with respect to amounts received on account of any Lender party to this Agreement) and IRS Form W-8ECI (or any successor forms) (with respect to amounts received on its own account), with the effect that, in either case, the Borrower will be entitled to make payments hereunder to the Administrative Agent without withholding or deduction on account of U.S. federal withholding Tax. The Administrative Agent agrees that if any form or certification it previously delivered becomes expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification.

(h) Each Lender agrees that if any documentation it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such documentation or promptly notify the Borrower and the Administrative Agent in writing of its legal ineligibility to do so. Notwithstanding anything to the contrary in this Section 3.10, a Lender shall not be required to deliver any documentation pursuant to Section 3.10(g) or this paragraph (h) that such Lender is not legally eligible to deliver.

(i) 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 3.10 (including by the payment of additional amounts pursuant to this Section 3.10), 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 3.10 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party related to such refund 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 (i) (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 (i), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (h) 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 (i) 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.

(j) Each party's obligations under this Section 3.10 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document.

3.11 Indemnity. The Borrower agrees to indemnify each Lender and to hold each Lender harmless from any loss, cost or expense that such Lender may sustain or incur as a consequence of (a) default by the Borrower in making a borrowing of, conversion into or continuation of Eurodollar Loans after the Borrower has given a notice requesting the same in accordance with the provisions of this Agreement, (b) default by the Borrower in making any prepayment of or conversion from Eurodollar Loans after the Borrower has given a notice thereof in accordance with the provisions of this Agreement, (c) the making of a prepayment of, or a conversion from, Eurodollar Loans on a day that is not the last day of an Interest Period with respect thereto or (d) any other default by the Borrower in the repayment of such Eurodollar Loans when and as required pursuant to the terms of this Agreement. Such indemnification may include an amount (other than with respect to clause (d)) equal to the excess, if any, of (i) the amount of interest that would have accrued on the amount so prepaid, or not so borrowed, converted or continued, for the period from the date of such prepayment or of such failure to borrow, convert or continue to the last day of such Interest Period (or, in the case of a failure to borrow, convert or continue, the Interest Period that would have commenced on the date of such failure) in each case at the applicable rate of interest for such Loans provided for herein (excluding, however, the Applicable Margin included therein, if any, as well as the effect of any applicable index rate "floor") over (ii) the amount of interest (as reasonably determined by such Lender) that would have accrued to such Lender on such amount by placing such amount on deposit for a comparable period with leading banks in the interbank eurodollar market. A certificate as to any amounts payable pursuant to this Section 3.11 submitted to the Borrower by any Lender shall be conclusive in the absence of manifest error. This covenant shall survive the termination of this Agreement and the payment of the Loans and all other amounts payable hereunder. This Section 3.11 shall not apply with respect to Taxes other than any Tax that represent losses, claims, damages, etc. arising from any non-Tax claim.

3.12 Change of Lending Office. If any Lender requests compensation under Section 3.9, or requires the Borrower to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.10, then such Lender shall (at the request of the Borrower) use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 3.9 or 3.10, as the case may be, in the future, and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

3.13 Replacement of Lenders. If any Lender requests compensation under Section 3.9, or if the Borrower is required to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.10 and, in each case, such Lender has declined or is unable to designate a different lending office in accordance with Section 3.12, or if any Lender is a Defaulting Lender or a Non-Consenting Lender, then the Borrower may, in its sole discretion, (i) prepay such Lender's outstanding Loans in full on a non-pro rata basis without premium or penalty, or (ii) at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 10.6), all of its interests, rights (other than its existing rights to payments pursuant to Section 3.9 or Section 3.10) and obligations under this Agreement and the related Loan Documents to an Eligible Assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that, in the case of an assignment:

(a) the Borrower shall have paid to the Administrative Agent the assignment fee (if any) specified in Section 10.6;

(b) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and participations in Letter of Credit disbursements, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 3.11) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts);

(c) in the case of any such assignment resulting from a claim for compensation under Section 3.9 or payments required to be made pursuant to Section 3.10, such assignment will result in a reduction in such compensation or payments thereafter;

(d) such assignment does not conflict with applicable law; and

(e) in the case of any assignment resulting from a Lender becoming a Non-Consenting Lender, the applicable assignee shall have consented to the applicable amendment, waiver or consent.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

3.14 Evidence of Debt. (a) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing indebtedness of the Borrower to such Lender resulting from each Loan of such Lender from time to time, including the amounts of principal and interest payable and paid to such Lender from time to time under this Agreement.

(b) The Administrative Agent, on behalf of the Borrower (or, in the case of an assignment not required to be recorded in the Register in accordance with the provisions of

Section 10.6(d), the assigning Lender, acting solely for this purpose as a non-fiduciary agent of the Borrower), shall maintain the Register (or, in the case of an assignment not required to be recorded in the Register in accordance with the provisions of Section 10.6(d), a Related Party Register), in each case pursuant to Section 10.6(d), and a subaccount therein for each Lender, in which shall be recorded the names and addresses of the Lenders, and the Commitments of, and principal amounts (and stated interest and currency) of the Loans and L/C Obligations owing to, each Lender pursuant to the terms hereof from time to time.

(c) The Borrower agrees that, upon the request to the Administrative Agent by any Lender, the Borrower will execute and deliver to such Lender a promissory note of the Borrower evidencing any Term Loans or Revolving Loans, as the case may be, of such Lender, substantially in the forms of Exhibit F-1 or F-2, respectively, with appropriate insertions as to date and principal amount.

3.15 Illegality. Notwithstanding any other provision herein, if the adoption of or any change in any Requirement of Law or in the interpretation or application thereof shall make it unlawful for any Lender to make or maintain Eurodollar Loans as contemplated by this Agreement, (a) the commitment of such Lender hereunder to make Eurodollar Loans, continue Eurodollar Loans as such and convert Base Rate Loans to Eurodollar Loans shall forthwith be canceled and (b) such Lender's Loans then outstanding as Eurodollar Loans, if any, shall be converted automatically to Base Rate Loans (or, in the case of a Revolving Loan denominated in any Alternate Currency, the Borrower and the Revolving Lenders shall establish a mutually acceptable alternative rate) on the respective last days of the then current Interest Periods with respect to such Loans or within such earlier period as required by law. If any such conversion of a Eurodollar Loan occurs on a day which is not the last day of the then current Interest Period with respect thereto, the Borrower shall pay to such Lender such amounts, if any, as may be required pursuant to Section 3.11. Each Lender agrees to designate a different lending office if such designation will avoid the circumstances described in this Section 3.15 and will not, in the good faith judgment of such Lender, otherwise be materially disadvantageous to such Lender.

SECTION 4. REPRESENTATIONS AND WARRANTIES

To induce the Agents and the Lenders to enter into this Agreement and to make the Loans and issue, amend, extend, renew or participate in the Letters of Credit, the Borrower hereby represents and warrants to each Agent and each Lender that:

4.1 Financial Condition. (a) (i) The audited consolidated balance sheets of the Borrower and its Subsidiaries for each of the 2017, 2018 and 2019 fiscal years, and the related consolidated statements of income, stockholders' equity and cash flows for such fiscal years, reported on by and accompanied by an unqualified report from KPMG LLP or other independent certified public accountants of nationally recognized standing, present fairly in all material respects the consolidated financial condition of the Borrower and its Subsidiaries as at such date, and the consolidated results of its operations and its consolidated cash flows for such fiscal years. (ii) All such financial statements delivered pursuant to clause (a)(i) above, including the related schedules and notes thereto, have been prepared in accordance with GAAP applied consistently

throughout the periods involved (except as approved by the aforementioned firm of accountants and disclosed therein).

(b) The most recent financial statements referred to in clause (a)(i) disclose in accordance with GAAP or other applicable accounting standards all 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.

4.2 No Change. Since December 31, 2019, there has been no development or event that has had or could reasonably be expected to have a Material Adverse Effect.

4.3 Corporate Existence; Compliance with Law. Except as permitted under Section 7.4, the Borrower and each Restricted Subsidiary (a) is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, (b) has the organizational 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 entity and in good standing under the laws of each jurisdiction where its ownership, lease or operation of property or the conduct of its business requires such qualification, (d) is in compliance with the terms of its Organizational Documents and (e) is in compliance with the terms of all Requirements of Law (including, for the avoidance of doubt, the Patriot Act) and all Governmental Authorizations, except to the extent that any failure under clause (a) (with respect to any Restricted Subsidiary that is not a Loan Party) or clauses (b) through (e) to comply therewith could not, in the aggregate, reasonably be expected to have a Material Adverse Effect.

4.4 Power; Authorization; Enforceable Obligations. Each Loan Party has the organizational power and authority, and the legal right, to make, deliver and perform the Loan Documents to which it is a party and, in the case of the Borrower, to obtain extensions of credit hereunder. Each Loan Party has taken all necessary organizational and other action to authorize the execution, delivery and performance of the Loan Documents to which it is a party and, in the case of the Borrower, to authorize the extensions of credit on the terms and conditions of this Agreement. No consent or authorization of, filing with, notice to or other act by or in respect of, any Governmental Authority or any other Person is required in connection with the Transactions or with the execution, delivery, performance, validity or enforceability of this Agreement or any of the Loan Documents, except (a) consents, authorizations, filings and notices described in Schedule 4.4, which consents, authorizations, filings and notices have been, or will be, obtained or made and are in full force and effect on or before the Closing Date, and all applicable waiting periods shall have expired, in each case without any action being taken by any Governmental Authority that would restrain, prevent or otherwise impose adverse conditions on the Transactions, other than any such consent, authorizations, filings and notices the absence of which could not reasonably be expected to have a Material Adverse Effect, and (b) 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 (a) its Organizational Document, (b) any Requirement of Law, Governmental Authorization or any Contractual Obligation of the Borrower or any Restricted Subsidiary and (c) will not result in, or require, the creation or imposition of any Lien on any of their respective properties or revenues pursuant to its Organizational Documents, any Requirement of Law or any such Contractual Obligation (other than the Liens created by the Security Documents and the Liens permitted by Section 7.3), except for any violation set forth in clauses (b) or (c) which could not 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 the Borrower, threatened in writing by or against the Borrower or any Restricted Subsidiary or against any of their respective properties or revenues (a) with respect to any of the Loan Documents, which would in any respect impair the enforceability of the Loan Documents, taken as a whole or (b) that could reasonably be expected to have a Material Adverse Effect.

4.7 Education Law Matters.

(a) Educational Authorizations. Each Loan Party complies, and during the past three (3) years has complied, in all material respects with all applicable Educational Laws regarding any licenses, permits, authorizations or other approvals required to be obtained from any Educational Agency to conduct its business.

(b) Incentive Compensation. Each Loan Party complies, and during the past three (3) years has complied, in all material respects with all applicable Educational Laws concerning the compensation of persons or entities engaged in student recruiting, admissions or financial aid activities, including but not limited to 20 U.S.C. § 1094(a)(20) and ED regulations at 34 C.F.R. § 668.14(b)(22).

(c) Misrepresentation. Each Loan Party complies, and for the past three (3) years has complied, in all material respects with all applicable Educational Laws regarding consumer marketing and student recruiting, has not committed any misrepresentation (either affirmatively or by omission) about the Loan Party or about any educational institution with which the Loan Party has an Educational Services Agreement, or about any educational program or course offered by a Loan Party or supported by an Educational Services Agreement. With respect to educational institutions, programs and courses supported by any Loan Party pursuant to an Educational Services Agreement, the Loan Party uses only marketing materials approved by the pertinent educational institution.

(d) Educational Records. Each Loan Party and each Educational Services Agreement complies, and for the past three (3) years has complied, in all material respects with all Privacy, Data Security and Consumer Protection Laws that are (i) applicable to any Protected Information created, obtained or maintained pursuant to any Educational Services Agreement, and (ii) subject to enforcement by any Educational Agency.

(e) Accessibility. Each Loan Party and each Educational Services Agreement complies, and for the past three (3) years has complied, in all material respects with all applicable Requirements of Law concerning the accessibility of educational programs and courses to persons with disabilities.

4.8 Ownership of Real Property; Liens. The Borrower and each Restricted Subsidiary has title in fee simple (or local law equivalent) to, or valid leasehold interests in all its leased real property, and good title to, or a valid leasehold interest in, license of, or right to use, all its other tangible Property material to its business, in all material respects, and no such Property is subject to any Lien except as permitted by Section 7.3, and except where the failure to have such title or other interest would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

4.9 Intellectual Property. All Intellectual Property owned by the Borrower and the Restricted Subsidiaries is owned free and clear of all Liens (other than (i) as permitted by Section 7.3, (ii) licenses listed on Schedule 4.9, (iii) other licenses granted in the ordinary course of business or which are not, individually or in the aggregate, material (including in connection with the sale or provision by the Borrower or any Restricted Subsidiary of products or services), (iv) the security interest granted to the Collateral Agent for the benefit of the Secured Parties pursuant to the applicable Security Documents, (v) licenses under which the Borrower or any Restricted Subsidiary is the licensor in existence as of the date hereof (including in connection with the sale or provision by the Borrower or any Restricted Subsidiary of products or services) and (vi) licenses to the Borrower or any Restricted Subsidiary). Except as could not reasonably be expected to have a Material Adverse Effect, to the knowledge of any Loan Party: (a) the conduct of, and the use of Intellectual Property in, the business of the Borrower and the Restricted Subsidiaries (including the products and services of the Borrower and each Restricted Subsidiary) does not infringe, misappropriate, or otherwise violate the Intellectual Property rights of any other Person; (b) in the last two (2) years, there has been no such claim asserted in writing (including in the form of offers or invitations to obtain a license) asserted or, to the knowledge of any Loan Party, threatened against the Borrower or any Restricted Subsidiary; (c) there is no valid basis for a claim of infringement, misappropriation, or other violation of Intellectual Property rights against the Borrower or any Restricted Subsidiary; (d) no Person is infringing, misappropriating, or otherwise violating any Intellectual Property of the Borrower or any Restricted Subsidiary, and there has been no such claim asserted or threatened against any third party by the Borrower or any Restricted Subsidiary, or to the knowledge of any Loan Party, any other Person; (e) no Software included in the Collateral is subject to the terms of any Open Source License or other similar license that requires any proprietary source code of such Software to be disclosed, licensed, publicly distributed, or dedicated to the public; and (f) the Borrower and each Restricted Subsidiary complies, and at all times has complied in all material

respects with all applicable laws relating to privacy, data protection, and the collection and use of personal information collected, used, or held for use by the Borrower or such Restricted Subsidiary.

4.10 Taxes. Except as could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, each Loan Party has filed or caused to be filed all federal and other material state and other Tax returns that are required to be filed by it and all such Tax returns are true, correct, and complete in all material respects; each Loan Party has paid, or caused to be paid, all federal, state and other Taxes due and payable by it and any assessments made against it or any of its property by any Governmental Authority (other than any such Taxes that are not yet due or 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 Loan Party); no Tax Lien has been filed (other than for Taxes not yet due or 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 Loan Party) and, no Loan Party is aware of any proposed or pending Tax assessments, deficiencies or audits.

4.11 Federal Regulations. No part of the proceeds of any extension of credit under this Agreement will be used for any purpose that violates or would be inconsistent with the provisions of Regulation T, U or X of the Board. No Loan Party is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of buying or carrying Margin Stock.

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

4.13 ERISA. Except as would not reasonably be expected to result in a Material Adverse Effect: (i) each Plan is in compliance with the applicable provisions of ERISA, the Code, and other applicable Laws and (ii) no ERISA Event has occurred or is reasonably expected to occur. There are no pending or, to the knowledge of the Borrower, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan that would reasonably be expected to have a Material Adverse Effect. There has been no prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan that has resulted or would reasonably be expected to result in a Material Adverse Effect. As of the Closing Date, the present value of all accrued benefits under each Single Employer Plan (based on those assumptions used to fund such Plans) did not, as of the last annual valuation date prior to the date on which this representation is made or deemed made, exceed the value of the assets

of such Single Employer Plan allocable to such accrued benefits, except as would not reasonably be expected to result in a Material Adverse Effect.

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.

4.15 Subsidiaries. (a) Except as disclosed to the Administrative Agent by the Borrower in writing from time to time after the Closing Date, Schedule 4.15 sets forth (i) the name and jurisdiction of formation or incorporation of each Group Member and, as to each such Group Member (other than the Borrower), states the authorized and issued capitalization of such Group Member, the beneficial and record owners thereof and the percentage of each class of Capital Stock owned by any Loan Party and (ii) each Excluded Subsidiary as of the Closing Date, (b) except as disclosed on Schedule 4.15 or as disclosed to the Administrative Agent by the Borrower in writing from time to time after the Closing Date, after giving effect to the consummation of the Transactions, there are no outstanding subscriptions, options, warrants, calls, rights or other agreements or commitments (other than stock options granted to employees, independent contractors or directors and directors’ qualifying shares) of any nature relating to any Capital Stock of the Borrower or any Restricted Subsidiary, except as created by the Loan Documents or as permitted hereby, and (c) as of the Closing Date, each Wholly Owned Domestic Subsidiary that is not a Subsidiary Guarantor is an Excluded Subsidiary. Except as listed on Schedule 4.15, as of the Closing Date, neither the Borrower nor any Restricted Subsidiary owns any interests in any joint venture, partnership or similar arrangements with any Person.

4.16 Use of Proceeds. (a) The Letters of Credit and the proceeds of the Revolving Loans shall be used for working capital and other general corporate purposes of the Borrower and its Restricted Subsidiaries, including the financing of Permitted Acquisitions and other permitted Investments.

(b) No proceeds of the Loans or the Letters of Credit will be used by the Borrower or any Subsidiary directly or, to the knowledge of the Borrower, indirectly, (a) 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 to obtain any improper advantage, in violation of the U.S. Foreign Corrupt Practices Act of 1977 or the UK Bribery Act 2010 or (b) for the purpose of financing activities of or with any Person, that, at the time of such financing, is a Sanctioned Person.

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

(a) the facilities and properties owned, operated or leased by the Borrower or any Restricted Subsidiary (the “Properties”) do not contain, and have not previously contained, any Materials of Environmental Concern in amounts or concentrations or under circumstances that constitute or constituted a violation of, or could reasonably be expected to give rise to liability under, any Environmental Law;

(b) neither the Borrower nor any Restricted Subsidiary has received any written notice of violation, nor has knowledge of any 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 the Borrower or any Restricted Subsidiary, nor does the Borrower have knowledge or reason to believe that any such notice will be received or is being threatened;

(c) Materials of Environmental Concern have not been transported or disposed of from the Properties by the Borrower or any Restricted Subsidiary or, to the Borrower's knowledge, by any other person in violation of, or in a manner or to a location that could reasonably be expected to give rise to liability of the Borrower or any Restricted Subsidiary under, any Environmental Law, nor have any Materials of Environmental Concern been generated, treated, stored or disposed of by the Borrower or any Restricted Subsidiary or, to the Borrower's knowledge, by any other person at, on or under any of the Properties in violation of, or in a manner that could reasonably be expected to give rise to liability of the Borrower or any Restricted Subsidiary under, any applicable Environmental Law;

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

(e) there has been no release or threat of release of Materials of Environmental Concern by the Borrower or any Restricted Subsidiary or, to Borrower's knowledge, by any other person at or from the Properties, or arising from or related to the operations of the Borrower or any Restricted Subsidiary in connection with the Properties or otherwise in connection with the business operated by the Borrower or any Restricted Subsidiary, in violation of or in amounts or in a manner that could reasonably be expected to give rise to liability of the Borrower or any Restricted Subsidiary under Environmental Laws;

(f) each of the Borrower and each Restricted Subsidiary, in respect of the Properties and all operations at the Properties, is, and for the last five (5) years has been, in compliance with all applicable Environmental Laws; and

(g) neither the Borrower nor any Restricted Subsidiary has assumed any liability of any other Person under Environmental Laws.

4.18 Accuracy of Information, etc. No written statement contained in this Agreement, any other Loan Document or any other document, certificate or statement furnished by 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, when taken as a whole, contained as of the date such statement, information, document or certificate was

furnished, any untrue statement of a material fact or omitted to state a material fact necessary to make the statements contained herein or therein not misleading in light of the circumstances under which such statements were made; provided, however, that with respect to the Projections, other pro forma financial information and forward looking information and information of a general economic or industry-specific nature contained in the materials referenced above, the Borrower represents only that the same were prepared in good faith and are based upon assumptions believed by management of the Borrower to be reasonable at the time made, it being recognized by the Lenders that such financial or other 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 or other information may differ from the projected results set forth therein by a material amount

4.19 Security Documents. (a) The Guarantee and Collateral Agreement and each other Security Document is effective to create in favor of the Collateral Agent, for the benefit of the Secured Parties, a valid security interest in the Collateral described therein and proceeds thereof (to the extent a security interest can be created therein under the Uniform Commercial Code). In the case of the Pledged Equity Interests described in the Guarantee and Collateral Agreement, when stock or interest certificates representing such Pledged Equity Interests (along with properly completed stock or interest powers endorsing the Pledged Equity Interest and executed by the owner of such shares or interests are delivered to the Collateral Agent), and in the case of the other Collateral described in the Guarantee and Collateral Agreement or any other Security Document (other than deposit accounts), 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 Collateral 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 Liens permitted by Section 7.3), subject, however, in the case of any Pledged Equity Interests of Foreign Subsidiaries to any additional requirements under foreign law.

(b) Each of the Mortgages (if any) is effective to create in favor of the Collateral Agent, for the benefit of the Secured Parties, a valid Lien on the Mortgaged Properties described therein and proceeds thereof, and when the Mortgages are filed in the offices specified therein, each such Mortgage shall constitute a fully perfected Lien on, and security interest in, all right, title and interest of the Loan Parties in the Mortgaged Properties and the proceeds thereof, as security for the Obligations (as defined in the relevant Mortgage), in each case prior and superior in right to any other Person (except Liens permitted by Section 7.3). Schedule 4.19(b) lists, as of the Closing Date, each Material Real Property.

4.20 Solvency. The Borrower and its Subsidiaries (on a consolidated basis) are Solvent.

4.21 Reserved.

4.22 Anti-Terrorism Laws. No Loan Party nor any of its Restricted Subsidiaries is in violation of any applicable Requirements of Law relating to Anti-Terrorism Laws. The use of

proceeds of the Loans and Letters of Credit will not violate the Trading With the Enemy Act (50 U.S.C. §§ 1-44, as amended) or any applicable foreign asset control regulations of the United States Treasury Department (31 C.F.R. Subtitle B, Chapter V). As of the Closing Date, to the knowledge of the Borrower, the information included in the Beneficial Ownership Certification is true and correct.

4.23 OFAC. None of the Borrower, any Restricted Subsidiary nor, to the knowledge of the Borrower, any director, officer, employee, or agent of the Borrower or any Restricted Subsidiary is a Sanctioned Person. The Borrower shall not use the proceeds of the Loans, directly or, to the Borrower's knowledge, indirectly, or otherwise make available such proceeds to any Person, for the purpose of financing activities of or with (i) a Sanctioned Person, or (ii) a Sanctioned Country or (iii) in any other manner that would result in a violation of applicable Sanctions by any Person that is a party to this Agreement, except, in the case of clauses (i), (ii), and (iii), to the extent licensed by OFAC or otherwise authorized under U.S. law or, if applicable, to the extent licensed or authorized under any similar laws or regulations enacted by the European Union or the United Kingdom.

4.24 Anti-Corruption Laws. The Borrower and its Subsidiaries have conducted their businesses in compliance with the U.S. Foreign Corrupt Practices Act of 1977 and the UK Bribery Act 2010 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 Effectiveness. This agreement shall become effective on the Closing Date subject to the satisfaction or waiver of the following conditions precedent:

(a) Loan Documents. The Administrative Agent shall have received this Agreement and each other Loan Document required to be entered into on the Closing Date, executed and delivered by each Loan Party that is a party thereto.

(b) [Reserved].

(c) Lien Searches. The Administrative Agent shall have received the results of a recent lien search in each of the jurisdictions within the United States in which Uniform Commercial Code financing statements will be made to evidence or perfect security interests required to be evidenced or perfected, and such search shall reveal no Liens on any of the assets of the Loan Parties except for Liens permitted by Section 7.3 or discharged on or prior to the Closing Date pursuant to documentation reasonably satisfactory to the Administrative Agent.

(d) Fees. The Lenders, the Lead Arrangers and the Agents shall have received all fees required to be paid and all accrued reasonable, documented out-of-pocket expenses required hereunder to be paid and for which invoices have been presented at least three Business Days prior to the Closing Date (including the reasonable fees and expenses of legal counsel) in respect of the Transactions, on or before the Closing Date.

(e) Closing Certificate. The Administrative Agent shall have received a certificate of each Loan Party, dated the Closing Date, substantially in the form of Exhibit G, with appropriate insertions and attachments including applicable corporate or similar authorizations and the certificate of incorporation or certificate of formation, as applicable, of each Loan Party certified by the relevant authority of the jurisdiction of organization of such Loan Party.

(f) Legal Opinions. The Administrative Agent shall have received the legal opinion of Latham & Watkins LLP, counsel to the Borrower and its Subsidiaries, in form and substance reasonably satisfactory to the Administrative Agent.

(g) Filings, Registrations and Recordings. Each document (including any Uniform Commercial Code financing statement, but excluding any Intellectual Property Security Agreement) required by the Security Documents or reasonably requested by the Collateral Agent to be filed, registered or recorded in order to create in favor of the Collateral Agent, for the benefit of the Secured Parties, a perfected Lien on the Collateral described therein, prior and superior in right to any other Person (other than with respect to Liens expressly permitted by Section 7.3), shall be in proper form for filing, registration or recordation.

(h) Solvency Certificate. The Administrative Agent shall have received a solvency certificate in the form of Exhibit I, executed as of the Closing Date by the chief financial officer of the Borrower.

(i) Patriot Act, Etc. The Administrative Agent shall have received, no later than three Business Days prior to the Closing Date, all documentation and other information required by bank regulatory authorities under applicable “know your customer” and anti-money laundering rules and regulations, including the Patriot Act, as reasonably requested by the Administrative Agent to the extent requested in writing by the Administrative Agent and the Lead Arrangers at least seven Business Days prior to the Closing Date.

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 on any date from and after 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 any Loan Party in or pursuant to the Loan Documents shall be true and correct in all material respects (unless qualified by materiality, in which case they shall be true and correct in all respects) on and as of such date as if made on and as of such date (except to the extent made as of a specific date, in which case such representation and warranty shall be true and correct in all material respects (unless qualified by materiality, in which case they shall be true and correct in all respects) on and as of such specific date).

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

(c) Notices. The Borrower shall have delivered to the Administrative Agent and, if applicable, the Issuing Lender, the notice of borrowing or Application, as the case may be, for such extension of credit in accordance with this Agreement.

Each borrowing by and issuance of a Letter of Credit on behalf of the Borrower hereunder shall constitute a representation and warranty by the Borrower as of the date of such extension of credit that the conditions contained in this Section 5.2 have been satisfied.

Notwithstanding anything in this Section 5.2 to the contrary, to the extent that the proceeds of Incremental Term Loans are to be used to finance a Permitted Acquisition or other Investment, the only conditions precedent to the funding of such Incremental Term Loans shall be the conditions precedent set forth in Section 2.14(b) and in the related Incremental Term Joinder with respect to such Incremental Term Loans.

SECTION 6. AFFIRMATIVE COVENANTS

The Borrower hereby agrees that, so long as the Commitments remain in effect, any Letter of Credit remains outstanding, or any Loan or other amount is owing to any Lender or Agent hereunder (other than unasserted contingent indemnification obligations, Letters of Credit that have been Cash Collateralized and any amount owing under Specified Hedge Agreements), the Borrower shall and shall cause each of its Restricted Subsidiaries to:

6.1 Financial Statements. Furnish to the Administrative Agent and each Lender:

(a) within ninety (90) days (or such other time period as specified in the SEC's rules and regulations with respect to non-accelerated filers for the filing of annual reports on Form 10-K) after the end of each fiscal year of the Borrower, a copy of the audited consolidated balance sheet of the Borrower and its consolidated Subsidiaries as at the end of such year and the related audited consolidated statements of income or operations, stockholders' equity and cash flows for such year, setting forth in each case in comparative form the figures for the previous year, reported on without a "going concern" qualification or exception, or qualification arising out of the scope of the audit other than to the extent resulting solely from (i) an upcoming maturity date under the Facilities or (ii) any prospective Default as a result of a breach of any Financial Covenant or a Financial Covenant Event of Default, by KPMG LLP or other independent certified public accountant of nationally recognized standing; and

(b) within forty-five (45) days (or such other time period as specified in the SEC's rules and regulations with respect to non-accelerated filers for the filing of annual reports on Form 10-Q) after the end of each of the first three quarterly periods of each fiscal year of the Borrower, the unaudited consolidated balance sheet of the Borrower and its consolidated Subsidiaries as at the end of such quarter and the related unaudited consolidated statements of income or operations, stockholders' equity (to the extent required on Form 10-Q) and cash flows for such quarter and the portion of the fiscal year through the end of such quarter, setting forth in each case in comparative form the figures for the previous year, certified by a Responsible Officer of the Borrower as fairly presenting in all material respects the financial condition,

results of operation, stockholders' equity and cash flows of the Borrower in accordance with GAAP (subject to normal year-end audit adjustments and the absence of footnotes).

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 consistently throughout the periods reflected therein and with prior periods (except as approved by such accountants or officer, as the case may be, and disclosed therein).

Documents required to be delivered pursuant to Section 6.1(a) or (b) or Section 6.2(e) (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which the Borrower posts such documents, or provides a link thereto on the Borrower's website on the Internet at www.2u.com; or (ii) on which such documents are posted on the Borrower's behalf on an Internet or intranet website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website (including on the SEC's website at www.sec.gov) or whether sponsored by the Administrative Agent); provided that, to the extent the Administrative Agent or any Lender reasonably requests, (x) the Borrower shall deliver paper copies of such documents to the Administrative Agent or such Lender until a written request to cease delivering paper copies is given by the Administrative Agent or such Lender and (y) the Borrower shall notify the Administrative Agent (by facsimile or electronic mail) of the posting of any such documents. The Administrative Agent shall have no obligation to request the delivery or to maintain copies of the documents referred to herein, and in any event shall have no responsibility to monitor compliance by the Borrower with any such request for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

6.2 Certificates; Other Information. Furnish to the Administrative Agent, the Collateral Agent (as applicable) and each Lender:

(a) to the extent permitted by the internal policies of such independent certified public accountants, concurrently with the delivery of the financial statements referred to in Section 6.1(a), a report of independent registered public accounting firm reporting on such financial statements stating that in making the examination necessary in connection therewith, no knowledge was obtained of any Default or Event of Default arising from a breach of the Financial Covenants (to the extent then applicable), except as specified in such report (which report may be limited to accounting matters and disclaim responsibility for legal interpretations);

(b) concurrently with the delivery of any financial statements pursuant to Section 6.1, (i) a certificate of a Responsible Officer of the Borrower stating that such Responsible Officer has obtained no knowledge of any Default or Event of Default except as specified in such certificate, (ii) to the extent not previously disclosed and delivered to the Administrative Agent and the Collateral Agent, a listing of any Intellectual Property which is the subject of a federal registration or federal application (including Intellectual Property included in the Collateral which was theretofore unregistered and becomes the subject of a federal registration or federal application) acquired by any Loan Party since the date of the most recent list delivered pursuant to this clause (ii) (or, in the case of the first such list so delivered, since the Closing Date), and

promptly deliver the Collateral Agent an agreement evidencing the security interest created in such Intellectual Property suitable for recordation in the United States Patent and Trademark Office or the United States Copyright Office, as applicable, or such other instrument in form and substance reasonably acceptable to the Administrative Agent, and undertake the filing of any instruments or statements as shall be reasonably necessary to create, record, preserve, protect or perfect the Collateral Agent's security interest in such Intellectual Property, and (iii) a Compliance Certificate containing all information and calculations necessary for determining compliance by the Borrower and each Restricted Subsidiary with the provisions of this Agreement referred to therein as of the last day of the fiscal quarter or fiscal year of the Borrower, as the case may be; provided that, if such Compliance Certificate demonstrates that a Financial Covenant Event of Default has occurred and is continuing and has not been cured prior to such time, the Borrower may deliver, to the extent and within the time period permitted by Section 8.2, prior to, after or together with such Compliance Certificate, a Notice of Intent to Cure such Event of Default. In addition, no later than forty-five (45) days following the end of the fiscal quarters ending December 31, 2020 and December 31, 2021, the Borrower shall deliver to the Administrative Agent and each Lender an abridged Compliance Certificate in form reasonably satisfactory to the Administrative Agent demonstrating compliance with the Financial Covenant set forth in Section 7.1(a) for the quarterly period ending on such applicable dates.

(c) no later than ninety (90) days after the end of each fiscal year of the Borrower, a detailed consolidated budget for the following fiscal year shown on a quarterly basis (including a projected consolidated balance sheet of the Borrower and its Restricted Subsidiaries as of the end of the following 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 projected covenant compliance levels) (collectively, the "Projections");

(d) [reserved];

(e) promptly after the same are sent, copies of all financial statements, reports and material notices that the Borrower sends to the holders of any Class of its Indebtedness or public equity securities and, promptly after the same are filed, copies of all annual, regular or periodic and special reports and registration statements which the Loan Parties may file or be required to file with the SEC and not otherwise required to be delivered to the Administrative Agent pursuant hereto, and, promptly after receipt thereof by the Borrower or any Restricted Subsidiary, copies of each written notice or other correspondence received from the SEC or comparable agency in any applicable foreign jurisdiction concerning any investigation or potential investigation or other inquiry by such agency regarding the financial or other operational results of the Borrower or any Restricted Subsidiary;

(f) promptly, after any request by the Administrative Agent, any final "management" letter submitted by such accountants to the board of directors of the Borrower in connection with their annual audit; and

(g) promptly, such additional financial and other information regarding the business, financial or corporate affairs of the Borrower or any of its Restricted Subsidiaries as the

Administrative Agent or any Lender may from time to time reasonably request in good faith, including, without limitation, other information with respect to the Patriot Act.

6.3 Payment of Taxes. Pay all federal and other material state, provincial and other Taxes, assessments, fees or other charges imposed on it or any of its property by any Governmental Authority before they become delinquent, except (i) where such Taxes, assessments, fees or other charges are being contested in good faith by appropriate proceedings diligently conducted and adequate reserves in conformity with GAAP are being maintained by the Borrower or such Restricted Subsidiary or (ii) where the failure to make such payments could not, in the aggregate, reasonably be expected to have a Material Adverse Effect.

6.4 Compliance with Educational Law.

(a) Comply in all material respects with all Educational Laws applicable to its operations, including the maintenance of all licenses, permits, approvals and authorizations necessary from any Educational Agency to conduct its business;

(b) Cause all Educational Services Agreements to comply in all material respects with Educational Laws applicable to the Loan Parties; and

(c) Comply in all material respects with all Privacy, Data Security and Consumer Protection Laws that are (i) applicable to any Protected Information created, obtained or maintained pursuant to any Educational Services Agreement, and (ii) subject to enforcement by any Educational Agency.

6.5 Maintenance of Existence; Compliance. (a) (i) Preserve, renew and keep in full force and effect its organizational existence except as permitted hereunder and (ii) take all reasonable action to maintain all rights, privileges and franchises necessary or desirable in the normal conduct of its business, including, without limitation, all necessary Governmental Authorizations, except, in each case, as otherwise permitted by Section 7.4 and except, in the case of clause (i) above with respect to Immaterial Subsidiaries that are not Loan Parties, and in the case of clause (ii) above, to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect and (b) comply with all Contractual Obligations, Organizational Documents and Requirements of Law (including, without limitation, and, as applicable, ERISA and the Code) except to the extent that failure to comply therewith could not, in the aggregate, reasonably be expected to have a Material Adverse Effect.

6.6 Maintenance of Property; Insurance. (a) Keep all material Property useful and necessary in its business in good working order and condition, ordinary wear and tear, casualty or condemnation, and obsolescence excepted and (b) maintain insurance with financially sound and reputable insurance companies (i) 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 and (ii) required pursuant to the Security Documents. The Borrower will furnish to the Administrative Agent, upon reasonable request, information in reasonable detail as to the insurance so maintained.

6.7 Inspection of Property; Books and Records; Discussions. (a) Keep proper books of records and account in which full, true and correct entries in conformity with GAAP and all Requirements of Law shall be made of all dealings and transactions in relation to its business and activities and (b) permit representatives of the Administrative Agent who may be accompanied by any Lender to visit and inspect any of its properties and examine and make abstracts from any of its books and records at any reasonable time during normal business hours and as often as may reasonably be desired upon reasonable advance notice to the Borrower and to discuss the business, operations, properties and financial and other condition of the Borrower and the Restricted Subsidiaries with officers and employees of the Borrower and the Restricted Subsidiaries and with their independent certified public accountants (provided that the Borrower or the Restricted Subsidiaries may, at their option, have one or more employees or representatives present at any discussion with such accountants); provided that unless an Event of Default has occurred and is continuing, (x) only one (1) such visit shall occur in any calendar year, (y) only one such visit per calendar year by the Administrative Agent shall be at the Borrower's expense (for the avoidance of doubt, unless an Event of Default has occurred and is continuing, any visits by any Lender permitted to occur under this Section 6.7 shall be at the respective Lender's expense) and (z) any such visits shall be coordinated by the Administrative Agent.

6.8 Notices. Promptly give notice to the Administrative Agent of:

- (a) the occurrence of any Default or Event of Default;
- (b) any litigation, investigation or proceeding that is reasonably likely to be adversely determined, and which, if adversely determined, could reasonably be expected to have a Material Adverse Effect;
- (c) the occurrence of an ERISA Event that would reasonably be expected to have a Material Adverse Effect; and
- (d) any development or event that has had or could 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 setting forth details of the occurrence referred to therein and stating what action the Borrower or the relevant Restricted Subsidiary proposes to take with respect thereto.

6.9 Environmental Laws. (a) Comply with, and require compliance in all material respects by any tenants and subtenants of the Borrower and any Restricted Subsidiary, if any, with, all applicable Environmental Laws, and obtain and comply with and maintain, and require that all such tenants and subtenants obtain and comply in all material respects with and maintain, any and all licenses, approvals, notifications, registrations or permits required by applicable Environmental Laws, except, in each case, to the extent the failure to do so could 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 under Environmental Laws and promptly comply with all lawful orders and directives of all Governmental Authorities regarding Environmental Laws, except to the extent the failure to do so could not reasonably be expected to have a Material Adverse Effect.

6.10 Post-Closing: Additional Collateral, etc. (a) With respect to any property acquired after the Closing Date by any Loan Party (other than (x) any property described in paragraph (b), (c) or (d) below, (y) property acquired by any Excluded Subsidiary and (z) Excluded Assets (as defined in the Guarantee and Collateral Agreement) and any other property that is not required to become subject to Liens in favor of the Collateral Agent pursuant to the Loan Documents) that has an individual fair market value (as determined in good faith by the Borrower) in excess of \$2,000,000 as to which the Collateral Agent, for the benefit of the Secured Parties, does not have a perfected Lien, within thirty (30) days after such acquisition (as such period may be extended by the Collateral Agent in its reasonable discretion) (i) execute and deliver to the Collateral Agent such amendments to the applicable Security Document or such other documents as the Collateral Agent deems necessary or advisable to grant to the Collateral Agent, for the benefit of the Secured Parties, a security interest in such property, (ii) take all actions necessary or advisable to grant to the Collateral Agent, for the benefit of the Secured Parties, a perfected first priority security interest in such property, including the filing of Uniform Commercial Code financing statements in such jurisdictions (other than foreign jurisdictions) as may be required by the applicable Security Document and, in the case of Intellectual Property (other than pursuant to clause (e) below), the recordation of an agreement evidencing the security interest created in such Intellectual Property suitable for recordation in the United States Patent and Trademark Office or the United States Copyright Office, as applicable, or such other instrument in form and substance reasonably acceptable to the Administrative Agent, or as may be reasonably requested by the Collateral Agent, and (iii) if reasonably requested by the Collateral Agent, deliver to the Collateral Agent legal opinions relating to the matters described above, which opinions shall be customary in form and substance and reasonably satisfactory to the Collateral Agent.

(b) With respect to any Material Real Property acquired after the Closing Date by any Loan Party (other than (x) any such Real Property subject to a Lien expressly permitted by Section 7.3(g) and (y) real property acquired by any Excluded Subsidiary), within ninety (90) days after such acquisition (as such period may be extended by the Collateral Agent in its reasonable discretion), (i) execute and deliver a first priority Mortgage subject only to Liens approved by the Collateral Agent or permitted under clauses (a), (e) or (i) of Section 7.3 hereof, in favor of the Collateral Agent, for the benefit of the Secured Parties, (ii) if requested by the Collateral Agent, provide the Secured Parties with (x) title and extended coverage insurance covering such Material Real Property in form and substance satisfactory to the Collateral Agent and in an amount at least equal to the purchase price of such real property (or such other amount as shall be reasonably acceptable to the Collateral Agent, provided that in jurisdictions that impose mortgage recording taxes, the Security Documents shall not secure indebtedness in an amount exceeding 120% of the fair market value of the Mortgaged Property, as reasonably determined in good faith by the Loan Parties and reasonably acceptable to the Collateral Agent),

(y) a current ALTA survey thereof, together with a surveyor's certificate satisfactory to the title insurance company and the Collateral Agent, and (z) any consents or estoppels deemed necessary or reasonably advisable by the Collateral Agent in connection with such Mortgage, each of the foregoing in form and substance reasonably satisfactory to the Administrative Agent, (iii) if requested by the Collateral Agent, deliver to the Collateral Agent legal opinions relating to the matters described above, which opinions shall be in customary form and substance and reasonably satisfactory to the Collateral Agent, (iv) prior to the date of delivery of any Mortgage the Collateral Agent shall have obtained a "Life-of-Loan" Federal Emergency Management Agency Standard Flood Hazard Determination with respect to each parcel of Mortgaged Property. Further, if at any time any Building included in Mortgaged Property is subsequently determined to be in a Special Flood Hazard Area (whether due to a re-mapping of the applicable flood zones or otherwise), (i) such Building shall automatically be deemed Excluded Property and be excluded from the Mortgaged Property and the lien thereon in favor of the Secured Parties shall immediately and automatically be of no further force or effect (with no action required on the part of any Loan Party or Secured Party) and (ii) in order to confirm such automatic lien release, the Collateral Agent shall promptly execute and deliver such documentation as may be required to evidence the release of such Building from the lien of the applicable Mortgage.

(c) With respect to any new Wholly Owned Restricted Subsidiary (other than an Excluded Subsidiary) created or acquired (or that becomes a Wholly Owned Restricted Subsidiary (other than an Excluded Subsidiary)) after the Closing Date by the Borrower or any other Loan Party (except that, for the purposes of this paragraph (c), the term Excluded Subsidiary shall not include any existing Restricted Subsidiary that ceases to be an Excluded Subsidiary), within thirty (30) days after such creation or acquisition (as such period may be extended by the Collateral Agent in its reasonable discretion) (i) execute and deliver to the Collateral Agent such Security Documents as the Administrative Agent deems necessary or reasonably advisable to grant to the Collateral Agent, for the benefit of the Secured Parties, a perfected first priority security interest in the Capital Stock of such applicable Restricted Subsidiary that is owned by the Borrower or any Loan Party, (ii) deliver to the Authorized Collateral Agent the certificates representing such Capital Stock, together with undated stock powers, in blank, executed and delivered by a duly authorized officer of the applicable Restricted Subsidiary, (iii) cause such applicable Restricted Subsidiary (A) to become a party to the applicable Security Documents, (B) to take such actions necessary or advisable to grant to the Collateral Agent for the benefit of the Secured Parties a perfected first priority security interest (subject to Liens permitted by Section 7.3 hereof) in all or substantially all, or any portion of the property of such applicable Restricted Subsidiary that is required to become subject to a Lien in favor of the Collateral Agent, for the benefit of the Secured Parties, pursuant to the Loan Documents as the Administrative Agent shall determine, in its reasonable discretion, including the filing of Uniform Commercial Code financing statements in such jurisdictions (other than foreign jurisdictions) as may be required by the Guarantee and Collateral Agreement or as may be requested by the Collateral Agent and (C) to deliver to the Collateral Agent a certificate of such Restricted Subsidiary, substantially in the form of Exhibit G, with appropriate insertions and attachments, and (iv) if reasonably requested by the Collateral Agent, deliver to the

Administrative Agent legal opinions relating to the matters described above, which opinions shall be in customary form and substance and reasonably satisfactory to the Collateral Agent.

(d) With respect to any new “first-tier” Foreign Subsidiary or CFC Holdco created or acquired after the Closing Date (other than any new Foreign Subsidiary that is an Immaterial Subsidiary or any Foreign Subsidiary excluded pursuant to Section 6.10(e) or any Unrestricted Subsidiary) by the Borrower or any other Loan Party, within thirty (30) days after such creation or acquisition (as such period may be extended by the Collateral Agent in its reasonable discretion) (A) execute and deliver to the Collateral Agent such Security Documents as the Collateral Agent deems necessary or reasonably advisable to grant to the Collateral Agent, for the benefit of the Secured Parties, a perfected first priority security interest in the Capital Stock of such new Subsidiary that is owned by the Borrower or such Loan Party (provided that in the case of any new “first-tier” Foreign Subsidiary that is a CFC or new “first-tier” Subsidiary that is a CFC Holdco, in no event shall more than 65% of the total outstanding voting Capital Stock of any such new CFC or CFC Holdco be required to be so pledged), (B) deliver to the Authorized Collateral Agent the certificates representing such Capital Stock, together with undated stock powers, in blank, executed and delivered by a duly authorized officer of the Borrower or relevant Loan Party, as the case may be, and take such other action as may be necessary or, in the opinion of the Collateral Agent, desirable to perfect the Collateral Agent’s security interest therein, and (C) if reasonably requested by the Collateral Agent, deliver to the Collateral Agent legal opinions relating to the matters described above, which opinions shall be in customary form and substance and reasonably satisfactory to the Collateral Agent; provided that, notwithstanding the foregoing, in no event shall the Borrower or any other Loan Party be required to perfect any such pledge under laws other than of the United States or any state thereof.

(e) Notwithstanding anything to the contrary in this Section 6.10, paragraphs (a), (b), (c) and (d) of this Section 6.10 shall not apply to (i) any property, applicable Subsidiary or new Foreign Subsidiary created or acquired or that becomes Wholly Owned after the Closing Date, as applicable, as to which the Administrative Agent has reasonably determined that (A) the collateral value thereof is insufficient to justify the difficulty, time and/or expense of obtaining a perfected security interest therein or (B) such security interest would violate any applicable law; or (ii) any property which is otherwise excluded or excepted under the Guarantee and Collateral Agreement (including, for the avoidance of doubt, any direct or indirect Subsidiary of any CFC or CFC Holdco (including as a result of any law or regulation in any non-U.S. jurisdiction similar to Section 956 of the Code)).

6.11 Further Assurances. From time to time execute and deliver, or cause to be executed and delivered, such additional instruments, certificates or documents, and take all such actions, as the Administrative Agent or the Collateral Agent may reasonably request for the purposes of implementing or effectuating the provisions of this Agreement and the other Loan Documents, or of more fully perfecting or renewing the rights of the Administrative Agent, the Collateral Agent and the Secured Parties with respect to the Collateral (or with respect to any additions thereto or replacements or proceeds thereof or with respect to any other property or assets hereafter acquired by the Borrower or any Loan Party which may be deemed to be part of the Collateral) pursuant hereto or thereto. Upon the reasonable exercise by the Administrative

Agent or the Collateral Agent of any power, right, privilege or remedy pursuant to this Agreement or the other Loan Documents which requires any consent, approval, recording qualification or authorization of any Governmental Authority, the Borrower will execute and deliver, or will cause the execution and delivery of, all applications, certifications, instruments and other documents and papers that the Administrative Agent or the Collateral Agent reasonably determine may be required to obtain from the Borrower or any of its Restricted Subsidiaries for such governmental consent, approval, recording, qualification or authorization.

6.12 [Reserved.]

6.13 Use of Proceeds. The Borrower shall use the proceeds of the Loans, together with the proceeds of the Letters of Credit, solely as set forth in the recitals to this Agreement and in Section 4.16 hereof.

6.14 Designation of Subsidiaries. (a) Subject to Sections 6.14(b) and (c) below and Section 7.7(t), the Borrower may at any time designate any Restricted Subsidiary as an Unrestricted Subsidiary or any Unrestricted Subsidiary as a Restricted Subsidiary; provided that (i) the designation of any Restricted Subsidiary as an Unrestricted Subsidiary shall constitute an Investment by the Borrower therein at the date of designation in an amount equal to the fair market value of the Borrower's Investment therein (and with such Investment to be permitted to be made and be maintained solely pursuant to Section 7.7(t)) and (ii) the designation of any Unrestricted Subsidiary as a Restricted Subsidiary shall constitute the incurrence at the time of designation of any Indebtedness or Liens of such Subsidiary existing at such time.

(b) The Borrower may not (x) designate any Restricted Subsidiary as an Unrestricted Subsidiary or (y) designate an Unrestricted Subsidiary as a Restricted Subsidiary, in each case unless no Event of Default shall have occurred or be continuing immediately before and after giving effect to such designation.

(c) No Subsidiary that is a Restricted Subsidiary may be designated as an Unrestricted Subsidiary if, upon the effectiveness of such designation, such Subsidiary is and would continue to be a restricted subsidiary under the terms of the Senior Notes Indenture or any other Material Indebtedness of the Borrower or any of its Restricted Subsidiaries.

6.15 Anti-Terrorism Law; Anti-Money Laundering; Foreign Corrupt Practices Act.

(a) The Borrower and its Restricted Subsidiaries shall not directly or indirectly, (i) knowingly deal in, or otherwise knowingly engage in any transaction relating to, any property or interests in property blocked pursuant to the Executive Order or any other Anti-Terrorism Law in violation of any applicable Anti-Terrorism Law or applicable Sanctions, or (ii) knowingly engage in or conspire to engage in any transaction that violates or attempts to violate, any of the material prohibitions set forth in any applicable Anti-Terrorism Law or applicable Sanctions.

(b) The Borrower and its Restricted Subsidiaries shall (i) not repay the Loans, or make any other payment to any Lender, using funds or properties of the Borrower or any Subsidiaries that are, to the knowledge of the Borrower, the property of a Sanctioned Person or

that are, to the knowledge of the Borrower, fifty percent or more beneficially owned, directly or indirectly, by Sanctioned Persons, in each case, in violation of applicable Anti-Terrorism Laws or applicable Sanctions or (ii) to the knowledge of Borrower, permit any Sanctioned Person to have any direct or indirect interest, in the Borrower, Borrower or any of the Subsidiaries, with the result that the investment in the Borrower, Borrower or any of the Subsidiaries (whether directly or indirectly) or the Loans made by the Lenders would be in violation of any applicable Sanctions.

(c) Each Loan Party and its Restricted Subsidiaries will conduct their business in material compliance with, and maintain in effect and enforce policies and procedures that are reasonably designed to ensure compliance by the Loan Parties, their subsidiaries and each of their respective directors, officers, employees and agents with, the U.S. Foreign Corrupt Practices Act of 1977 and the UK Bribery Act 2010.

(d) To the extent applicable, each Loan Party and its Restricted Subsidiaries will comply with (i) the laws, regulations, Sanctions and executive orders administered by OFAC, (ii) all Anti-Terrorism Laws, (iii) the U.S. Foreign Corrupt Practices Act of 1977, as amended and (iv) the Patriot Act. No Loan Party nor any of their respective Restricted Subsidiaries will (A) engage in or conspire to engage in any transaction that attempts to violate (or evade in a manner that could violate) any of the foregoing or any similar Requirements of Law or (B) engage in or conspire to engage in any transaction that avoids, or has the purposes of avoiding any of the laws and regulations referenced in clauses (i), (ii) or (iv) of this clause (d) or any similar Requirements of Law.

(e) No Loan Party or any of its Restricted Subsidiaries will use any Loans or the proceeds thereof, or lend, contribute or otherwise make available any Loans or the proceeds of any Loans to any Sanctioned Person, to fund any activities of or business with any Sanctioned Person or in any Sanctioned Country, or in any other manner that will result in a violation by any Person (including any Person participating in the transaction, whether as a Lead Arranger, the Administrative Agent, any Lender or an Issuing Lender or otherwise) of Sanctions except, in each case, to the extent licensed by OFAC or otherwise authorized under U.S. law or, if applicable, to the extent licensed or authorized under any similar laws or regulations enacted by the European Union or the United Kingdom.

6.16 Post-Closing Deliveries.

(a) The Borrower hereby agrees to deliver, or cause to be delivered, to the Administrative Agent, in form and substance reasonably satisfactory to the Administrative Agent, the items described on Schedule 6.16 hereof on or before the dates specified with respect to such items, or such later dates as may be agreed to by, or as may be waived by, the Administrative Agent in its sole discretion.

(b) All representations and warranties contained in this Agreement and the other Loan Documents shall be deemed modified to the extent necessary to effect the foregoing (and to permit the taking of the actions described above within the time periods required above and in Schedule 6.16, rather than as elsewhere provided in the Loan Documents); provided that (x) to

the extent any representation and warranty would not be true because the foregoing actions were not taken on the Closing Date or, following the Closing Date, prior to the date by which such action is required to be taken by Section 6.16(a), the respective representation and warranty shall be required to be true and correct in all material respects (unless qualified by materiality, in which case they shall be true and correct in all respects) at the time the respective action is taken (or was required to be taken) in accordance with the foregoing provisions of this Section 6.16 (and Schedule 6.16) and (y) all representations and warranties relating to the assets set forth on Schedule 6.16 pursuant to the Security Documents shall be required to be true in all material respects immediately after the actions required to be taken under this Section 6.16 (and Schedule 6.16) have been taken (or were required to be taken), except to the extent any such representations and warranties expressly relate to an earlier date, in which case such representations and warranties shall be true and correct in all material respects (unless qualified by materiality, in which case they shall be true and correct in all respects) as of such earlier date.

SECTION 7. NEGATIVE COVENANTS

The Borrower hereby agrees that, so long as the Commitments remain in effect, any Letter of Credit remains outstanding or any Loan or other amount is owing to any Lender or Agent hereunder (other than unasserted contingent indemnification obligations, Letters of Credit that have been Cash Collateralized and any amount owing under Specified Hedge Agreements), the Borrower shall not, and shall not permit any of its Restricted Subsidiaries to:

7.1 Financial Condition Covenants.

(a) Minimum Liquidity. At all times for the period commencing July 1, 2020 and ending December 31, 2021, permit Liquidity at any time, as tested on the last day of each fiscal quarter of the Borrower, to be less than \$20,000,000.

(b) Minimum EBITDA. During the period commencing with the fiscal quarter ending September 30, 2020 and ending with the fiscal quarter ending December 31, 2021, permit Consolidated EBITDA as of the last day of each applicable fiscal quarter set forth in the schedule delivered by the Agent to the Borrower on or prior to the Closing Date to be less than the corresponding amount set forth in such schedule.

(c) Maximum Consolidated Secured Leverage Ratio. Permit the Consolidated Secured Leverage Ratio, calculated on a *pro forma basis*, as of the last day of any period of four (4) consecutive fiscal quarters of the Borrower (i) ending after (but not including) December 31, 2021 and on or prior to December 31, 2022, to exceed 2.50 to 1.00 and (ii) ending thereafter, to exceed 1.50 to 1.00.

(d) Consolidated Fixed Charge Coverage Ratio. Permit the Consolidated Fixed Charge Coverage Ratio, calculated on a *pro forma basis*, for any period of four (4) consecutive fiscal quarters of the Borrower (i) ending after (but not including) December 31, 2021 and on or prior to September 30, 2022, to be less than 0.20 to 1.00 and (ii) ending thereafter, to be less than 0.70 to 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 (i) any Loan Document or Cash Management Agreement, (ii) the Senior Notes and the Senior Notes Indenture in an aggregate principal amount not to exceed \$380.0 million (including any Permitted Refinancing thereof), or (iii) any Incremental Equivalent Term Debt;

(b) unsecured Indebtedness of (i) any Loan Party owed to any other Loan Party; (ii) any Loan Party owed to the Borrower or any Restricted Subsidiary; (iii) any Restricted Subsidiary that is not a Loan Party owed to any other Restricted Subsidiary that is not a Loan Party; and (iv) any Restricted Subsidiary that is not a Loan Party owed to a Loan Party in an aggregate amount at any time outstanding, when combined with the amount of intercompany Investments made by a Loan Party in a Restricted Subsidiary that is not a Loan Party pursuant to Section 7.7(f), not to exceed, in the case of this clause (iv), the greater of (x) \$25,000,000 and (y) 50% of Consolidated EBITDA for the most recent period of four fiscal quarters for which financial statements have been provided pursuant to Section 6.1(a) or (b); provided, that, in the case of clauses (i) and (iv), any such Indebtedness is evidenced by, and subject to the provisions of, an Intercompany Note;

(c) Guarantee Obligations incurred by (i) any Restricted Subsidiary that is a Loan Party of obligations of the Borrower, any Subsidiary Guarantor and, subject to Section 7.7(f), of any Restricted Subsidiary that is not a Loan Party and (ii) any Restricted Subsidiary that is not a Loan Party of obligations of the Borrower, any Subsidiary Guarantor and any other Restricted Subsidiary;

(d) Indebtedness outstanding on the Closing Date and listed on Schedule 7.2 and any Permitted Refinancing thereof;

(e) Indebtedness (including, without limitation, Capital Lease Obligations) of the Borrower or any Restricted Subsidiary secured by Liens permitted by Section 7.3(g) in an aggregate principal amount at any one time outstanding not to exceed the greater of (x) \$25,000,000 and (y) 50% of Consolidated EBITDA for the most recent period of four fiscal quarters for which financial statements have been provided pursuant to Section 6.1(a) or (b);

(f) Hedge Agreements;

(g) Indebtedness of the Borrower or any Restricted Subsidiary in respect of performance, bid, surety, indemnity, appeal bonds, completion guarantees and other obligations of like nature and guarantees and/or obligations as an account party in respect of the face amount of letters of credit in respect thereof, in each case securing obligations not constituting Indebtedness for borrowed money (including worker's compensation claims, environmental remediation and other environmental matters and obligations in connection with insurance or similar requirements) provided in the ordinary course of business;

(h) Indebtedness in respect of (A) workers' compensation claims, self-insurance obligations, bankers' acceptances, customs, Taxes and other similar tax guarantees, in each case incurred in the ordinary course of business and not in connection with the borrowing of money and (B) any customary cash management, cash pooling or netting or setting-off arrangements incurred in the ordinary course of business;

(i) (A) Indebtedness consisting of (a) the financing of insurance premiums or (b) take-or-pay obligations contained in supply arrangements, in the case of the foregoing clauses (a) and (b) in the ordinary course of business and (B) Indebtedness incurred by the Borrower or any of its Restricted Subsidiaries in respect of bank guarantees, warehouse receipts, letters of credit, or similar instruments issued or created in the ordinary course of business, including in respect of workers compensation claims, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance, or other Indebtedness with respect to reimbursement type obligations regarding workers compensation claims; provided that any reimbursement obligations in respect thereof are reimbursed within 30 days following the due date thereof;

(j) Indebtedness arising from the endorsement of instruments in the ordinary course of business and in respect of netting services, overdraft protections and similar arrangements in each case in connection with deposit accounts;

(k) [reserved];

(l) Indebtedness representing deferred compensation to employees of the Borrower and its Restricted Subsidiaries;

(m) Indebtedness issued by any Loan Party to current or former officers, directors and employees, their respective estates, spouses or former spouses to finance the purchase or redemption of Equity Interests of Holdings or its direct or indirect parent permitted by Section 7.6;

(n) Indebtedness of a Person existing at the time such Person became a Restricted Subsidiary (such Person, an "Acquired Person"), together with all Indebtedness assumed by the Borrower or any of its Restricted Subsidiaries in connection with any acquisition permitted under Section 7.7, but only to the extent that (i) such Indebtedness was not created or incurred in contemplation of such Person becoming a Restricted Subsidiary or such acquisition, (ii) any Liens securing such Indebtedness attach only to the assets of the Acquired Person and (iii) the aggregate principal amount of such Indebtedness at any one time outstanding does not exceed the greater of (x) 30,000,000 and (y) 75% of Consolidated EBITDA for the most recent period of four fiscal quarters for which financial statements have been provided pursuant to Section 6.1(a) or (b);

(o) (i) Earn-Out Obligations consisting of common stock of the Borrower and (ii) any other unsecured Earn-Out Obligations in an amount not to exceed \$25,000,000 at any time outstanding;

(p) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument inadvertently (except in the case of daylight overdrafts) drawn against insufficient funds in the ordinary course of business; provided, however, that such Indebtedness is extinguished within ten (10) Business Days of incurrence;

(q) Indebtedness of the Borrower or any Restricted Subsidiary that may be deemed to exist in connection with agreements providing for indemnification, deferred purchase price obligations or other purchase price adjustments and similar obligations in connection with acquisitions or sales of assets and/or businesses;

(r) Indebtedness arising from judgments or decrees not constituting an Event of Default under Section 8.1(h);

(s) Indebtedness of Restricted Subsidiaries that are not Loan Parties in an aggregate principal amount (for all such Restricted Subsidiaries) not to exceed at any time outstanding the greater of (x) \$25,000,000 and (y) 50% of Consolidated EBITDA for the most recent period of four fiscal quarters for which financial statements have been provided pursuant to Section 6.1(a) or (b);

(t) other unsecured Indebtedness in an aggregate principal amount not to exceed \$300,000,000 at any time outstanding (including, for the avoidance of doubt, Convertible Bond Indebtedness);

(u) other Indebtedness of the Borrower or any of its Restricted Subsidiaries in an aggregate principal amount at any time outstanding (for the Borrower and all Restricted Subsidiaries) not in excess of the greater of (i) \$50,000,000 and (ii) 100% of Consolidated EBITDA for the most recent period of four fiscal quarters for which financial statements have been provided pursuant to Section 6.1(a) or (b); and

(v) Indebtedness existing as of the Closing Date owed by a Group Member to another Group Member.

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

(a) Liens for Taxes, assessments, charges or other governmental levies which are (i) immaterial to the Borrower and its Restricted Subsidiaries, taken as a whole, (ii) not yet due and payable or delinquent for more than sixty (60) days or (iii) being contested in good faith by appropriate proceedings; provided that adequate reserves with respect thereto are maintained on the books of the Borrower or its Restricted Subsidiaries, as the case may be, in conformity with GAAP;

(b) Liens imposed by law, including, carriers', warehousemen'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 sixty (60) days (or, if more than sixty (60) days overdue, no action has been taken to enforce such Lien) or that are being contested in good faith by

appropriate proceedings or which do not in the aggregate materially detract from the value of the Property of the Borrower and its Restricted Subsidiaries, taken as a whole, and do not materially impair the use thereof in the operation of the business of the Borrower and its Restricted Subsidiaries, taken as a whole;

(c) pledges or deposits in connection with workers' compensation, unemployment insurance and other social security legislation, or letters of credit or guarantees issued in respect thereof, other than any Lien imposed by ERISA with respect to a Single Employer Plan or Multiemployer Plan;

(d) pledges or deposits to secure the performance of bids, trade contracts (other than for borrowed money), leases, licenses, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business or letters of credit or guarantees issued in respect thereof;

(e) easements, zoning restrictions, rights-of-way, restrictions, encroachments and other similar encumbrances and title defects affecting Real Property that, in any such case, individually or in the aggregate, do not in any case materially detract from use, occupancy or the value of the property subject thereto or materially interfere with the ordinary conduct of the business of the Borrower or any of its Restricted Subsidiaries;

(f) Liens in existence on the Closing Date listed on Schedule 7.3 and any renewals or extensions thereof; provided that no such Lien is spread to cover any additional property after the Closing Date and the Indebtedness secured thereby is permitted by Section 7.2(d);

(g) Liens securing Indebtedness of the Borrower or any Restricted Subsidiary incurred pursuant to Section 7.2(e) to finance the acquisition of fixed or capital assets; provided that (i) such Liens do not at any time encumber any property other than the property financed by such Indebtedness, except for replacements, additions and accessions to the property that are affixed or incorporated into the property covered by such Lien or financed with the proceeds of such Indebtedness and the proceeds and the products thereof and (ii) individual financings or leases of equipment provided by one lender or lessor may be cross collateralized to other financings of equipment provided by such lender or lessor;

(h) Liens created pursuant to the Security Documents or any other Loan Document or securing any Refinancing Facility or Incremental Equivalent Term Debt; provided, that any Liens securing any Incremental Equivalent Term Debt or any Incremental Term Loans shall be junior in priority to the Liens securing the Revolving Facility and shall be subject to customary intercreditor arrangements reasonably satisfactory to the Administrative Agent;

(i) Liens appearing on policies of title insurance being issued in connection with any Mortgage;

(j) any interest or title of a lessor under any lease, sublease, or non-exclusive license or sublicense, entered into by the Borrower or any Restricted Subsidiary in the ordinary course of

its business and covering only the assets subject to such lease, sublease license or sublicense, as the case may be;

(k) assignments, licenses, cross-licenses, sublicenses, contributions, leases or subleases granted to third parties or the Borrower or any Restricted Subsidiary in the ordinary course of business;

(l) Liens securing judgments not constituting an Event of Default under Section 8.1(h) or securing appeal or other surety bonds related to such judgments;

(m) the filing of UCC financing statements solely as a precautionary measure in connection with operating leases and consignment arrangements;

(n) Liens existing on property acquired by the Borrower or any Restricted Subsidiary at the time such property is so acquired (whether or not the Indebtedness secured thereby shall have been assumed); provided that (i) such Lien is not created in contemplation of such acquisition, (ii) such Lien does not extend to any other property of the Borrower or any Restricted Subsidiary following such acquisition (other than the proceeds or products thereof) and (iii) the Indebtedness secured by such Liens is permitted by Section 7.2(n);

(o) Liens (i) of a collection bank arising under Section 4-210 of the UCC on items in the course of collection (or comparable foreign liens); (ii) attaching to commodity trading accounts or other commodities brokerage accounts incurred in the ordinary course of business; (iii) in favor of a banking institution arising as a matter of law encumbering deposits (including the right of set-off) and which are within the general parameters customary in the banking industry; and (iv) incurred in connection with a cash management program established in the ordinary course of business;

(p) Liens on Margin Stock owned by the Borrower;

(q) Liens in favor of customs and revenue authorities arising as a matter of law and in the ordinary course of business to secure payment of customs duties in connection with the importation of goods;

(r) statutory and common law landlords' liens under leases to which the Borrower or any of its Restricted Subsidiaries is a party;

(s) Liens on cash, Cash Equivalents or other property arising in connection with any defeasance, discharge or redemption of Indebtedness;

(t) Liens (i) on cash advances in favor of the seller of any property to be acquired in an Investment permitted pursuant to Section 7.7 to be applied against the purchase price for such Investment, or (ii) consisting of an agreement to Dispose of any property in a Disposition permitted under Section 7.5, in each case, solely to the extent such Investment or Disposition, as the case may be, would have been permitted on the date of the creation of such Lien;

(u) Liens arising out of conditional sale, title retention, consignment or similar arrangements for sale of goods entered into by the Borrower or any of its Restricted Subsidiaries in the ordinary course of business permitted by this Agreement;

(v) Liens deemed to exist in connection with Investments in repurchase agreements under Section 7.7;

(w) Liens encumbering reasonable customary initial deposits and margin deposits and similar Liens attaching to commodity trading accounts or other brokerage accounts incurred in the ordinary course of business and not for speculative purposes;

(x) Liens that are customary contractual rights of setoff (i) relating to the establishment of depository relations with banks or other financial institutions not given in connection with the incurrence of Indebtedness, (ii) relating to pooled deposit or sweep accounts of the Borrower or any of its Restricted Subsidiaries to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of the Borrower or any of its Restricted Subsidiaries, or (iii) relating to purchase orders and other agreements entered into with customers of the Borrower or any of its Restricted Subsidiaries in the ordinary course of business;

(y) (i) zoning, building, entitlement and other land use regulations by Governmental Authorities which are not violated in any material respect by existing improvements or the present use or occupancy of any Real Property, and (ii) any zoning or similar law or right reserved to or vested in any Governmental Authority to control or regulate the use of any real property that does not materially interfere with the ordinary conduct of the business of the Borrower or any of its Restricted Subsidiaries;

(z) Liens solely on any cash earnest money deposits or other similar escrow arrangements made by the Borrower or any of its Restricted Subsidiaries in connection with any Investment, Disposition, letter of intent or purchase agreement in each case permitted hereunder;

(aa) Liens on property or assets under construction (and related rights) in favor of a contractor or developer or arising from progress or partial payments by a third party relating to such property or assets;

(bb) Liens (including put and call arrangements) on Capital Stock or other securities of any Unrestricted Subsidiary that secure Indebtedness of such Unrestricted Subsidiary;

(cc) Liens on insurance policies and the proceeds thereof securing the financing of the premiums with respect thereto;

(dd) Liens securing Indebtedness owing to the Borrower or any Subsidiary Guarantor;

(ee) Liens on assets of Restricted Subsidiaries of the Borrower that are not Loan Parties to the extent the Indebtedness secured thereby is permitted under Section 7.2; provided, that the assets encumbered pursuant to this Section 7.3(ee) are limited solely to the assets of such Restricted Subsidiaries; and

(ff) Liens not otherwise permitted by this Section 7.3 so long as the aggregate outstanding principal amount of the obligations secured thereby do not exceed at any one time (as to the Borrower and all Restricted Subsidiaries) the greater of (i) \$50,000,000 and (ii) an amount equal to 100% of Consolidated EBITDA for the most recent period of four fiscal quarters for which financial statements have been provided pursuant to Section 6.1(a) or (b).

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

(a) any Restricted Subsidiary of the Borrower may be merged, consolidated or be amalgamated (i) with or into the Borrower (provided that the Borrower shall be the continuing or surviving corporation), (ii) with or into any other Restricted Subsidiary of the Borrower (provided that if only one party to such transaction is a Subsidiary Guarantor, the continuing or surviving corporation shall be a Subsidiary Guarantor) or (iii) subject to Section 7.7(f) (to the extent applicable), with or into any other Restricted Subsidiary;

(b) any Restricted Subsidiary of the Borrower may Dispose of all or substantially all of its assets (upon voluntary liquidation or otherwise) to the Borrower or any Subsidiary Guarantor or, subject to Section 7.7(f) (to the extent applicable), any other Restricted Subsidiary;

(c) any Restricted Subsidiary that is not a Loan Party may (i) merge or consolidate with or into any Restricted Subsidiary that is not a Loan Party or (ii) dispose of all or substantially all of its assets (including any Disposition that is in the nature of a liquidation) to (x) another Restricted Subsidiary that is not a Loan Party or (y) to a Loan Party;

(d) any Restricted Subsidiary may enter into any merger, consolidation or similar transaction with another Person to effect a transaction permitted under Section 7.7;

(e) any Immaterial Subsidiary may liquidate or dissolve voluntarily;

(f) transactions permitted under Section 7.5 shall be permitted; and

(g) such merger, consolidation, reorganization or amalgamation does not result in the Borrower ceasing to be organized under the Laws of the United States, any state thereof or the District of Columbia.

Notwithstanding anything in this Section 7.4 to the contrary, in no event will any Loan Party, (directly or indirectly through one or a series of transactions) sell, transfer, assign or grant an exclusive license with respect to or contribute any material Intellectual Property to any non-Loan Party.

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

(a) Dispositions of obsolete, damaged, uneconomic or worn out machinery, parts, property or equipment, or property or equipment no longer used or useful, in the conduct of its business, whether now owned or hereafter acquired;

(b) the sale of inventory and goods held for sale, each in the ordinary course of business;

(c) Dispositions permitted by Section 7.4(a), (b), (c), (d) and (e);

(d) the sale or issuance of any Restricted Subsidiary's Capital Stock to the Borrower or any Subsidiary Guarantor or, if any Restricted Subsidiary is not a Loan Party, to any other Restricted Subsidiary;

(e) the Borrower or any Restricted Subsidiary of the Borrower may Dispose of any assets to the Borrower or any Subsidiary Guarantor or, subject to Section 7.7(f) (to the extent applicable) or Section 7.7(u) (to the extent applicable), any other Restricted Subsidiary, and any Restricted Subsidiary that is not a Subsidiary Guarantor may Dispose of any assets, or issue or sell Capital Stock, to any other Restricted Subsidiary that is not a Subsidiary Guarantor;

(f) Dispositions of cash or Cash Equivalents in the ordinary course of business in transactions not otherwise prohibited by this Agreement;

(g) assignments, licenses, cross-licenses, or sublicenses with respect to Intellectual Property granted to third parties in the ordinary course of business which, in the aggregate, do not materially detract from the value of the Collateral taken as a whole or materially interfere with the business of the Loan Parties and their Restricted Subsidiaries;

(h) (x) the Disposition of other property having a fair market value not to exceed the greater of (A) 5.0% of the Consolidated Total Assets of the Borrower in the aggregate for any fiscal year of the Borrower and (B) \$5,000,000 in any fiscal year of the Borrower; provided that at least 75% of the consideration received in connection therewith consists of cash or Cash Equivalents and (y) the Disposition of property or assets as a result of a Recovery Event;

(i) the Disposition of Margin Stock owned by the Borrower for cash at not less than its fair market value;

(j) (x) the issuance or sale of shares of any Restricted Subsidiary's Capital Stock to qualify directors if required by applicable law and (y) compensatory issuances or grants of Capital Stock of the Borrower approved by the Borrower's board of directors, any committee thereof or any designee of either to employees, officer, directors or consultants made pursuant to equity-based compensation plans or arrangements that have been approved by the shareholders of the Borrower;

(k) Dispositions or exchanges of equipment or other property to the extent that (i) such property is exchanged for credit against the purchase price of similar replacement property

or (ii) the proceeds of such Disposition are reasonably promptly applied to the purchase price of such replacement property;

(l) Dispositions of leases entered into in the ordinary course of business, to the extent that they do not materially interfere with the business of the Borrower or any Restricted Subsidiary, taken as a whole;

(m) Dispositions of the Capital Stock of Unrestricted Subsidiaries;

(n) the lapse, abandonment or other Disposition of Intellectual Property rights (including allowing any registrations or any applications for registration of any Intellectual Property rights to lapse or go abandoned) to the extent the Borrower determines in its reasonable business judgment that (i) such Intellectual Property rights are not commercially reasonable to maintain under the circumstances or (ii) such lapse, abandonment or other Disposition would not materially interfere with the business of the Borrower and its Restricted Subsidiaries;

(o) any surrender or waiver of contract rights or settlement, release, recovery on or surrender of contract, tort or other claims in the ordinary course of business;

(p) the unwinding or settling of any Hedge Agreement; and

(q) Dispositions of Investments in joint ventures to the extent required by, or made pursuant to customary buy/sell arrangements between, the joint venture parties set forth in joint venture arrangements and similar binding arrangements.

Notwithstanding anything in this Section 7.5 to the contrary, in no event will any Loan Party, (directly or indirectly through one or a series of transactions) sell, transfer, assign or grant an exclusive license with respect to or contribute any material Intellectual Property to any non-Loan Party.

7.6 Restricted 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 the Borrower or any Restricted Subsidiary, in each case, 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 the Borrower or any Restricted Subsidiary (collectively, "Restricted Payments"), except that:

(a) for any taxable period for which the Borrower or any Subsidiaries of the Borrower are members of a consolidated, combined, unitary, or similar income tax group for federal and/or applicable state or local income tax purposes or are entities treated as disregarded from any such members for U.S. federal income Tax purposes (a "Tax Group") of which the Borrower, any direct or indirect parent company of the Borrower or any Subsidiary is the common parent, the Borrower and the Borrower's Subsidiaries may make dividends or other distributions, directly or indirectly, to the Borrower or any Subsidiary (and the Borrower may make such dividends or

other distributions to any direct or indirect parent company of the Borrower) to permit the parent of the Tax Group to pay any consolidated, combined or similar income Taxes of such Tax Group that are due and payable by the parent of such Tax Group for such taxable period, but only to the extent attributable to the Borrower and/or Subsidiaries of the Borrower, provided that dividends or other distributions in respect of an Unrestricted Subsidiary shall be permitted only to the extent that dividends or other distributions were made by such Unrestricted Subsidiary to such Group Member or any of its Subsidiaries for such purpose; provided further that (x) the amount of dividends permitted to be made under this Section 7.6(a) for any taxable period shall not exceed the lesser of (A) the amount of such Taxes that would have been due and payable by the Borrower and/or the applicable Subsidiaries of the Borrower had the Borrower and/or such Subsidiaries of the Borrower, as applicable, been a stand-alone corporate taxpayer (or a stand-alone corporate Tax Group) and (B) the actual Tax liability of the Borrower for such taxable period, (y) to the extent that such Taxes are attributable to Subsidiaries of the Borrower that are not Loan Parties, such Taxes must be funded by such Subsidiaries and (z) if the Borrower receives a refund from a Governmental Authority in respect of any amounts paid pursuant to this Section 7.6(a), any subsequent distributions pursuant to this Section 7.6(a) shall be reduced by the amount of such refund;

(b) each Restricted Subsidiary may make Restricted Payments to the Borrower and to Wholly Owned Subsidiaries (and, in the case of a Restricted Payment by a non-Wholly Owned Subsidiary, to the Borrower and any Restricted Subsidiary and to each other owner of Capital Stock or other equity interests of such Restricted Subsidiary on a pro rata basis based on their relative ownership interests);

(c) the Borrower and each Restricted Subsidiary may declare and make dividend payments or other distributions payable solely in the common stock or other common equity interests of such Person;

(d) so long as no Default or Event of Default has occurred and is continuing or would result therefrom, the Borrower may purchase, redeem or otherwise acquire shares of its common stock or other common equity interests or warrants or options to acquire any such shares, in each case, to the extent consideration therefor consists of the proceeds received from the substantially concurrent issue of new shares of its common stock or other common equity interests;

(e) the Borrower may (i) purchase its Capital Stock from present or former officers, directors, employees or consultants of the Borrower or any Group Member upon the death, disability or termination of employment or services of such individual, (ii) purchase, redeem or otherwise acquire any Capital Stock from the employees, officers, directors and consultants of the Borrower or any Group Member by net exercise, net withholding or otherwise, pursuant to the terms of any employee stock option, incentive stock or other equity-based plan or arrangement and (iii) consummate ordinary course net settlements made pursuant to its equity incentive program; provided, that the aggregate amount of payments under this clause (e)(i), (e)(ii) and (e)(iii) shall not exceed \$10,000,000 in any fiscal year (with unused amounts in any fiscal year being permitted to be carried over for the succeeding fiscal years) plus, in each case, any proceeds received by the Borrower after the Closing Date in connection with the issuance of

Capital Stock that are used for the purposes described in this clause (e) (which proceeds, for the avoidance of doubt, shall not be included in the calculation of the Available Amount); provided, further, that any payment in respect of an Unrestricted Subsidiary shall count as an Investment under Section 7.7(t);

(f) so long as (x) no Event of Default shall have occurred and be continuing or would result therefrom, (y) the Consolidated Leverage Ratio on a *pro forma basis* does not exceed 4.00 to 1.0 and (z) the Borrower shall have delivered to the Administrative Agent a certificate evidencing compliance with clauses (x) and (y), the Borrower may make Restricted Payments with the Available Amount; provided, for purposes of this clause (f), if Consolidated EBITDA is negative for the applicable Reference Period for purposes of calculating the Consolidated Leverage Ratio, no amount shall be available under this clause (f) for any purpose;

(g) so long as (x) no Event of Default shall have occurred and be continuing or would result therefrom; and (y) the Borrower shall have delivered to the Administrative Agent a certificate evidencing compliance with clause (x), Restricted Payments so long as the Consolidated Leverage Ratio on a *pro forma basis* does not exceed 3.00 to 1.0; provided, for purposes of this clause (g), if Consolidated EBITDA is negative for the applicable Reference Period for purposes of calculating the Consolidated Leverage Ratio, no amount shall be available under this clause (g) for any purpose;

(h) the Borrower may make Restricted Payments to pay cash payments in lieu of issuing fractional shares in connection with the exercise of warrants, options or other securities convertible into or exchangeable for Capital Stock of the Borrower;

(i) the Borrower may make Restricted Payments consisting of the cashless exercise of options and warrants of the Capital Stock of the Borrower or any of its Subsidiaries;

(j) the Borrower may (i) enter into Capped Call Transactions in connection with the issuance of Convertible Bond Indebtedness permitted under Section 7.02 and satisfy its obligations to pay premiums upon entering into such transactions and (ii) make any payment in connection therewith by delivery of shares of the Borrower's common stock (or other securities or property following a merger event or other change of the Capital Stock of the Borrower) upon net share settlement thereof (together with cash in lieu of fractional shares) or set-off, netting and/or payment of an early termination payment or similar payment thereunder upon any early termination thereof, in each case made in the Borrower's common stock (or other securities or property following a merger event or other change of the Capital Stock of the Borrower);

(k) the Borrower may make cash payments to satisfy obligations in respect of Capped Call Transactions solely to the extent the Borrower does not have the option of satisfying such payment obligations through the issuance of the Borrower's common stock or is required to satisfy such payment obligations in cash, it being understood and agreed that any payment made in cash in connection with Capped Call Transactions by set-off, netting and/or payment of an early termination payment or similar payment thereunder upon any early termination thereof, in each case, after using commercially reasonable efforts to satisfy such obligation (or the portion thereof remaining after giving effect to any netting or set-off against termination or similar

payments under an applicable hedging transaction) by delivery of shares of the Borrower's common stock shall be deemed to be a payment obligation required to be satisfied in cash; and

(l) so long as no Event of Default shall have occurred and be continuing or would result therefrom, the Borrower and each Restricted Subsidiary may make other Restricted Payments in an aggregate amount not to exceed the greater of (x) \$50 million and (y) an amount equal to 50% of Consolidated EBITDA for the most recent period of four fiscal quarters for which financial statements have been provided pursuant to Section 6.1(a) or (b).

Notwithstanding anything in this Section 7.6 to the contrary, (i) in no event will any Loan Party, (directly or indirectly through one or a series of transactions) sell, transfer, assign or grant an exclusive license with respect to or contribute any material Intellectual Property to any non-Loan Party and (ii) in no event shall the Capital Stock in any Unrestricted Subsidiary be the subject of a dividend or other Restricted Payment (pursuant to this Section 7.6 or otherwise).

7.7 Investments. Make any advance, loan, extension of credit (by way of guaranty 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 line or unit of, or a division of, or make any other investment in, any other Person (all of the foregoing, "Investments"), except:

(a) extensions of trade credit in the ordinary course of business;

(b) Investments in cash and Cash Equivalents;

(c) Guarantee Obligations permitted by Section 7.2;

(d) loans and advances to officers, directors and employees of the Borrower or any Restricted Subsidiary in the ordinary course of business (including for travel, entertainment, relocation and similar expenses) in an aggregate amount for the Borrower and all Restricted Subsidiaries not to exceed at any time outstanding the greater of (x) \$5,000,000 and (y) 10% of Consolidated EBITDA for the most recent period of four fiscal quarters for which financial statements have been provided pursuant to Section 6.1(a) or (b);

(e) intercompany Investments by (i) the Borrower or any Restricted Subsidiary in any Loan Party; provided that all such intercompany Investments to the extent such Investment is a loan or advance owed to a Loan Party are evidenced by the Intercompany Note and (ii) any Restricted Subsidiary that is not a Loan Party to any other Restricted Subsidiary that is not a Loan Party;

(f) intercompany Investments by any Loan Party in any Restricted Subsidiary, that, after giving effect to such Investment, is not a Subsidiary Guarantor (including, without limitation, Guarantee Obligations with respect to obligations of any such Restricted Subsidiary, loans made to any such Restricted Subsidiary and Investments resulting from mergers with or sales of assets to any such Subsidiary) in an amount (valued at cost) (but excluding all such Investments outstanding as of the Closing Date) not to exceed in the aggregate at any time outstanding, when combined with the amount of intercompany Loans made by Loan Parties in

Restricted Subsidiaries that are not Loan Parties pursuant to Section 7.2(b)(iv), the greater of (x) \$25,000,000 million and (y) 50% of Consolidated EBITDA for the most recent period of four fiscal quarters for which financial statements have been provided pursuant to Section 6.1(a) or (b);

(g) Investments in the ordinary course of business consisting of endorsements for collection or deposit or lease, utility and other similar deposits and deposits with suppliers in the ordinary course of business and customary trade arrangements with customers consistent with past practice;

(h) Investments in connection with Permitted Acquisitions;

(i) Investments consisting of Hedge Agreements permitted by Section 7.11;

(j) Investments existing as of the Closing Date and set forth in Schedule 7.7 and any modification, extension or renewal thereof; provided that the amount of any such Investment is not increased at the time of such extension or renewal;

(k) Investments consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the ordinary course of business, and Investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors or other Persons to the extent reasonably necessary in order to prevent or limit loss or in connection with the bankruptcy or reorganization of suppliers or customers and in settlement of delinquent obligations of, and other disputes with, suppliers or customers arising in the ordinary course of business;

(l) Investments received as consideration in connection with Dispositions permitted under Section 7.5;

(m) in addition to Investments otherwise expressly permitted by this Section 7.7, so long as no Event of Default shall have occurred and be continuing or would result therefrom, Investments in businesses permitted to be engaged in by the Borrower and its Restricted Subsidiaries under Section 7.15 in an aggregate amount (valued at cost, if applicable) at any time outstanding not to exceed the greater of (x) \$50,000,000 and (y) 100% of Consolidated EBITDA for the most recent period of four fiscal quarters for which financial statements have been provided pursuant to Section 6.1(a) or (b);

(n) the licensing, cross-licensing, sublicensing or contribution of Intellectual Property rights pursuant to joint research development or marketing arrangements with Persons other than the Borrower and its Restricted Subsidiaries which does not interfere in any material respect with the business of the Borrower or any of its Restricted Subsidiaries;

(o) Investments of a Restricted Subsidiary that is acquired after the Closing Date or of a company merged or amalgamated or consolidated into the Borrower or merged, amalgamated or consolidated with a Restricted Subsidiary, in each case in accordance with Section 7.4 or 7.7 after the Closing Date to the extent that such Investments were not made in contemplation of or

in connection with such acquisition, merger, amalgamation or consolidation and were in existence on the date of such acquisition, merger or consolidation;

(p) loans and advances in the ordinary course of business in respect of intercompany accounts attributable to the operation of the Borrower's cash management system;

(q) guarantees (i) by any Loan Party of Indebtedness and other obligations of Borrower and the other Loan Parties not otherwise permitted hereunder, (ii) by the Borrower or any Restricted Subsidiary of Indebtedness and other obligations of any Loan Party not otherwise permitted hereunder, (iii) by any Restricted Subsidiary that is not a Subsidiary Guarantor of Indebtedness and other obligations of any other Restricted Subsidiary that is not a Subsidiary Guarantor not otherwise permitted hereunder and (iv) by any Loan Party of Indebtedness and other obligations of any Restricted Subsidiary that is not a Subsidiary Guaranty not otherwise permitted hereunder subject, in the case of this clause (iv) to the limits set forth in Section 7.7(f) above;

(r) so long as (x) no Event of Default shall have occurred and be continuing or would result therefrom; and (y) the Consolidated Leverage Ratio on a *pro forma basis* does not exceed 5.00 to 1.00; Investments with the Available Amount; provided, for purposes of this clause (r), if Consolidated EBITDA is negative for the applicable Reference Period for purposes of calculating the Consolidated Leverage Ratio, no amount shall be available under this clause (r) for any purpose;

(s) so long as no Event of Default shall have occurred and be continuing or would result therefrom, Investments so long as the Consolidated Leverage Ratio on a *pro forma basis* does not exceed 4.00 to 1.0; provided, for purposes of this clause (s), if Consolidated EBITDA is negative for the applicable Reference Period for purposes of calculating the Consolidated Leverage Ratio, no amount shall be available under this clause (s) for any purpose;

(t) Subject to Section 6.14, Investments in Unrestricted Subsidiaries (including Investments comprising the designation of a Restricted Subsidiary as an Unrestricted Subsidiary) in an aggregate amount since the Closing Date not to exceed the greater of (x) \$25 million and (y) an amount equal to 50% of Consolidated EBITDA for the most recent period of four fiscal quarters for which financial statements have been provided pursuant to Section 6.1(a) or (b);

(u) Investments and related transactions, including Dispositions and the incurrence of intercompany Indebtedness, in connection with internal reorganizations and/or restructurings and related activities related to tax planning and reorganizations, restructurings and related activities which do not, individually or in the aggregate, materially detract from the value of the Collateral or adversely affect in any material respect the rights of the Secured Parties in respect of the Collateral or which facilitate the repatriation of cash to the Borrower or any Domestic Subsidiaries;

(v) Investments existing as of the Closing Date of a Group Member in another Group Member;

(w) to the extent constituting Investments, any Capped Call Transactions; and

(x) Investments constituting purchases and other acquisitions of websites and related assets in the ordinary course of business or consistent with past practice so long as the aggregate consideration in any fiscal year of the Borrower for such purchases and other acquisitions does not at any time exceed the greater of (x) \$20,000,000 and (y) 40% of Consolidated EBITDA for the most recent period of four fiscal quarters for which financial statements have been provided pursuant to Section 6.1(a) or (b).

Notwithstanding anything in this Section 7.7 to the contrary, (x) in no event will any Loan Party, (directly or indirectly through one or a series of transactions) sell, transfer, assign or grant an exclusive license with respect to or contribute any material Intellectual Property to any non-Loan Party and (y) Investments by the Borrower or any Restricted Subsidiary in any Unrestricted Subsidiary shall be permitted to exist or be made solely in reliance on Section 7.7(t).

7.8 Optional Payments and Modifications of Certain Documents. (a) Make or offer to make any optional or voluntary payment, prepayment, repurchase or redemption of or otherwise optionally or voluntarily defease or segregate funds with respect to any Junior Financing (other than unsecured Indebtedness that is not (x) Subordinated Indebtedness or (y) subordinated in right of payment to the Facilities) except (A) with the proceeds of a Permitted Refinancing of such Junior Financing, (B) payments with, or the conversion of any such Junior Financing to, Capital Stock (other than Disqualified Capital Stock that is not permitted hereunder) or (C) so long as (x) no Event of Default shall have occurred and be continuing or would result therefrom; and (y) the Consolidated Leverage Ratio on a *pro forma basis* does not exceed 4.00 to 1.0, repurchases or redemptions with the Available Amount; provided, for purposes of this clause (C), if Consolidated EBITDA is negative for the applicable Reference Period for purposes of calculating the Consolidated Leverage Ratio, no amount shall be available under this clause (C) for any purpose; and provided, further, that nothing in this Section 7.8 shall restrict the Group Members from repaying intercompany loans so long as such repayments are in accordance with the terms of the Intercompany Note, if applicable, and (D) regularly scheduled payments of principal and interest, mandatory offers to repay or mandatory prepayments of principal, premium and interest, and payment of fees, expenses and indemnification obligations.

(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 Organization Document of any Loan Party or any Pledged Company if such amendment, modification, waiver or change could reasonably be expected to have a Material Adverse Effect.

7.9 Transactions with Affiliates. Enter into any transaction of any kind with any Affiliate of the Borrower, whether or not in the ordinary course of business, on terms that are materially less favorable to the Borrower or such Restricted Subsidiary than would be obtainable by the Borrower or such Restricted Subsidiary at the time in a comparable arm's length transaction with a Person other than an Affiliate, except (a) transactions between or among Loan Parties; (b) transactions between or among Restricted Subsidiaries that are not Loan Parties; (c) loans or advances to officers, directors and employees permitted under Section 7.7; (d) the payment of reasonable fees to directors of the Borrower or any Restricted Subsidiary who are not

employees of the Borrower or any Restricted Subsidiary, and compensation, employment, termination and other employee benefit arrangements paid to, and indemnities provided for the benefit of, directors, officers or employees of any Group Member, each in the ordinary course of business, provided, that any payment in respect of an Unrestricted Subsidiary shall count as an Investment under Section 7.7(t); (e) (i) any issuances of securities or other payments, awards or grants in cash, securities or otherwise pursuant to, or the funding of, employment agreements, stock options and stock ownership plans approved by the Borrower's board of directors and (ii) any repurchases of any issuances, awards or grants issued pursuant to clause (i), in each case, to the extent permitted by Section 7.6; (f) employment arrangements entered into in the ordinary course of business between the Borrower or any Restricted Subsidiary and any employee thereof; (g) any Restricted Payment permitted by Section 7.6; (h) pledges of Capital Stock of an Unrestricted Subsidiary to secure Indebtedness of such Unrestricted Subsidiary; (i) the provision of cash collateral permitted under Section 7.3 and payments and distributions of amounts therefrom; (j) transactions with customers, clients, suppliers, or purchasers or sellers of goods or services or providers of employees or other labor, in each case in the ordinary course of business and otherwise in compliance with the terms of this Agreement that are fair to the Borrower or the Restricted Subsidiaries, in the reasonable determination of the members of the Board of Directors of the Borrower or the senior management thereof, or are on terms at least as favorable as might reasonably have been obtained at such time from an unaffiliated Person; and (k) any transaction (or series of related transactions) with an Affiliate of the Borrower involving consideration of an amount equal to or less than \$5,000,000.

7.10 Issuance of Qualified Capital Stock. Notwithstanding anything herein to the contrary (including any restrictions set forth in Sections 7.4, 7.5 and 7.6), but subject in all events to Section 8, for the avoidance of doubt, the Borrower shall be permitted to issue any Qualified Capital Stock.

7.11 Reserved.

7.12 Changes in Fiscal Periods; Accounting Changes. (a) Permit the fiscal year of the Borrower to end on a day other than December 31 of each calendar year or change the Borrower's method of determining fiscal quarters; provided, that Borrower may, upon written notice to the Administrative Agent, change its fiscal year to any other fiscal year reasonably acceptable to the Administrative Agent, in which case, the Borrower and the Administrative Agent will, and are hereby authorized by the Lenders to, make any adjustments to this Agreement that are necessary to reflect such change in fiscal year.

(b) Make or permit any change in accounting policies or reporting practices, except changes that are required by GAAP, or change independent accountants other than to any nationally recognized firm or such other firm reasonably acceptable to the Administrative Agent.

7.13 Negative Pledge Clauses. Enter into or suffer to exist or become effective any agreement that prohibits, limits or imposes any condition upon the ability of the Borrower or any other 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 other than (a) this Agreement, the other Loan Documents, the Senior Notes Indenture, Incremental Equivalent Term Debt, a Refinancing

Facility and other agreements governing such Indebtedness, (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) any agreement governing any Junior Indebtedness or Convertible Bond Indebtedness so long as (x) the restrictions set forth therein are no more restrictive than the corresponding provisions in the Loan Documents or (y) if such encumbrances and restrictions are customary for similar financings in light of prevailing market conditions at the time of incurrence thereof (as determined in good faith by the Borrower) and the Borrower determines in good faith that such encumbrances and restrictions would not reasonably be expected to materially impair the Borrower's ability to create and maintain the Liens on the Collateral pursuant to the Security Documents, (d) any restrictions with respect to a Restricted Subsidiary imposed pursuant to an agreement that has been entered into in connection with the Disposition of all or substantially all of the Capital Stock or assets of such Restricted Subsidiary, (e) any agreement of a Foreign Subsidiary governing Indebtedness permitted to be incurred or permitted to exist under Section 7.2, (f) customary restrictions and conditions contained in leases, subleases, licenses, sublicenses, cross license, pooling and similar agreements or asset sale agreements otherwise permitted hereby so long as such restrictions may relate to the assets subject thereto, (g) customary restrictions contained in Indebtedness incurred pursuant to Section 7.2 (provided that such restrictions do not restrict the Liens securing the Obligations), (h) restrictions arising in connection with cash or other deposits permitted under Sections 7.3 or 7.7 and limited to such cash or deposit, (i) customary provisions restricting assignment of any agreement entered into in the ordinary course of business, (j) restrictions arising by reason of applicable Law, rule, regulation or order or the terms of any license, authorization, concession or permit, (k) customary restrictions in joint venture agreements and other similar agreements applicable to joint ventures permitted hereunder and applicable solely to such joint venture or the Capital Stock of such joint venture or in organizational documents of entities in which Borrower or any Restricted Subsidiary owns a minority interest applicable to such entity and the Capital Stock of such entity, (l) customary provisions in software and other Intellectual Property licenses entered into in the ordinary course of business pursuant to which such Loan Party is the licensee of the relevant software or Intellectual Property, as the case may be (in which case, any prohibition or limitation shall relate only to the assets subject to the applicable license), and (m) restrictions on cash or other deposits under contracts entered into in the ordinary course of business and not prohibited hereunder and limited to such cash or other deposit.

7.14 Clauses Restricting Subsidiary Distributions. Enter into or suffer to exist or become effective any consensual encumbrance or restriction on the ability of any Restricted Subsidiary to (a) make Restricted Payments in respect of any Capital Stock of such Restricted Subsidiary held by, or pay any Indebtedness owed to, the Borrower or any other Restricted Subsidiary of the Borrower or (b) make loans or advances to, or other Investments in, the Borrower or any other Restricted Subsidiary of the Borrower, 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 Restricted Subsidiary imposed pursuant to an agreement that has been entered into in connection with the Disposition of all or substantially all of the Capital Stock or assets of such Restricted Subsidiary, (iii) any restrictions set forth in the Senior Notes, Incremental Equivalent Term Debt, Refinancing Facility, any Junior Indebtedness or Convertible

Bond Indebtedness so long as (x) the restrictions set forth therein are not, taken as a whole, materially more restrictive than the corresponding provisions in the Loan Documents or (y) such encumbrances and restrictions are customary for similar financings in light of prevailing market conditions at the time of incurrence thereof (as determined in good faith by the Borrower) and the Borrower determines in good faith that such encumbrances and restrictions would not reasonably be expected to materially impair the Borrower's ability to pay the Obligations when due, (iv) 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), (v) restrictions and conditions existing on the Closing Date identified on Schedule 7.14 (but not to any amendment or modification expanding the scope or duration of any such restriction or condition), (vi) restrictions or conditions imposed by any agreement relating to Liens permitted by this Agreement but solely to the extent that such restrictions or conditions apply only to the property or assets subject to such permitted Lien, (vii) customary provisions in leases, licenses, sublicenses, cross-licensing, pooling and similar agreements entered into in the ordinary course of business that restrict the assignment thereof, (viii) customary restrictions in joint venture agreements and other similar agreements applicable to joint ventures permitted hereunder and applicable solely to such joint venture, (ix) any agreement of a Foreign Subsidiary or Restricted Subsidiary which is not a Loan Party governing Indebtedness permitted to be incurred or permitted to exist under Section 7.2, (x) any agreement or arrangement already binding on a Restricted Subsidiary when it is acquired so long as such agreement or arrangement was not created in anticipation of such acquisition, (xi) customary provisions limiting the disposition or distribution of assets or property in asset sale agreements, sale-leaseback agreements, stock sale agreements and other similar agreements in the ordinary course of business (including agreements entered into in connection with any Investment permitted under Section 7.7), which limitation is applicable only to the assets that are the subject of such agreements, (xii) customary provisions restricting assignment of any agreement entered into in the ordinary course of business, (xiii) restrictions pursuant to applicable Law, rule, regulation or order or the terms of any license, authorization, concession or permit, (xiv) customary net worth provisions contained in Real Property leases entered into by the Borrower and its Restricted Subsidiaries, so long as the Borrower has determined in good faith that such net worth provisions would not reasonably be expected to impair the ability of the Borrower to meet its ongoing payment obligations hereunder or, in the case of any Subsidiary Guarantor, its obligations under the Guarantee and Collateral Agreement or (xv) encumbrances or restrictions on cash or other deposits imposed by customers under contracts entered into in the ordinary course of business.

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

SECTION 8. EVENTS OF DEFAULT

8.1 Events of Default. If any of the following events shall occur and be continuing:

(a) the Borrower shall fail to pay any principal of any Loan or Reimbursement Obligation when due in accordance with the terms hereof; or the Borrower shall fail to pay any interest on any Loan or Reimbursement Obligation, or any other amount payable hereunder or under any other Loan Document, within five (5) Business Days after any such interest or other amount becomes due in accordance with the terms hereof; or

(b) any representation or warranty made or deemed made by any Loan Party herein or in any other Loan Document or that is contained in any certificate, document or financial or other statement furnished by it at any time under or in connection with this Agreement or any such other Loan Document shall prove to have been inaccurate in any material respect on or as of the date made or deemed made; or

(c) any Loan Party shall default in the observance or performance of any agreement contained in Section 2.13(a)(vi), clause (i) or (ii) of Section 6.5(a) (with respect to the Borrower only), Section 6.8(a) or Section 7 of this Agreement (an Event of Default under this clause (c) as a result of a breach of any Financial Covenant, a “Financial Covenant Event of Default”); provided, that a Financial Covenant Event of Default is subject to a cure pursuant to Section 8.2; 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 (other than as provided in paragraphs (a) through (c) of this Section 8.1), and such default shall continue unremedied for a period of thirty (30) days (or, in the case of a default under Section 6.1, for a period of ten (10) Business Days or, in the case of a default under Section 6.15(e), for a period of ten (10) days) after notice to the Borrower from the Administrative Agent or the Required Lenders; or

(e) the Borrower or any Restricted Subsidiary (i) defaults in making any payment of any principal of any Material Indebtedness (including any Guarantee Obligation or Hedge Agreement that constitutes Material Indebtedness, but excluding the Loans and intercompany Indebtedness) on the scheduled or original due date with respect thereto; or (ii) defaults in making any payment of any interest on any such Material Indebtedness beyond the period of grace, if any, provided in the instrument or agreement under which such Indebtedness was created; or (iii) defaults in the observance or performance of any other agreement or condition relating to any such Material Indebtedness or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event shall occur or condition exist, the effect of which default or other event or condition is to cause, or to permit the holder or beneficiary of such Material Indebtedness (or a trustee or agent on behalf of such holder or beneficiary) to cause, with the giving of notice if required, such Material Indebtedness to become due prior to its stated maturity or to become subject to a mandatory offer to purchase by the obligor thereunder or (in the case of any such Material Indebtedness constituting a Guarantee Obligation) to become payable (it being understood, for the avoidance of doubt, that the satisfaction of any customary “conversion conditions” set forth in the instruments governing any Convertible Bond Indebtedness will not be deemed to constitute a default under this clause (e) on account of such satisfaction giving any holder of such Convertible Bond Indebtedness the right to convert the same and that this clause (e) shall not apply to any early payment requirement or

unwinding or termination with respect to any Capped Call Transactions, or satisfaction of any condition giving rise to or permitting the foregoing in accordance with the terms thereof); or

(f) (i) the Borrower or any Restricted Subsidiary (other than an Immaterial Subsidiary) shall commence any case, proceeding, assignment, or other action (A) under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization or relief of debtors, 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 or other similar official for it or for all or any substantial part of its assets, or the Borrower or any Restricted Subsidiary (other than an Immaterial Subsidiary) shall make a general assignment for the benefit of its creditors; or (ii) there shall be commenced against the Borrower or any Restricted Subsidiary (other than an Immaterial Subsidiary) any case, proceeding, petition 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 sixty (60) days; or (iii) there shall be commenced any case, proceeding, petition or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of the assets of the Borrower and its Restricted Subsidiaries, taken as a whole, 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 sixty (60) days from the entry thereof; or (iv) the Borrower or any Restricted Subsidiary (other than an Immaterial Subsidiary) 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) the Borrower or any Restricted Subsidiary (other than an Immaterial Subsidiary) 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) an ERISA Event that, together with all other ERISA Events, if any, would reasonably be expected to have a Material Adverse Effect; or

(h) one or more judgments or decrees shall be entered against the Borrower or any Restricted Subsidiary and the same shall not have been vacated, discharged, stayed or bonded pending appeal within 60 days from the entry thereof and any such judgments or decrees either (i) is for the payment of money, individually or in the aggregate (not paid or fully covered by insurance as to which the relevant insurance company has acknowledged coverage), of \$30,000,000 or more or (ii) is for injunctive relief and could reasonably be expected to have a Material Adverse Effect, or

(i) any of the Security Documents shall cease, for any reason, to be in full force and effect with respect to a material portion of the Collateral, 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 any Loan Party shall so assert (other than, in any such case, any transactions expressly permitted by the Loan Documents); 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 (other than, in any such case, any transactions expressly permitted by the Loan Documents); or

(k) a Change of Control occurs,

then, and in any such event, (A) if such event is an Event of Default specified in paragraph (f) above, automatically the Commitments shall immediately terminate and the Loans hereunder (with accrued interest thereon) and all other amounts owing under this Agreement and the other Loan Documents (including all amounts of L/C Obligations, whether or not the beneficiaries of the then outstanding Letters of Credit shall have presented the documents required thereunder) shall immediately become due and payable, and (B) if such event is any other Event of Default, any or all of the following actions may be taken: (i) with the consent of the Required Lenders, the Administrative Agent may, or upon the request of the Required Lenders, the Administrative Agent shall, by notice to the Borrower declare the Revolving Commitments and any Term Commitments to be terminated forthwith, whereupon the Revolving Commitments and the Term Loan Commitments, as the case may be, shall immediately terminate; (ii) with the consent of the Required Lenders, the Administrative Agent may, or upon the request of the Required Lenders, the Administrative Agent shall, by notice to the Borrower, declare the Loans hereunder (with accrued interest thereon) and all other amounts owing under this Agreement and the other Loan Documents (including all amounts of L/C Obligations, whether or not the beneficiaries of the then outstanding Letters of Credit shall have presented the documents required thereunder) to be due and payable forthwith, whereupon the same shall immediately become due and payable; (iii) with the consent of the Required Lenders, the Administrative Agent may, or upon the request of the Required Lenders, the Administrative Agent shall, enforce (or direct the Collateral Agent to enforce) all of the Liens and security interests created pursuant to the Security Documents; and (vi) with the consent of the Required Lenders, the Administrative Agent may, or upon the request of the Required Lenders, the Administrative Agent shall, enforce each guaranty of the Obligations (including without limitation under the Guaranty and Collateral Agreement). With respect to all Letters of Credit with respect to which presentment for honor shall not have occurred at the time of an acceleration pursuant to this paragraph, the Borrower shall at such time deposit in a cash collateral account subject to the security interest granted in favor of the Lenders opened by the Administrative Agent an amount equal to the 103% of the aggregate then undrawn and unexpired amount of such Letters of Credit. Amounts held in such cash collateral account shall be applied by the Administrative Agent to the payment of drafts drawn under such Letters of Credit, and the unused portion thereof after all such Letters of Credit shall have expired or been fully drawn upon, if any, shall be applied to repay other obligations of the Borrower hereunder and under the other Loan Documents in accordance with the Guarantee and Collateral Agreement. After all such Letters of Credit shall have expired or been fully drawn upon, all Reimbursement Obligations shall have been satisfied and all other obligations of the Borrower hereunder and under the other Loan Documents shall have been paid in full, the balance, if any, in such cash collateral account shall be returned to the Borrower (or such other Person as may be lawfully entitled thereto). Except as expressly provided above in this Section 8.1, presentment, demand, protest and all other notices of any kind are hereby expressly waived by the Borrower.

8.2 Equity Cure.

(a) Notwithstanding anything to the contrary contained in Section 8.1, but subject to Section 8.2(b), solely for the purpose of determining whether a Financial Covenant Event of Default has occurred as of the end of and for any Reference Period (or, in the case of Section 7.1(b), any applicable fiscal quarter of the Borrower) ending on the last day of any fiscal quarter with respect to which an applicable Financial Covenant is tested (such fiscal quarter, a “Cure Quarter”), the Borrower shall have the right to issue equity, directly or indirectly (which equity shall be not be Disqualified Capital Stock), in exchange for cash to be directly received by it, on or after the first day of such Cure Quarter and on or prior to the tenth (10th) Business Day after the date on which financial statements are required to be delivered pursuant to Section 6.1(a) or (b), as applicable, with respect to such Cure Quarter or the fiscal year ending on the last day of such Cure Quarter, as applicable (the “Cure Expiration Date”), and such cash will, if so designated by the Borrower, be included in the calculation of Consolidated EBITDA for purposes of determining compliance with the applicable Financial Covenants as of the end of and for the Reference Period (or, in the case of Section 7.1(b), the applicable fiscal quarter of the Borrower) ending on the last day of such Cure Quarter and, except in the case of Section 7.1(b) (in which case such cash will be included in the calculation of Consolidated EBITDA solely for the applicable Cure Quarter), any Reference Periods ending on the last day of any of the subsequent three fiscal quarters (any such equity contribution, an “Equity Cure Contribution,” and the amount of such Equity Cure Contribution, the “Cure Amount”); provided that (i) cash proceeds of such Equity Cure Contribution shall not constitute unrestricted cash or Cash Equivalents for “cash netting” purposes and (ii) for the avoidance of doubt, any Equity Cure Contribution made in respect of the Financial Covenant set forth in Section 7.1(b) shall constitute a Cure Amount and be included in the calculation of Consolidated EBITDA solely for purposes of determining compliance with Section 7.1(b) for the applicable Cure Quarter (and not for any other fiscal quarter of the Borrower for which Section 7.1(b) is tested or for any other purpose (including, for the avoidance of doubt, for purposes of determining compliance with the Financial Covenants set forth in Section 7.1(c) or (d))).

All Equity Cure Contributions shall be disregarded for all purposes of this Agreement other than inclusion in the calculation of Consolidated EBITDA for the purpose of determining compliance with the Financial Covenants as of the end of and for the Reference Period (or, in the case of Section 7.1(b), the applicable fiscal quarter of the Borrower) ending on the last day of such applicable Cure Quarter and (except as set forth in the immediately preceding proviso with respect to Section 7.1(b)) any Reference Periods ending on the last day of any of the subsequent three fiscal quarters, including being disregarded for purposes of the determination of the Available Amount and all components thereof and any baskets with respect to the covenants contained in Section 7 (other than Section 7.1). Notwithstanding anything to the contrary contained in Section 8.1, (A) upon receipt of the Cure Amount by the Borrower in an amount necessary to cause the Borrower to be in compliance with the applicable Financial Covenant, as of the end of and for the Reference Period (or, in the case of Section 7.1(b), the applicable fiscal quarter of the Borrower) ending on the last day of such applicable Cure Quarter, the applicable Financial Covenant, shall be deemed satisfied and complied with as of the end of and for such Reference Period (or, in the case of Section 7.1(b), the applicable fiscal quarter of

the Borrower) with the same effect as though there had been no failure to comply with the applicable Financial Covenant, and any Default or Event of Default related to any failure to comply with the applicable Financial Covenant, shall be deemed not to have occurred for purposes of the Loan Documents and (B) upon receipt by the Administrative Agent of a notice from the Borrower stating the Borrower's intent to cure such Event of Default ("Notice of Intent to Cure") prior to the making of an Equity Cure Contribution (but in any event no later than the applicable Cure Expiration Date): (i) no Default or Event of Default shall be deemed to have occurred on the basis of any failure to comply with the applicable Financial Covenant, unless such failure is not cured by the making of an Equity Cure Contribution on or prior to the applicable Cure Expiration Date, (ii) none of the Administrative Agent, the Collateral Agent or any Lender shall exercise any of the remedial rights otherwise available to it upon an Event of Default, including the right to accelerate the Loans, to terminate Commitments or to foreclose on the Collateral solely on the basis of an Event of Default having occurred as a result of a violation of Section 7.1, as applicable, unless the Equity Cure Contribution is not made on or before the applicable Cure Expiration Date and (iii) if the Equity Cure Contribution is not made on or before the applicable Cure Expiration Date, such Event of Default or potential Event of Default shall spring into existence after such time.

(b) There shall be (i) no more than two (2) Equity Cure Contributions made during the term of this Agreement, (ii) no more than one (1) Equity Cure Contributions made during any four consecutive fiscal quarters, and (iii) no Equity Cure Contributions made in any two consecutive fiscal quarters. No Equity Cure Contribution shall be any greater than the lesser of (x) \$5,000,000 and (y) the minimum amount required to cause the Borrower to be in compliance with the applicable Financial Covenant in the applicable Cure Quarter.

SECTION 9. THE AGENTS

9.1 Appointment. Each Lender (and, if applicable, each other Secured Party) hereby irrevocably designates and appoints each Agent as the agent of such Lender (and, if applicable, each other Secured Party) under this Agreement and the other Loan Documents, and each such Lender (and, if applicable, each other Secured Party) irrevocably authorizes such Agent, in such capacity, to take such action on its behalf under the provisions of this Agreement and the other Loan Documents and to exercise such powers and perform such duties as are expressly delegated to such Agent by the terms of this Agreement and the other Loan Documents, together with such other powers as are reasonably incidental thereto. Notwithstanding any provision to the contrary elsewhere in this Agreement, no Agent shall have any duties or responsibilities, except those expressly set forth herein, or any fiduciary relationship with any Lender or other Secured Party, 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 any Agent.

9.2 Delegation of Duties. Each Agent may execute any of its duties under this Agreement and the other Loan Documents by or through agents or attorneys-in-fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. No Agent shall be responsible for the negligence or misconduct of any agents or attorneys-in-fact selected by it with reasonable care.

9.3 Exculpatory Provisions. Without limiting the generality of the foregoing, each Agent:

(a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(b) shall not 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 such 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), provided that no Agent shall be required to take any action that, in its opinion or the opinion of its counsel, may expose such 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;

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

(d) 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 such Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 8.1 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 a final and nonappealable judgment; and

(e) 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, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, or the creation, perfection or priority of any Lien purported to be created by the Security Documents, (v) the value or the sufficiency of any Collateral, or (v) the satisfaction of any condition set forth in Section 5 or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to such Agent.

(f) The Administrative Agent shall not be responsible or have any liability for, or have any duty to ascertain, inquire into, monitor or enforce, compliance with the provisions hereof relating to Disqualified Institutions. Without limiting the generality of the foregoing, the Administrative Agent shall not (x) be obligated to ascertain, monitor or inquire as to whether any Lender or Participant or prospective Lender or Participant is a Disqualified Institution or

(y) have any liability with respect to or arising out of any assignment or participation of Loans, or disclosure of confidential information, to any Disqualified Institution.

9.4 Reliance by Administrative Agent. Each 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. Each 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 or an Issuing Lender, each Agent may presume that such condition is satisfactory to such Lender or Issuing Lender unless such Agent shall have received notice to the contrary from such Lender or Issuing Lender prior to the making of such Loan or the issuance of such Letter of Credit. Each Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

9.5 Notice of Default. No Agent shall be deemed to have knowledge or notice of the occurrence of any Default or Event of Default hereunder unless such Agent has received notice from a Lender or the Borrower referring to this Agreement, describing such Default or Event of Default and stating that such notice is a “notice of default”. In the event that the Administrative Agent receives such a notice, the Administrative Agent shall give notice thereof to the Lenders. The Administrative Agent shall take such action with respect to such Default or Event of Default as shall be reasonably directed by the Required Lenders (or, if so specified by this Agreement, all Lenders or any other instructing group of Lenders specified by this Agreement); 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 Secured Parties.

9.6 Non-Reliance on Agents and Other Lenders. Each Lender (and, if applicable, each other Secured Party) expressly acknowledges that neither the Agents nor any of their respective officers, directors, employees, agents, attorneys-in-fact or affiliates have made any representations or warranties to it and that no act by any Agent hereafter taken, including any review of the affairs of a Loan Party or any affiliate of a Loan Party, shall be deemed to constitute any representation or warranty by any Agent to any Lender or any other Secured Party. Each Lender (and, if applicable, each other Secured Party) represents to the Agents that it has, independently and without reliance upon any Agent or any other Lender or any other Secured Party, and based on such documents and information as it has deemed appropriate, made its own appraisal of an investigation into the business, operations, property, financial and other condition and creditworthiness of the Loan Parties and their affiliates and made its own decision to make its Loans hereunder and enter into this Agreement, any Specified Hedge Agreement or any Specified Cash Management Agreement. Each Lender (and, if applicable, each other Secured

Party) also represents that it will, independently and without reliance upon any Agent or any other Lender or any other Secured Party, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Loan Documents, any Specified Hedge Agreement or any Specified Cash Management Agreement, 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 Loan Parties and their affiliates. Except for notices, reports and other documents expressly required to be furnished to the Lenders by the Administrative Agent hereunder, the Administrative Agent shall not have any duty or responsibility to provide any Lender or any other Secured Party with any credit or other information concerning the business, operations, property, condition (financial or otherwise), prospects or creditworthiness of any Loan Party or any Affiliate of a Loan Party 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. To the extent that the Borrower for any reason fails to indefeasibly pay any amount required under Section 10.5 to be paid by it to any Agent Related Party (or any sub-agent thereof), each Lender severally agrees to pay to such Agent Related Party (or any such sub-agent thereof) such Lender's ratable proportion (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount; provided that (a) the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against any Agent Related Party (or any such sub-agent thereof) and (b) no Lender shall be liable for the payment of any portion of such unreimbursed expense or indemnified loss, claim, damage, liability or related expense that is found by a final and nonappealable decision of a court of competent jurisdiction to have resulted from such Agent's gross negligence or willful misconduct. 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. Each Agent and its affiliates may make loans to, accept deposits from and generally engage in any kind of business with any Loan Party as though such Agent were not an Agent and without any duty to account therefor to the Lenders. With respect to its Loans made or renewed by it and with respect to any Letter of Credit issued or participated in by it, each Agent shall have the same rights and powers under this Agreement and the other Loan Documents as any Lender and may exercise the same as though it were not an Agent, and the terms "Lender", "Lenders", "Secured Party" and "Secured Parties" shall include each Agent in its individual capacity.

9.9 Successor Administrative Agent; Resignation of Issuing Lender. (a) The Administrative Agent and the Collateral Agent may resign as Administrative Agent and Collateral Agent, respectively, upon ten (10) days' notice to the Lenders and the Borrower. If the Administrative Agent or Collateral Agent, as applicable, shall resign as Administrative Agent or Collateral Agent, as applicable, under this Agreement and the other Loan Documents, then the Required Lenders shall appoint a successor agent for the Lenders (which such successor agent shall be (x) a Lender or (y) otherwise satisfactory to the Required Lenders), which successor agent shall (unless an Event of Default under Section 8.1(a) or Section 8.1(f) with respect to the

Borrower shall have occurred and be continuing) be subject to approval by the Borrower (which approval shall not be unreasonably withheld or delayed), whereupon such successor agent shall succeed to the rights, powers and duties of the Administrative Agent or Collateral Agent, as applicable, and the term “Administrative Agent” or “Collateral Agent,” as applicable, shall mean such successor agent effective upon such appointment and approval, and the former Administrative Agent’s or Collateral Agent’s, as applicable, rights, powers and duties as Administrative Agent or Collateral Agent, as applicable, shall be terminated, without any other or further act or deed on the part of such former Administrative Agent or Collateral Agent, as applicable, or any of the parties to this Agreement or any holders of the Loans. If no successor agent has accepted appointment as Administrative Agent or Collateral Agent, as applicable, by the date that is ten (10) days following a retiring Administrative Agent’s or Collateral Agent’s, as applicable, notice of resignation, the retiring Administrative Agent’s or Collateral Agent’s, as applicable, resignation shall nevertheless thereupon become effective and the Lenders shall assume and perform all of the duties of the Administrative Agent or Collateral Agent, as applicable, hereunder until such time, if any, as the Required Lenders appoint a successor agent as provided for above. After the retiring or removed Administrative Agent’s or Collateral Agent’s, as applicable, resignation or removal hereunder and under the other Loan Documents, the provisions of this Section 9 and Section 10.5 shall continue in effect for the benefit of such retiring or removed Administrative Agent, Collateral Agent, their respective sub-agents and their respective Agent 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 Administrative Agent or Collateral Agent, as applicable.

(b) Anything herein to the contrary notwithstanding, if at any time the Required Lenders determine that the Person serving as Administrative Agent is a Defaulting Lender, the Required Lenders (determined after giving effect to the final paragraph of Section 10.1) may by notice to the Borrower and such Person remove such Person as Administrative Agent and appoint a replacement Administrative Agent hereunder, which successor agent shall (unless an Event of Default under Section 8.1(a) or Section 8.1(f) with respect to the Borrower shall have occurred and be continuing) be subject to approval by the Borrower (which approval shall not be unreasonably withheld or delayed). Such removal will, to the fullest extent permitted by applicable law, be effective on the earlier of (i) the date a replacement Administrative Agent is appointed and (ii) the date ten (10) Business Days after the giving of such notice by the Required Lenders (regardless of whether a replacement Administrative Agent has been appointed).

(c) In addition to the foregoing, (i) if a Lender becomes, and during the period it remains, a Defaulting Lender, the Issuing Lender may, upon prior written notice to the Borrower and the Administrative Agent, resign as Issuing Lender effective at the close of business New York time on a date specified in such notice (which date may not be less than ten (10) Business Days after the date of such notice), (ii) the Issuing Lender may, upon prior written notice to the Borrower and the Administrative Agent, resign as Issuing Lender effective at the close of business New York time on a date specified in such notice (which date may not be less than thirty (30) days after the date of such notice) or (iii) if Morgan Stanley Senior Funding, Inc. resigns or is removed as Administrative Agent, such resignation or removal shall also constitute its resignation as Issuing Lender; provided that such resignation by the Issuing Lender will have

no effect on the validity or enforceability of any Letter of Credit then outstanding or on the obligations of the Borrower or any Lender under this Agreement with respect to any such outstanding Letter of Credit or otherwise to the Issuing Lender and such Issuing Lender shall continue to be an Issuing Lender for the purposes of this Agreement in respect of such Letters of Credit.

9.10 Agents Generally. Except as expressly set forth herein, the Agents and the Lead Arrangers shall not have any duties or responsibilities hereunder in its capacity as such.

9.11 Lender Action. Each Lender agrees that it shall not take or institute any actions or proceedings, judicial or otherwise, for any right or remedy against any Loan Party or any other obligor under any of the Loan Documents, the Specified Hedge Agreements or the Specified Cash Management Agreements (including the exercise of any right of setoff, rights on account of any banker's lien or similar claim or other rights of self-help), or institute any actions or proceedings, or otherwise commence any remedial procedures, with respect to any Collateral or any other property of any such Loan Party, without the prior written consent of the Administrative Agent. Each Lender agrees that it shall not take or institute any actions or proceedings, judicial or otherwise, for any right or remedy for recovery, sale or other disposition of any Collateral, against any Loan Party or any other obligor under any of the Specified Hedge Agreements or the Specified Cash Management Agreements without the prior written consent of the Administrative Agent.

9.12 Withholding Taxes. Without limiting or expanding the provisions of Section 3.10, each Lender shall indemnify the Administrative Agent (to the extent that Administrative Agent has not already been reimbursed by the Loan Parties and without limiting or expanding the obligation of the Loan Parties to do so) against, and shall make payable in respect thereof within ten (10) days after demand therefor, any and all Taxes and any and all related losses, claims, liabilities and expenses (including fees, charges and disbursements of any counsel for the Administrative Agent) incurred by or asserted against the Administrative Agent by the Internal Revenue Service or any other Governmental Authority as a result of the failure of the Administrative Agent to properly withhold Tax from amounts paid to or for the account of such Lender for any reason (including because the appropriate form was not delivered or not properly executed, or because such Lender failed to notify the Administrative Agent of a change in circumstance that rendered the exemption from, or reduction of, withholding tax ineffective). A certificate as to the amount of any 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 amounts at any time owing to such Lender under this Agreement or any other Loan Document against any amounts due the Administrative Agent under this Section 9.12. The agreements in this Section 9.12 shall survive the resignation and/or replacement of the Administrative Agent, any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all other Obligations.

9.13 Administrative Agent May File Proofs of Claim; Credit Bidding. 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 L/C Obligation shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, L/C Obligations and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the Issuing Lender and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the Issuing Lenders and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders, the Issuing Lenders and the Administrative Agent under Sections 2.3, 2.7 and 10.5 or otherwise) allowed in such judicial proceeding; provided, that the foregoing shall not prohibit any Qualified Counterparty from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Loan Party under any Debtor Relief Laws; 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 and the Issuing Lender to make such payments to the Administrative Agent and, if the Administrative Agent shall consent to the making of such payments directly to the Lenders and the Issuing Lender, 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 2.3, 2.7 and 10.5 or otherwise.

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 or Issuing Lender any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or Issuing Lender to authorize the Administrative Agent to vote in respect of the claim of any Lender or Issuing Lender or in any such proceeding.

The Secured Parties hereby irrevocably authorize the Administrative Agent, at the direction of the Required Lenders, to credit bid all or any portion of the Obligations (including accepting some or all of the Collateral in satisfaction of some or all of the Secured Obligations pursuant to a deed in lieu of foreclosure or otherwise) and in such manner purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral (a) at any sale thereof conducted under the provisions of the Bankruptcy Code of the United States, including under Sections 363, 1123 or 1129 of the Bankruptcy Code of the United States, or any similar Laws in any other jurisdictions to which a Loan Party is subject, (b) at any other sale or foreclosure or acceptance of collateral in lieu of debt conducted by (or with the consent or at the direction of) the Administrative Agent (whether by judicial action or otherwise) in accordance with any applicable law. In connection with any such credit bid and purchase, the Obligations owed to the Secured Parties shall be entitled to be, and shall be, credit bid on a ratable basis (with

Obligations with respect to contingent or unliquidated claims receiving contingent interests in the acquired assets on a ratable basis that would vest upon the liquidation of such claims in an amount proportional to the liquidated portion of the contingent claim amount used in allocating the contingent interests) in the asset or assets so purchased (or in the Capital Stock or debt instruments of the acquisition vehicle or vehicles that are used to consummate such purchase). In connection with any such bid (i) the Administrative Agent shall be authorized to form one or more acquisition vehicles to make a bid, (ii) to adopt documents providing for the governance of the acquisition vehicle or vehicles (provided that any actions by the Administrative Agent with respect to such acquisition vehicle or vehicles, including any disposition of the assets or Capital Stock thereof shall be governed, directly or indirectly, by the vote of the Required Lenders, irrespective of the termination of this Agreement and without giving effect to the limitations on actions by the Required Lenders contained in Section 10.1 of this Agreement), (iii) the Administrative Agent shall be authorized to assign the relevant Obligations to any such acquisition vehicle pro rata by the Lenders, as a result of which each of the Lenders shall be deemed to have received a pro rata portion of any Capital Stock and/or debt instruments issued by such an acquisition vehicle on account of the assignment of the Obligations to be credit bid, all without the need for any Secured Party or acquisition vehicle to take any further action, and (iv) to the extent that Obligations that are assigned to an acquisition vehicle are not used to acquire Collateral for any reason (as a result of another bid being higher or better, because the amount of Obligations assigned to the acquisition vehicle exceeds the amount of debt credit bid by the acquisition vehicle or otherwise), such Obligations shall automatically be reassigned to the Lenders pro rata and the Capital Stock and/or debt instruments issued by any acquisition vehicle on account of the Obligations that had been assigned to the acquisition vehicle shall automatically be cancelled, without the need for any Secured Party or any acquisition vehicle to take any further action.

9.14 Certain ERISA Matters.

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that at least one of the following is and will be true:

(i) such Lender is not using “plan assets” (within the meaning of Section 3(42) of ERISA or otherwise) of one or more Benefit Plans with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments or this Agreement;

(ii) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE

96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable so as to exempt from the prohibitions of Section 406 of ERISA and Section 4975 of the Code such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement;

(iii) (A) such Lender is an investment fund managed by a "Qualified Professional Asset Manager" (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Letters of Credit, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement, or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

(b) In addition, unless either (1) sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or (2) a Lender has provided another representation, warranty and covenant in accordance with sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that the Administrative Agent is not a fiduciary with respect to the assets of such Lender involved in such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Loan Document or any documents related hereto or thereto).

SECTION 10. MISCELLANEOUS

10.1 Amendments and Waivers. Except to the extent otherwise expressly set forth in this Agreement, neither this Agreement, any other Loan Document, nor any terms hereof or thereof may be amended, supplemented or modified except in accordance with the provisions of this Section 10.1. Subject to Section 3.7(b), the Required Lenders and each Loan Party party to the relevant Loan Document may, or, with the written consent of the Required Lenders, the Administrative Agent and each Loan Party party to the relevant Loan Document may, from time to time, (a) 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 (b) 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, however, that (1) any such amendment, supplement, modification or waiver shall be acknowledged by the Administrative Agent and (2) no such waiver and no such amendment, supplement or modification shall:

(i) forgive the principal amount or extend the final scheduled date of maturity of any Loan, extend the scheduled date of any amortization payment in respect of any Term Loan, reduce the stated rate of any interest or forgive or reduce any interest or fee payable hereunder (except (x) in connection with the waiver of applicability of any post-default increase in interest rates, which waiver shall be effective with the consent of the Majority Facility Lenders of each adversely affected Facility and (y) that any amendment or modification of the financial covenants or 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 (i)) or extend the scheduled date of any payment thereof, or increase the amount or extend the expiration date of any Lender's Commitment, in each case without the written consent of each Lender directly affected thereby;

(ii) eliminate or reduce the voting rights of any Lender under this Section 10.1 without the written consent of such Lender;

(iii) reduce any percentage specified in the definition of Required Lenders, consent to the assignment or transfer by the Borrower of any of its rights and obligations under this Agreement and the other Loan Documents, release all or substantially all of the Collateral or release all or substantially all of the Subsidiary Guarantors from their obligations under the Guarantee and Collateral Agreement (other than pursuant to any transaction or transactions expressly permitted by the Loan Documents), in each case without the written consent of all Lenders;

(iv) after the Closing Date, no amendment, waiver or consent which has the effect of enabling the Borrower to satisfy any condition to a Borrowing contained in Section 5.2 hereof which, but for such amendment, waiver or consent would not be satisfied, shall be effective to require the Revolving Lenders to make any additional Revolving Loan, unless and until the Majority Facility Lenders under the Revolving Facility shall have approved such amendment, waiver or consent (it being understood and agreed that the waiver of any Default or Event of Default effected with the requisite percentage of Lenders under the other provisions of this Section 10.1 shall be effective to waive such Default or Event of Default, despite the provisions of this clause (iv) and following such waiver such Default or Event of Default shall be treated as cured for all purposes hereunder, including under Section 5.2 and this clause (iv));

(v) amend, modify or waive any provision of Sections 3.8 or 10.7(a) of this Agreement or Section 6.5 of the Guarantee and Collateral Agreement, in each case without the written consent of all Lenders except, in the case of amendments to Section 3.8 pursuant to an Extension Amendment;

(vi) [reserved];

(vii) amend, modify or waive any provision of the Loan Documents that by its terms adversely affects the rights of one Facility in respect of Collateral in a manner different than another Facility, in each case without the written consent of the Majority Facility Lenders with respect to each Facility adversely affected thereby;

(viii) reduce the percentage specified in the definition of Majority Facility Lenders with respect to any Facility without the written consent of all Lenders under such Facility;

(ix) amend, modify or waive any provision of Section 9 without the written consent of each Agent adversely affected thereby;

(x) amend, modify or waive any provision of Section 10.6 to further restrict any Lender's ability to assign or otherwise transfer its obligations hereunder without the written consent of all Lenders;

(xi) amend, modify or waive any provision of Sections 2.5 to 2.12 without the written consent of each Issuing Lender;

(xii) [reserved]; and

(xiii) amend, modify or waive any provision of this Section 10.1 that requires the consent of: (A) each Issuing Lender without the express written consent of each Issuing Lender; (B) each Agent without the express written consent of each Agent; (C) the Majority Facility Lenders under any Facility with the express written consent of the Majority Facility Lenders under such Facility; and (D) all Lenders or each affected Lender without the express written consent of each Lender.

In the case of any waiver, the Loan Parties, the Lenders and the Agents 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 and not continuing; but no such waiver shall extend to any subsequent or other Default or Event of Default, or impair any right consequent thereon.

In addition, notwithstanding the foregoing, this Agreement may be amended with the written consent of the Administrative Agent (not to be unreasonably withheld, delayed or conditioned), the Borrower and the Lenders or other Persons providing the relevant Refinancing Facility (as defined below) to permit the refinancing (including by extending maturity) of all or any portion of any outstanding Term Loans or Revolving Loans and Revolving Commitments (such refinanced Term Loans or Revolving Loans and Revolving Commitments, as the case may be, each a "Refinanced Facility" and, collectively, the "Refinanced Facilities") with a replacement term loan tranche in the form of a separate term loan facility ("Refinancing Facility"); provided that (a) the aggregate principal amount of such Refinancing Facilities shall not exceed the aggregate principal amount of such Refinanced Facilities plus accrued interest, fees and expenses related thereto, (b) the maturity date for such Refinancing Facilities shall not be earlier than the maturity date for the corresponding Refinanced Facilities, (c) the weighted

average life to maturity of such Refinancing Facilities shall not be shorter than the weighted average life to maturity of such Refinanced Facilities at the time of such refinancing (except to the extent of nominal amortization for periods where amortization has been eliminated as a result of prepayment of any applicable Term Loans) (d) if guaranteed, such Refinancing Facility shall not be guaranteed by any Subsidiary of the Borrower that is not a Guarantor and, if secured, shall not be secured by any property that does not constitute Collateral; and (e) all other terms applicable to such Refinancing Facilities (other than pricing and optional prepayment or redemption terms) shall be substantially identical to, or not materially more favorable (taken as a whole) to the Lenders or other Persons providing such Refinancing Facility than, those applicable to the applicable Refinanced Facility, except to the extent necessary to provide for covenants and other terms applicable to any period after the latest final maturity of the Loans in effect immediately prior to such refinancing.

If, in connection with any proposed amendment, modification, waiver or termination requiring the consent of all Lenders (including all Lenders under a single Facility), the consent of the Required Lenders (or Majority Facility Lenders) is obtained, but the consent of other Lenders whose consent is required is not obtained (any such Lender whose consent is not obtained being referred to as a “Non-Consenting Lender”), then a Person reasonably acceptable to the Borrower and the Administrative Agent shall have the right but not the obligation to purchase from such Non-Consenting Lenders, and such Non-Consenting Lenders agree that they shall, upon the Borrower’s request, sell and assign to such Person, all of the Term Loans and Revolving Commitments of such Non-Consenting Lenders for an amount equal to the principal balance of all such Term Loans and any outstanding Revolving Loans held by such Non-Consenting Lenders and all accrued interest and fees with respect thereto through the date of sale, such purchase and sale to be consummated pursuant to an executed Assignment and Assumption. In addition to the foregoing, the Borrower may replace any Non-Consenting Lender pursuant to Section 3.13.

Notwithstanding the foregoing, this Agreement and the other Loan Documents may be amended (or amended and restated), modified or supplemented with the written consent of the Administrative Agent and the Borrower (or the Administrative Agent and the Borrower may enter into additional Loan Documents as the Administrative Agent reasonably deems appropriate) (a) to cure any ambiguity, error, omission or inconsistency of a technical nature, defect or inconsistency, so long as such amendment, modification or supplement does not adversely affect the rights of any Lender or the Issuing Lender, (b) to add one or more additional credit facilities with respect to Incremental Term Loans to this Agreement, including to permit the extensions of credit from time to time outstanding thereunder and the accrued interest and fees in respect thereof to share ratably in the benefits of this Agreement and the other Loan Documents with any existing Term Loans, as applicable, and the accrued interest and fees in respect thereof and (c) to include appropriately the Lenders holding such credit facilities in any determination of the Required Lenders and Majority Facility Lenders; provided, that the conditions set forth in Section 2.14 are satisfied, (d) to permit the extensions of credit from time to time outstanding under any Incremental Equivalent Term Debt or Refinancing Facility permitted to be incurred hereunder to share ratably in the benefits of Section 3.2 with any existing Term Loans to the extent applicable taking into account the obligors and scope and lien

priority of the collateral securing such Refinancing Facility as compared to any existing Term Loans as reasonably determined by the Administrative Agent in consultation with the Borrower, (e) to implement changes contemplated by Section 7.12 with respect to a change in the Borrower's fiscal year and (f) to implement any Benchmark Replacement or any Benchmark Replacement Conforming Changes or otherwise effectuate the terms of Section 3.7(b) in accordance with the terms of Section 3.7(b). In addition, notwithstanding the foregoing, the Fee Letter may be amended, modified, supplemented or restated with the written consent solely of the Borrower and the Administrative Agent.

Anything herein to the contrary notwithstanding, during such period as a Lender is a Defaulting Lender, to the fullest extent permitted by applicable law, such Lender will not be entitled to vote in respect of amendments and waivers hereunder and the Commitment and the outstanding Loans or other extensions of credit of such Lender hereunder will not be taken into account in determining whether the Required Lenders or all of the Lenders, as required, have approved any such amendment or waiver (and the definitions of "Required Lenders" and "Majority Facility Lenders" will automatically be deemed modified accordingly for the duration of such period); provided that, subject to the limitations set forth in the first paragraph of this Section 10.1, any such amendment or waiver that would increase or extend the term of the Commitment of such Defaulting Lender, extend the date fixed for the payment of principal or interest owing to such Defaulting Lender hereunder, reduce the principal amount of any obligation owing to such Defaulting Lender, reduce the amount of or the rate or amount of interest on any amount owing to such Defaulting Lender or of any fee payable to such Defaulting Lender hereunder, reduce any percentage specified in the definition of Required Lender, disproportionately affect such Defaulting Lender as compared to other Lenders holding the same Class of Loans, or alter the terms of this proviso, will require the consent of such Defaulting Lender.

10.2 Notices. (a) All notices and other communications provided for hereunder shall be either (i) in writing (including telecopy or e-mail communication) and mailed, telecopied or delivered or (ii) as and to the extent set forth in Section 10.2(b) and in the proviso to this Section 10.2(a), in an electronic medium and as delivered as set forth in Section 10.2(b) if to the Borrower, at its address at 7900 Harkins Road, Lanham, MD 20706, Attention: Matthew Norden; Paul S. Lalljie; Kevin Welch, E-mail Address: mnorden@2u.com; plalljie@2u.com; kwelch@2u.com, with a copy to Latham & Watkins LLP, at its address at 555 Eleventh Street, NW, Suite 1000, Washington, D.C. 20004-1304 Attention: Brandon Bortner and Katherine Putnam, E-mail Address: Brandon.Bortner@lw.com and Katherine.Putnam@lw.com; if to the Administrative Agent, at its address at 1585 Broadway, New York, New York, 10036, attention: Agency Team, E-mail Address: AGENCY.BORROWERS@morganstanley.com, telephone No. (917) 260-0588; if to the Administrative Agent, to its address at 1300 Thames Street, 4th Floor, Thames Street Wharf, Baltimore, MD 21231, attention: Documentation team, E-mail Address: DOCS4LOANS@morganstanley.com, or, as to any party, at such other address as shall be designated by such party in a written notice to the other parties; provided, however, that materials and information described in Section 10.2(b) shall be delivered to the Administrative Agent in accordance with the provisions thereof or as otherwise specified to the Borrower by the Administrative Agent; if to any other Lender, to the address, facsimile number, electronic mail

address or telephone number specified in its administrative questionnaire delivered to the Administrative Agent (including, as appropriate, notices delivered solely to the Person designated by a Lender on its administrative questionnaire delivered to the Administrative Agent then in effect for the delivery of notices that may contain material non-public information relating to the Borrower). All such notices and other communications shall, when mailed, be effective four days after having been mailed, and when telecopied or e-mailed, be effective when properly transmitted, except that notices and communications to any Agent pursuant to Sections 2, 3, 5 and 9 shall not be effective until received by such Agent. Delivery by telecopier of an executed counterpart of a signature page to any amendment or waiver of any provision of this Agreement or the Notes or of any Exhibit hereto to be executed and delivered hereunder shall be effective as delivery of an original executed counterpart thereof.

(b) The Borrower hereby agrees that it will provide to the Administrative Agent all information, documents and other materials that it is obligated to furnish to the Administrative Agent pursuant to the Loan Documents, including, without limitation, all notices, requests, financial statements, financial and other reports, certificates and other information materials, but excluding any such communication that (i) relates to a request for a new, or a conversion of an existing, borrowing or other extension of credit (including any election of an interest rate or interest period relating thereto), (ii) relates to the payment of any principal or other amount due under this Agreement prior to the scheduled date therefor, (iii) provides notice of any default or event of default under this Agreement or (iv) is required to be delivered to satisfy any condition precedent to the effectiveness of this Agreement and/or any borrowing or other extension of credit hereunder (all such non-excluded communications being referred to herein collectively as “Communications”), by transmitting the Communications by electronic communication (including e-mail, FpML messaging, and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent. In addition, the Borrower agrees to continue to provide the Communications to the Agents in the manner specified in the Loan Documents but only to the extent reasonably requested by the Administrative Agent. The Borrower further agrees that the Administrative Agent may make the Communications available to the Lenders and the Qualified Counterparties by posting the Communications on IntraLinks, Syndtrak, ClearPar, or a substantially similar electronic transmission system (the “Platform”). The Borrower hereby acknowledges that (a) the Administrative Agent and/or the Lead Arrangers will make available to the Lenders and the Issuing Lender materials and/or information provided by or on behalf of the Borrower hereunder (collectively, “Borrower Materials”) by posting the Borrower Materials on the Platform and (b) certain of the Lenders (each, a “Public Lender”) may have personnel who do not wish to receive material non-public information with respect to the Borrower or its Affiliates, or the respective securities of any of the foregoing, and who may be engaged in investment and other market-related activities with respect to such Persons’ securities. The Borrower hereby agrees that it will use commercially reasonable efforts to identify that portion of the Borrower Materials that may be distributed to the Public Lenders and that (w) all such Borrower Materials shall be clearly and conspicuously marked “PUBLIC” which, at a minimum, shall mean that the word “PUBLIC” shall appear prominently on the first page thereof; (x) by marking Borrower Materials “PUBLIC,” the Borrower shall be deemed to have authorized the Administrative Agent, the Lead Arrangers, each Issuing Lender and the Lenders to treat such Borrower Materials as not containing any material non-public information (although it may be

sensitive and proprietary) with respect to the Borrower or its securities for purposes of United States Federal and state securities laws (provided, however, that to the extent such Borrower Materials constitute information covered by Section 10.15, they shall be treated as set forth in Section 10.15); (y) all Borrower Materials marked “PUBLIC” are permitted to be made available through a portion of the Platform designated “Public Side Information;” and (z) the Administrative Agent and the Lead Arrangers shall be entitled to treat any Borrower Materials that are not marked “PUBLIC” as being suitable only for posting on a portion of the Platform not designated “Public Side Information.”

(c) THE PLATFORM IS PROVIDED “AS IS” AND “AS AVAILABLE”. THE ADMINISTRATIVE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE COMMUNICATIONS, OR 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 THE ADMINISTRATIVE AGENT PARTIES IN CONNECTION WITH THE COMMUNICATIONS OR THE PLATFORM. IN NO EVENT SHALL THE ADMINISTRATIVE AGENT OR ANY OF ITS AFFILIATES OR ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, ADVISORS OR REPRESENTATIVES (COLLECTIVELY, “ADMINISTRATIVE AGENT PARTIES”) HAVE ANY LIABILITY TO THE BORROWER, ANY LENDER PARTY OR ANY OTHER PERSON OR ENTITY FOR DAMAGES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, DIRECT OR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, LOSSES OR EXPENSES (WHETHER IN TORT, CONTRACT OR OTHERWISE) ARISING OUT OF THE BORROWER’S OR THE ADMINISTRATIVE AGENT’S TRANSMISSION OF COMMUNICATIONS THROUGH THE INTERNET, except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by a final and non-appealable judgment to have resulted from the gross negligence, bad faith or willful misconduct of such Administrative Agent Party or any of its Related Persons; provided, however, that in no event shall any Administrative Agent Party have any liability to the Borrower, any Lender, any Issuing Lender or any other Person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages).

The Administrative Agent agrees that the receipt of the Communications by the Administrative Agent at its e-mail address set forth above shall constitute effective delivery of the Communications to the Administrative Agent for purposes of the Loan Documents. Each Lender agrees that notice to it (as provided in the next sentence) specifying that the Communications have been posted to the Platform shall constitute effective delivery of the Communications to such Lender for purposes of the Loan Documents. Each Lender agrees to notify the Administrative Agent in writing (including by electronic communication) from time to time of such Lender’s e-mail address to which the foregoing notice may be sent by electronic transmission and (ii) that the foregoing notice may be sent to such e-mail address. Nothing herein shall prejudice the right of the Administrative Agent or any Lender to give any notice or

other communication pursuant to any Loan Document in any other manner specified in such Loan Document.

10.3 No Waiver; Cumulative Remedies. No failure to exercise and no delay in exercising, on the part of any Agent or any Lender, any right, remedy, power or privilege hereunder or under the other Loan Documents shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

10.4 Survival of Representations and Warranties. All representations and warranties made hereunder, in the other Loan Documents and in any document, certificate or statement delivered pursuant hereto or in connection herewith shall survive the execution and delivery of this Agreement and the making of the Loans and other extensions of credit hereunder and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied or any Letter of Credit shall remain outstanding and so long as the Commitments of any Lender have not been terminated.

10.5 Payment of Expenses. (a) The Borrower agrees (i) to pay or reimburse each Agent for all its reasonable and documented out-of-pocket costs and expenses incurred in connection with the development, preparation and execution of, and any amendment, supplement or modification to, this Agreement and the other Loan Documents and any other documents prepared in connection herewith or therewith, and the consummation and administration of the transactions contemplated hereby and thereby, including the reasonable fees and disbursements of counsel to such parties (provided that such fees and disbursements shall not include fees and disbursements for more than one counsel plus one local counsel in each relevant jurisdiction) and filing and recording fees and expenses, with statements with respect to the foregoing to be submitted to the Borrower prior to the Closing Date (in the case of amounts to be paid on the Closing Date) and from time to time thereafter as such parties shall deem appropriate, (ii) to pay or reimburse each Lender and Agent for all its documented costs and expenses incurred in connection with the enforcement or preservation of any rights under this Agreement, the other Loan Documents and any such other documents, including the fees, charges and disbursements of a single firm of legal counsel, and, if necessary, one firm of local counsel in each appropriate jurisdiction (which may include a single special counsel acting in multiple jurisdictions) to each Lender and of counsel to such Agent, plus, in the case of any actual or perceived conflict of interest where the Lender or Agent affected by such conflict notifies you of the existence of such conflict and thereafter retains its own counsel, of one other firm of counsel for such affected Lender or Agent and (iii) to pay, indemnify, and hold each Lender, Agent and their respective affiliates and each of the respective officers, partners, directors, employees, agents and controlling persons of the foregoing (each, an "Indemnitee") harmless from and against any and all other liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever with respect to the execution, delivery, enforcement, performance and administration of this Agreement, the other Loan Documents (regardless of whether any Indemnitee is or is not a party to any such actions or suits

and whether or not such actions or suits are brought by the Borrower, its affiliates, its security holders or creditors or any other person) and any such other documents, including any of the foregoing relating to the use of proceeds of the Loans or Letters of Credit or the violation of, noncompliance with or liability under, any Environmental Law applicable to the operations of the Borrower or any Restricted Subsidiary or any of the Properties and the reasonable fees and expenses of a single firm of legal counsel, and, if necessary, one firm of local counsel in each appropriate jurisdiction (which may include a single special counsel acting in multiple jurisdictions), in connection with claims, actions or proceedings by any Indemnatee against any Loan Party under any Loan Document (all the foregoing in this clause (iii), collectively, the “Indemnified Liabilities”); provided, that no Indemnatee will be indemnified for any Indemnified Liabilities to the extent (a) it has been determined by a court of competent jurisdiction in a final, non-appealable judgment to have resulted from (i) the gross negligence, bad faith or willful misconduct of such Indemnatee or (ii) a material breach of the obligations of such Indemnatee under the Loan Documents or (b) any proceeding between and among Indemnitees that do not involve an act or omission by the Borrower or its Subsidiaries (other than claims against the Administrative Agent or a Lead Arranger in its capacity or in fulfilling its role as the agent or arranger or any other similar role under the Facilities (excluding its role as a Lender)); provided further, that, this Section 10.5 shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim. Without limiting the foregoing, and to the extent permitted by applicable law, the Borrower agrees not to assert and to cause its Subsidiaries not to assert, and hereby waives and agrees to cause its Subsidiaries to waive, all rights for contribution or any other rights of recovery with respect to all claims, demands, penalties, fines, liabilities, settlements, damages, costs and expenses of whatever kind or nature, under or related to Environmental Laws, that any of them might have by statute or otherwise against any Indemnatee except to the extent found by a final and nonappealable decision of a court of competent jurisdiction to have resulted primarily from the bad faith, gross negligence or willful misconduct of such Indemnatee. The agreements in this Section 10.5 shall survive repayment of the Loans and all other amounts payable hereunder.

(b) To the fullest extent permitted by applicable law, neither the Borrower nor any Indemnatee shall assert, and each of the Borrower and each Indemnatee does hereby waive, any claim against any party hereto, 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; provided that the foregoing shall not limit any Loan Party’s indemnity obligations to the extent special, indirect, consequential or punitive damages are included in any third party claim in connection with which such Indemnatee is entitled to receive indemnification hereunder. No Indemnatee 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 in the absence of gross negligence, bad faith or willful misconduct of such Indemnatee as determined by a court of competent jurisdiction in a final and non-appealable judgment.

(c) All amounts due under this Section 10.5 shall be payable not later than ten (30) days after invoiced or demand therefor is made.

10.6 Successors and Assigns; Participations and Assignments. (a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby (including any affiliate of an Issuing Lender that issues any Letter of Credit), except that (i) the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender (and any attempted assignment or transfer by the Borrower without such consent shall be null and void) and (ii) no Lender may assign or otherwise transfer its rights or obligations hereunder except (w) to an assignee in accordance with the provisions of paragraphs (b) or (c) of this Section 10.6, (x) by way of participation in accordance with the provisions of paragraph (e) of this Section 10.6 or (y) by way of pledge or assignment of a security interest subject to the restrictions of paragraph (h) of this Section 10.6 (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, express or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors as assigns permitted hereby, Participants to the extent provided in paragraph (e) of this Section 10.6 and, to the extent expressly contemplated hereby, the Affiliates 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) Any Lender may assign to one or more assignees (each, an “Assignee”) all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitments and the Loans at the time owing to it); provided that any such assignment shall be subject to the following conditions:

(i) except in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, an assignment effected by the Administrative Agent in connection with the initial syndication of the Commitments or an assignment of the entire remaining amount of the assigning Lender’s Commitments or Loans under any Facility, the amount of the Commitments or 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 (or, in the case of a Term Facility, \$1,000,000) unless each of the Borrower and the Administrative Agent otherwise consent (such consent not to be unreasonably withheld or delayed); provided that no such consent of the Borrower shall be required if a Specified Event of Default has occurred and is continuing;

(ii) 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 Loan or the Commitment assigned, except that this clause (ii) shall not prohibit any Lender from assigning all or a portion of its rights and obligations among separate tranches of Loans (if any) on a non-pro rata basis;

(iii) no consent shall be required for any assignment except to the extent required by paragraph (b)(i) of this Section 10.6 and, in addition, the consent of:

(A) the Borrower (such consent not to be unreasonably withheld or delayed) shall be required unless (x) a Specified 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 (other than a Defaulting Lender); provided that the Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within ten (10) Business Days after having received notice thereof; and

(B) the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required for assignments in respect of (x) any Term Facility if such assignment is to an Assignee that is not a Lender, an Affiliate of a Lender or an Approved Fund or (y) the Revolving Facility if such assignment is to an Assignee that is not a Lender with a Revolving Commitment, an Affiliate of such Lender or an Approved Fund with respect to such Lender; and

(C) in the case of any assignment to a new Revolving Lender or that increases the obligation of the Assignee to participate in exposure under one or more Letters of Credit (whether or not then outstanding), the Issuing Lenders (such consent not to be unreasonably withheld or delayed);

(iv) except in the case of assignments pursuant to paragraph (c) below, 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 (or group of affiliated or related assignments) (except (w) no processing and recordation fee shall be payable in the case of assignments in connection with the initial syndication of the Facilities, (x) in the case of contemporaneous assignments by any Lender to one or more Approved Funds, only a single processing and recording fee shall be payable for such assignments, (y) no processing and recordation fee shall be payable for assignments among Approved Funds or among any Lender and any of its Approved Funds and (z) the Administrative Agent, in its sole discretion, may elect to waive such processing and recording fee in the case of any assignment), and the Assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an administrative questionnaire;

(v) no assignment shall be permitted to be made to the Borrower or any of its Subsidiaries; and

(vi) no assignment shall be permitted to be made to a natural person (or a holding company, investment vehicle or trust for, or owned and operated by or for the primary benefit of natural Person).

Except as otherwise provided in paragraph (c) below, subject to acceptance and recording thereof in the Register pursuant to paragraph (d) below, from and after the effective date specified in each Assignment and Assumption the Eligible Assignee thereunder shall be a party hereto and, to

the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 3.9, 3.10, 3.11 and 10.5); provided, that such Lender continues to comply with the requirements of Section 3.10(g). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 10.6 shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with and subject to the requirements of paragraph (e) of this Section 10.6.

(c) Notwithstanding anything in this Section 10.6 to the contrary, but subject to recording thereof in the applicable Related-Party Register pursuant to paragraph (d) below, a Lender may assign any or all of its rights hereunder to an Affiliate of such Lender or an Approved Fund of such Lender without (a) providing any notice (including, without limitation, any administrative questionnaire) to the Administrative Agent or any other Person or (b) delivering an executed Assignment and Assumption to the Administrative Agent; provided that (A) such assigning Lender shall remain solely responsible to the other parties hereto for the performance of its obligations under this Agreement, (B) the Borrower, the Administrative Agent, the Issuing Lenders and the other Lenders shall continue to deal solely and directly with such assigning Lender in connection with such assigning Lender's rights and obligations under this Agreement until an Assignment and Assumption and an administrative questionnaire have been delivered to the Administrative Agent, (C) the failure of such assigning Lender to deliver an Assignment and Assumption or administrative questionnaire to the Administrative Agent or any other Person shall not affect the legality, validity or binding effect of such assignment and (D) an Assignment and Assumption between an assigning Lender and its Affiliate or Approved Fund shall be effective as of the date specified in such Assignment and Assumption.

(d) The Administrative Agent, acting solely for this purpose as a non-fiduciary agent of the Borrower (and such agency being solely for Tax purposes), shall maintain at the Administrative Agent's Office a copy of each Assignment and Assumption delivered to it (or the equivalent thereof in electronic form) and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts (and stated interest) of the Loans and L/C Obligations owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Borrower and any Lender (but only to entries with respect to itself), at any reasonable time and from time to time upon reasonable prior notice. In the case of an assignment to an Affiliate of a Lender or an Approved Fund pursuant to paragraph (c), as to which an Assignment and Assumption and an administrative questionnaire are not delivered to the Administrative Agent, the assigning Lender shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register (a "Related Party Register") comparable to the Register on behalf of the Borrower. The Register

or Related Party Register shall be available for inspection by the Borrower, the Issuing Lenders and any Lender (but, with respect to any Lender, only to entries with respect to itself) at the Administrative Agent's office at any reasonable time and from time to time upon reasonable prior notice. Except as otherwise provided in paragraph (c) above, upon its receipt of a duly completed Assignment and Assumption executed by an assigning Lender and an Assignee, the Assignee's completed administrative questionnaire (unless the Assignee shall already be a Lender hereunder), the processing and recordation fee referred to in paragraph (b)(iv) of this Section 10.6 and any written consent to such assignment required by paragraph (b) of this Section 10.6, the Administrative Agent shall accept such Assignment and Assumption and record the information contained therein in the Register. No assignment shall be effective for purposes of this Agreement unless and until it has been recorded in the Register (or, in the case of an assignment pursuant to paragraph (c) above, the applicable Related Party Register) as provided in this paragraph (d). The date of such recordation of a transfer shall be referred to herein as the "Assignment Effective Date." The Register and Related Party Register are intended to cause each Loan and other obligation here under to be in registered form within the meaning of Section 5f.103-1(c) of the U.S. Treasury Regulations and Proposed Treasury Regulations Section 1.163-5(b) (or any amended or successor version) and within the meaning of Sections 163(f), 871(h) and 881(c)(2) of the Code.

(e) (i) Any Lender may, without the consent of, or notice to, the Borrower or the Administrative Agent, sell participations to one or more banks or other entities (a "Participant") in all or a portion of such Lender's rights and obligations under this Agreement (including all or a portion of its Commitments and the Loans owing to it); provided that (A) such Lender's obligations under this Agreement shall remain unchanged, (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, (C) the Borrower, the Administrative Agent, the Issuing Lenders 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, (D) no participation shall be permitted to be made to the Borrower or any of its Subsidiaries, nor any officer or director of any such Person and (E) no sale of a participation shall be effective until and unless recorded in the selling Lender's Participant Register. 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 that requires the consent of each Lender directly affected thereby pursuant to the proviso to the second sentence of Section 10.1. Subject to paragraph (g) of this Section 10.6, the Borrower agrees that each Participant shall be entitled to the benefits of Sections 3.9, 3.10 and 3.11 (if such Participant agrees to have related obligations thereunder) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section 10.6 (it being understood that the documentation required under Sections 3.10(g) and (h) shall be delivered to the participating Lender). To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 10.7(b) as though it were a Lender; provided such Participant shall be subject to Section 10.7(a) as though it were a Lender.

(f) Each Lender that sells participations to a Participant, acting solely for this purpose as a non-fiduciary agent of the Borrower, shall maintain a register on which it enters the name and address of each Participant and the principal amount of and interest owing with respect to the participation sold to each such Participant (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), Section 1.871-14(c)(1) of the U.S. Treasury Regulations, Proposed Treasury Regulations Section 1.163-5(b) (or any amended or successor version) and within the meaning of Sections 163(f), 871(h) and 881(c)(2) of the Code. The entries in the Participant Register shall be conclusive (absent manifest error), and the Borrower and the Lenders shall treat each Person whose name is recorded in such Participant Register pursuant to the terms hereof as a participant for all purposes of this Agreement, notwithstanding notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as such) shall have no responsibility for maintaining a Participant Register.

(g) A Participant shall not be entitled to receive any greater payment under Section 3.9 or 3.10 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant had no such participation been transferred to such Participant, unless the sale of the participation to such Participant is made with the Borrower’s prior written consent. Any Participant shall not be entitled to the benefits of Section 3.10 unless such Participant complies with Section 3.10(g) and (h) as if it were a Lender.

(h) 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 or any other Person, and this Section shall not apply to any such pledge or assignment of a security interest or to any such sale or securitization; provided that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or Assignee for such Lender as a party hereto.

(i) [Reserved.]

(j) [Reserved.]

(k) With respect to any proposed assignment or participation for a Disqualified Institution:

(i) No assignment or participation shall be made to any Person that was a Disqualified Institution as of the date (the “Trade Date”) on which the assigning Lender entered into a binding agreement to sell and assign all or a portion of its rights and obligations under this Agreement to such Person (unless the Borrower has consented to such assignment in writing in its sole and absolute discretion, in which case such Person will not be considered a Disqualified Institution for the purpose of such assignment or

participation). For the avoidance of doubt, with respect to any assignee that becomes a Disqualified Institution after the applicable Trade Date (including as a result of the delivery of a notice pursuant to the definition of “Disqualified Institution”), such assignee shall not retroactively be disqualified from becoming a Lender. Any assignment in violation of this clause (k)(i) shall not be void, but the other provisions of this clause (k) shall apply.

(ii) If any assignment or participation is made to any Disqualified Institution without the Borrower’s prior written consent in violation of clause (i) above, or if any Person becomes a Disqualified Institution after the applicable Trade Date, the Borrower may, at its sole expense and effort, upon notice to the applicable Disqualified Institution and the Administrative Agent, (A) terminate any Revolving Commitment of such Disqualified Institution and repay all obligations of the Borrower owing to such Disqualified Institution in connection with such Revolving Commitment, (B) in the case of outstanding Term Loans held by Disqualified Institutions, purchase or prepay such Term Loan by paying the lesser of (x) the principal amount thereof and (y) the amount that such Disqualified Institution paid to acquire such Term Loans, in each case plus accrued interest, accrued fees and all other amounts (other than principal amounts) payable to it hereunder and/or (C) require such Disqualified Institution to assign, without recourse (in accordance with and subject to the restrictions contained in this Section 10.6), all of its interest, rights and obligations under this Agreement to one or more Eligible Assignees at the lesser of (x) the principal amount thereof and (y) the amount that such Disqualified Institution paid to acquire such interests, rights and obligations, in each case plus accrued interest, accrued fees and all other amounts (other than principal amounts) payable to it hereunder.

(iii) Notwithstanding anything to the contrary contained in this Agreement, Disqualified Institutions (A) will not (x) have the right to receive information, reports or other materials provided to Lenders by the Borrower, the Administrative Agent or any other Lender, (y) attend or participate in meetings attended by the Lenders and the Administrative Agent, or (z) access any electronic site established for the Lenders or confidential communications from counsel to or financial advisors of the Administrative Agent or the Lenders and (B) for purposes of any consent to any amendment, waiver or modification of, or any action under, and for the purpose of any direction to the Administrative Agent or any Lender to undertake any action (or refrain from taking any action) under this Agreement or any other Loan Document, each Disqualified Institution will be deemed to have consented in the same proportion as the Lenders that are not Disqualified Institutions consented to such matter.

(iv) The Administrative Agent shall have the right, and the Borrower hereby expressly authorizes the Administrative Agent, to (A) post the list of Disqualified Institutions provided by the Borrower and any updates thereto from time to time (collectively, the “DQ List”) on the Platform, including that portion of the Platform that is designated for “public side” Lenders and/or (B) provide the DQ List to each Lender requesting the same.

10.7 Sharing of Payments; Set-off. (a) Except to the extent that this Agreement expressly provides for payments to be allocated to a particular Lender or to the Lenders under a particular Facility, if any Lender (a “Benefitted Lender”) shall, at any time after the Loans and other amounts payable hereunder shall immediately become due and payable pursuant to Section 8, 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, however, 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. Each Loan Party consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against each Loan Party rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a director creditor of each Loan Party in the amount of such participation to the extent provided in clause (b) of this Section 10.7.

(b) In addition to any rights and remedies of the Lenders provided by law, subject to Section 9.11, each Lender shall have the right, without prior notice to the Borrower, any such notice being expressly waived by the Borrower, and to the extent permitted by applicable law, upon the occurrence of any Event of Default which is continuing, upon any amount becoming due and payable by the Borrower hereunder (whether at the stated maturity, by acceleration or otherwise), to set off and appropriate and apply against such amount any and all deposits (general or special, time or demand, provisional or final but excluding trust accounts), in any currency, and any other credits, indebtedness or claims, in any currency, in each case whether direct or indirect, absolute or contingent, matured or unmatured, at any time held or owing by such Lender or any branch or agency thereof to or for the credit or the account of the Borrower, as the case may be. Each Lender agrees promptly to notify the Borrower and the Administrative Agent after any such setoff and application made by such Lender; provided that the failure to give such notice shall not affect the validity of such setoff and application.

(c) Notwithstanding anything to the contrary contained herein, the provisions of this Section 10.7 shall be subject to the express provisions of this Agreement which require or permit differing payments to be made to Non-Defaulting Lenders as opposed to Defaulting Lenders.

10.8 Counterparts. This Agreement may be executed in one or more counterparts (and by different parties hereto in different counterparts), each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The words “execution,” “signed,” “signature,” and words of like import in this Agreement 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. For the avoidance of doubt, the authorization under this paragraph may include, without limitation, use or acceptance by the Administrative Agent of a manually signed letter which has been converted into electronic form (such as scanned into “.pdf” format), or an electronically signed letter converted into another format, for transmission, delivery and/or retention.

10.9 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.

10.10 Integration. This Agreement and the other Loan Documents represent the entire agreement of the Borrower, the Agents and the Lenders with respect to the subject matter hereof and thereof, and there are no promises, undertakings, representations or warranties by any Agent or any Lender relative to subject matter hereof not expressly set forth or referred to herein or in the other Loan Documents.

10.11 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.

10.12 Submission To Jurisdiction; Waivers. Each of the parties hereto hereby irrevocably and unconditionally:

(a) submits for itself and its property in any legal action or proceeding relating to this Agreement and the other Loan Documents to which it is a party, or for recognition and enforcement of any judgment in respect thereof, to the exclusive jurisdiction of the courts of the State of New York sitting in the Borough of Manhattan, the courts of the United States for the Southern District of New York, and appellate courts from any thereof;

(b) consents that any such action or proceeding may be brought in such courts and waives any objection that it may now or hereafter have to the venue of any such action or proceeding in any such court or that such action or proceeding was brought in an inconvenient court and agrees not to plead or claim the same;

(c) agrees that service of process in any such action or proceeding may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, to the address set forth in Section 10.2 or on the signature pages hereof, as the case may be, or at such other address of which the Administrative Agent shall have been notified pursuant thereto; and

(d) agrees that nothing herein shall affect the right to effect service of process in any other manner permitted by law or shall limit the right to sue in any other jurisdiction.

10.13 Acknowledgments. The Borrower hereby acknowledges that:

(a) it has been advised by counsel in the negotiation, execution and delivery of this Agreement and the other Loan Documents;

(b) no Agent or Lender has any fiduciary relationship with or duty to the Borrower arising out of or in connection with this Agreement or any of the other Loan Documents, and the relationship between the Agents and Lenders, on one hand, and the Borrower, on the other hand, in connection herewith or therewith is solely that of debtor and creditor; and

(c) no joint venture is created hereby or by the other Loan Documents or otherwise exists by virtue of the transactions contemplated hereby among the Lenders or among the Borrower and the Lenders.

(d) each Agent, Issuing Lender, Lender and their Affiliates, may have economic interests that conflict with those of the Loan Parties, their stockholders and/or their affiliates.

10.14 Releases of Guarantees and Liens. (a) Notwithstanding anything to the contrary contained herein or in any other Loan Document, each of the Administrative Agent and the Collateral Agent is hereby irrevocably authorized by each Secured Party (without requirement of notice to or consent of any Secured Party except as expressly required by Section 10.1) to take any action requested by the Borrower having the effect of releasing any Collateral obligations (i) at the time the property subject to such Lien is transferred or to be transferred as part of or in connection with any transfer permitted hereunder to any Person other than the Borrower or any of the Subsidiaries that are Guarantors; provided that no such release shall occur if such Collateral continues to secure any Junior Financing, (ii) subject to Section 10.1, if the release of such Lien is approved, authorized or ratified in writing by the Required Lenders, or (iii) if the property subject to such Lien is owned by a Guarantor, upon release of such Guarantor from its obligations under the Guarantee and Collateral Agreement pursuant to clause (c) below, or (iv) under the circumstances described in paragraph (b) below.

(b) At such time as (i) the Loans, the Reimbursement Obligations and the other Obligations (other than Unasserted Contingent Obligations and obligations under or in respect of Hedge Agreements) shall have been paid in full or Cash Collateralized and (ii) the Commitments have been terminated and no Letters of Credit shall be outstanding, 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, the Collateral 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.

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

Collateral Agreement pursuant to this Section 10.14. In each case as specified in this Section 10.14, the applicable Agent will (and each Lender irrevocably authorizes the applicable Agent to), at the Borrower's expense, execute and deliver to the applicable Loan Party such documents as such Loan Party may reasonably request to evidence the release of such item of Collateral from the assignment and security interest granted under the Security Documents, or to evidence the release of such Guarantor from its obligations under the Guarantee and Collateral Agreement, in each case in accordance with the terms of the Loan Documents and this Section 10.14.

10.15 Confidentiality. Each Agent and each Lender agrees to keep confidential all non-public information provided to it by any Loan Party pursuant to this Agreement that is designated by such Loan Party as confidential in accordance with its customary procedures for handling its own confidential information; provided that nothing herein shall prevent any Agent or any Lender from disclosing any such information (a) to any Agent, any other Lender, any Affiliate of a Lender or any Approved Fund, (b) subject to an agreement to comply with the provisions of this Section 10.15, to any actual or prospective Transferee or any direct or indirect counterparty to any Hedge Agreement (or any professional advisor to such counterparty), (c) to its employees, officers, directors, agents, attorneys, accountants, trustees and other professional advisors or those of any of its affiliates (collectively, its "Related Parties") who need to know such information in connection with the Transactions and who are informed of the confidential nature of such information and are or have been advised of their obligation to keep information of this type confidential (provided that such Agent or such Lender shall be responsible for the compliance of its affiliates and Related Parties with the provisions of this paragraph), (d) upon the request or demand of any Governmental Authority or 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), (e) in response to any order of any court or other Governmental Authority or as may otherwise be required pursuant to any Requirement of Law, (f) if requested or required to do so in connection with any litigation or similar proceeding, (g) that has been publicly disclosed (other than as a result of a disclosure in violation of this Section 10.15), (h) to the National Association of Insurance Commissioners or any similar organization or any nationally recognized rating agency that requires access to information about a Lender's investment portfolio in connection with ratings issued with respect to such Lender, (i) in connection with the exercise of any remedy hereunder or under any other Loan Document, (j) on a confidential basis to (i) any rating agency in connection with rating the Borrower or its Subsidiaries or the Facilities or (ii) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers of other market identifiers with respect to the Facilities or (k) to any other party hereto; provided that, unless specifically prohibited by applicable law or court order, each Lender shall notify the Borrower of any request by any Governmental Authority or representative thereof (other than any such request in connection with any examination of the financial condition or other routine examination of such Lender by such Governmental Authority) for disclosure of any such non-public information prior to disclosure of such information. In addition, the Administrative Agent and the Lenders may disclose the existence of this Agreement and information about this Agreement to market data collectors, similar service providers to the lending industry and service providers to the Administrative Agent and the Lenders in connection with the administration of this Agreement, the other Loan Documents, and the Commitments.

10.16 WAIVERS OF JURY TRIAL. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 10.16.

10.17 Patriot Act Notice. (a) Each Lender and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Loan Parties that pursuant to the requirements of the Patriot Act, it may be required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of such Loan Party and other information that will allow such Lender or the Administrative Agent, as applicable, to identify such Loan Party in accordance with the Patriot Act.

(b) Each of the Agents, the Lenders and the Issuing Lenders hereby notifies each Group Member, if any, organized under the laws of Canada, or any province thereof, that pursuant to the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (Canada) and other applicable anti-money laundering, anti-terrorist financing, government sanction and “know your client” laws, within Canada (including any guidelines or orders thereunder), it may be required to obtain, verify and record information regarding such Person, its directors, authorized signing officers, direct or indirect shareholders or other Persons in control of such Person, and the transactions contemplated hereby.

10.18 No Fiduciary Relationship. The Borrower acknowledges that the Lenders have no fiduciary relationship with, or fiduciary duty to, the Borrower arising out of or in connection with this Agreement or the other Loan Documents, and the relationship between each Lender and the Borrower is solely that of creditor and debtor. This Agreement and the other Loan Documents do not create a joint venture among the parties hereto. The Borrower acknowledges that the Lead Arrangers and each Lender may have economic interests that conflict with those of the Borrower, its stockholders and/or its Affiliates. To the fullest extent permitted by law, the Borrower hereby waives and releases any claims that it may have against the Administrative Agent, the Lead Arrangers and the Lenders with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

10.19 Acknowledgement and Consent to Bail-In of Affected Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement,

arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Affected 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 the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an Affected Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of the applicable Resolution Authority.

10.20 Acknowledgement Regarding Any Supported QFCs. To the extent that the Loan Documents provide support, through a guarantee or otherwise, for Hedge Agreements or any other agreement or instrument that is a QFC (such support, “QFC Credit Support” and each such QFC, a “Supported QFC”), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the “U.S. Special Resolution Regimes”) in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States). In the event a Covered Entity that is party to a Supported QFC (each, a “Covered Party”) becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the

Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

10.21 Judgment Currency. If, for the purpose 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 the Borrower in respect of any such sum due from it to the Administrative Agent or the Lenders hereunder or under the other Loan Documents shall, notwithstanding any judgment in a currency (the "Judgment Currency") other than that in which such sum is denominated in accordance with the applicable provisions of this Agreement (the "Agreement Currency"), be discharged only to the extent that on the Business Day following receipt by the Administrative Agent of any sum adjudged to be so due in the Judgment Currency, the Administrative Agent may in accordance with normal banking procedures purchase the Agreement Currency with the Judgment Currency. If the amount of the Agreement Currency so purchased is less than the sum originally due to the Administrative Agent from the Borrower in the Agreement Currency, the Borrower agrees, as a separate obligation and notwithstanding any such judgment, to indemnify the Administrative Agent or the Person to whom such obligation was owing against such loss. If the amount of the Agreement Currency so purchased is greater than the sum originally due to the Administrative Agent in such currency, the Administrative Agent agrees to return the amount of any excess to the Borrower (or to any other Person who may be entitled thereto under applicable Requirements of Law).

[Remainder of page left intentionally blank.]

IN WITNESS WHEREOF, the parties have caused this Credit Agreement to be executed by their respective authorized officers or other authorized signatories as of the date first above written.

2U, INC., as Borrower

By: /s/ Paul S. Lalljie

Name: Paul S. Lalljie

Title: Chief Financial Officer

[Signature Page to Credit Agreement]

Morgan Stanley Senior Funding, Inc., as Administrative Agent, Collateral Agent,
Issuing Lender and as a Lender

By: /s/ Lisa Hanson
Name: Lisa Hanson
Title: Vice President

[Signature Page to Credit Agreement]

**CREDIT SUISSE AG, CAYMAN ISLANDS
BRANCH**, as a Lender and Issuing Lender

By: /s/ Doreen Barr

Name: Doreen Barr

Title: Authorized Signatory

By: /s/ Komal Shah

Name: Komal Shah

Title: Authorized Signatory

[Signature Page to Credit Agreement]

GOLDMAN SACHS BANK USA, as a Lender and Issuing Lender

By: /s/ Thomas M. Manning

Name: Thomas M. Manning

Title: Authorized Signatory

[Signature Page to Credit Agreement]

EBITDA Schedule (Section 7.1(b))

<u>Fiscal Quarter Ending</u>	<u>Minimum Consolidated EBITDA</u>
September 30, 2020	\$(6,000,000)
December 31, 2020	\$10,000,000
March 31, 2021	\$0
June 30, 2021	\$(4,000,000)
September 30, 2021	\$0
December 31, 2021	\$20,000,000

SUMMARY OF NON-EMPLOYEE DIRECTOR COMPENSATION

- Each year, the Compensation Committee (the “*Committee*”) of the Board of Directors (the “*Board*”) of 2U, Inc. (the “*Company*”) approves the compensation arrangements for non-employee members of the Board to take effect as of April 1 of such year. The compensation arrangements described below may be modified, amended or terminated by the Board at any time in its discretion.
 - Each non-employee director will receive an annual cash retainer of \$25,000, to be paid in equal quarterly installments of \$6,250 on April 1 (or as soon as reasonably practicable thereafter) and on the first day of each calendar quarter thereafter. At the timely election of a non-employee director, such director may receive, in lieu of such annual retainer, a restricted stock unit award (the “*Director Retainer RSU Grant*”) covering a number of shares of the Company’s common stock (the “*Common Stock*”) determined by dividing \$25,000 by the Fair Market Value (as defined in the Company’s Amended and Restated 2014 Equity Incentive Plan (as amended, the “*2014 Plan*”) of the Common Stock on the date of grant. Director Retainer RSU Grants vest in full on the first anniversary of the vesting commencement date (typically April 1 of the applicable year), assuming Continuous Service (as defined in 2014 Plan) through the vesting date.
 - Each non-employee director who serves as Chair of the Board or Chair of the Audit Committee, Compensation Committee or Nominating and Corporate Governance Committee will receive an additional annual cash retainer of \$5,000, to be paid in equal quarterly installments of \$1,250 on April 1 (or as soon as reasonably practicable thereafter) and on the first day of each calendar quarter thereafter. At the timely election of any Chair, such Chair may receive, in lieu of such annual retainer, a restricted stock unit award (the “*Chair Retainer RSU Grant*”) covering a number of shares of Common Stock determined by dividing \$5,000 by the Fair Market Value of the Common Stock on the date of grant. Chair Retainer RSU Grants vest in full on the first anniversary of the vesting commencement date (typically April 1 of the applicable year), assuming Continuous Service through the vesting date.
 - On or about April 1 of each year, each non-employee director will receive an annual restricted stock unit award (each, a “*Director Annual RSU Grant*”) covering a number of shares of Common Stock determined by dividing \$200,000 by the Fair Market Value of the Common Stock on the date of grant. Director Annual RSU Grants vest in full on the first anniversary of the vesting commencement date (typically April 1 of the applicable year), assuming Continuous Service through the vesting date.
 - On or about April 1 of each year, each non-employee director who is then serving as Chair of the Board or Chair of the Audit Committee will also receive a restricted stock unit award (each, an “*Board/Audit Chair Annual RSU Grant*”) covering a number of shares of Common Stock determined by dividing \$15,000 by the Fair Market Value of the Common Stock on the date of grant. Board/Audit Chair Annual RSU Grants vest in full on the first anniversary of the vesting commencement date (typically April 1 of the applicable year), assuming Continuous Service through the vesting date.
 - On or about April 1 of each year, each non-employee director who is then serving as Chair of the Compensation Committee or Chair of the Nominating and Corporate Governance Committee or member of the Audit Committee (other than the Chair) will also receive a restricted stock unit award (each, an “*Other Chair/Audit Member Annual RSU Grant*”) covering a number of shares of Common Stock determined by dividing \$5,000 by the Fair Market Value of the Common Stock on the date of grant. Other Chair/Audit Member Annual RSU Grants vest in full on the first anniversary of the vesting commencement date (typically April 1 of the applicable year), assuming Continuous Service through the vesting date.
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- In connection with his or her initial appointment to the Board, each non-employee director will receive a restricted stock unit award (an “*Initial RSU Grant*”) on the first day of the first quarter immediately following the effective date of the director’s appointment. Initial RSU Grants cover a number of shares of Common Stock determined by dividing \$50,000 by the Fair Market Value of the Common Stock on the date of grant and vest in full on the first anniversary of the vesting commencement date (which is typically the grant date), assuming Continuous Service through the vesting date.
- Each Director Retainer RSU Grant, Chair Retainer RSU Grant, Director Annual RSU Grant, Board/Audit Chair Annual RSU Grant, Other Chair Annual RSU Grant, and Initial RSU Grant is granted under and subject to the terms and conditions of the 2014 Plan and an award agreement in substantially the forms previously approved by the Board or the Compensation Committee to evidence awards issued under the 2014 Plan. Awards that would otherwise cover partial shares are typically rounded down to the nearest whole share.
- The cash retainers, equity awards and vesting schedules described in this summary may be prorated to reflect partial periods of a non-employee director’s service.

CERTIFICATION OF CHIEF EXECUTIVE OFFICER

I, Christopher J. Paucek, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of 2U, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: July 31, 2020

By: /s/ Christopher J. Paucek

Name: Christopher J. Paucek

Title: *Chief Executive Officer*

CERTIFICATION OF CHIEF FINANCIAL OFFICER

I, Paul S. Lalljie, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of 2U, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: July 31, 2020

By: /s/ Paul S. Lalljie

Name: Paul S. Lalljie

Title: Chief Financial Officer

**CERTIFICATION OF CEO PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report on Form 10-Q of 2U, Inc. (the "Company") for the quarterly period ended June 30, 2020 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Christopher J. Paucek, as Chief Executive Officer of the Company, do hereby certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of my knowledge:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: July 31, 2020

By: /s/ Christopher J. Paucek

Name: Christopher J. Paucek
Title: Chief Executive Officer

This certification accompanies the Report pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 and shall not, except to the extent required by the Sarbanes-Oxley Act of 2002, be deemed filed by the Company for purposes of Section 18 of the Securities Exchange Act of 1934, as amended.

A signed original of this written statement required by Section 906 of the Sarbanes-Oxley Act of 2002 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

**CERTIFICATION OF CFO PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report on Form 10-Q of 2U, Inc. (the "Company") for the quarterly period ended June 30, 2020 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Paul S. Lalljie, as Chief Financial Officer of the Company, do hereby certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of my knowledge:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: July 31, 2020

By: /s/ Paul S. Lalljie

Name: Paul S. Lalljie
Title: Chief Financial Officer

This certification accompanies the Report pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 and shall not, except to the extent required by the Sarbanes-Oxley Act of 2002, be deemed filed by the Company for purposes of Section 18 of the Securities Exchange Act of 1934, as amended.

A signed original of this written statement required by Section 906 of the Sarbanes-Oxley Act of 2002 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.