

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

**FORM 10-K**

(Mark One)

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

For the fiscal year ended December 31, 2021

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 001-37961

**ICHOR HOLDINGS, LTD.**  
(Exact name of registrant as specified in its charter)

**Cayman Islands**  
(State or other jurisdiction of  
incorporation)

**001-37961**  
(Commission File Number)

**Not Applicable**  
(IRS Employer Identification No.)

**3185 Laurelview Ct.**  
**Fremont, California 94538**  
(Address of principal executive offices, including Zip Code)

**(510) 897-5200**  
(Registrant's telephone number, including area code)

**Not Applicable**  
(Former name or former address, if changed since last report)

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

Title of each class  
Ordinary Shares, par value \$0.0001

Trading Symbol(s)  
ICHR

Name of each exchange on which registered  
The NASDAQ Stock Market LLC

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

None

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

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

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

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

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

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

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

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

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

There were 28,592,634 ordinary shares, \$0.0001 par value, outstanding as of February 22, 2022. The aggregate market value of voting ordinary shares held by non-affiliates was \$1,479,680,000 as of June 25, 2021, the last business day of our most recently completed second fiscal quarter.

**DOCUMENTS INCORPORATED BY REFERENCE**

The information required by Part III of Form 10-K is incorporated herein by reference to the registrant's definitive Proxy Statement relating to its 2022 General Meeting, which will be filed with the Securities and Exchange Commission within 120 days after the end of the registrant's fiscal year.

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## CAUTIONARY STATEMENT CONCERNING FORWARD-LOOKING STATEMENTS

This report contains forward-looking statements within the meaning of the federal securities laws. All statements other than statements of historical fact included in this report are forward-looking statements. These statements relate to analyses and other information, which are based on forecasts of future results and estimates of amounts not yet determinable. These statements also relate to our future prospects, developments and business strategies. These forward-looking statements are identified by the use of terms and phrases such as “anticipate,” “believe,” “could,” “estimate,” “expect,” “intend,” “may,” “plan,” “predict,” “project,” “will” and similar terms and phrases, including references to assumptions. However, these words are not the exclusive means of identifying such statements. These statements are contained in many sections of this report, including those entitled *Item 1 – Business* and *Item 7 – Management’s Discussion and Analysis of Financial Condition and Results of Operations*. Although we believe that our plans, intentions and expectations reflected in or suggested by such forward-looking statements are reasonable, we cannot assure you that we will achieve those plans, intentions or expectations. All forward-looking statements are subject to risks and uncertainties that may cause actual results to differ materially from those that we expected.

Important factors that could cause actual results to differ materially from our expectations, or cautionary statements, are disclosed under the sections entitled *Item 1A – Risk Factors* and *Item 7 – Management’s Discussion and Analysis of Financial Condition and Results of Operations* in this report. All written and oral forward-looking statements attributable to us, or persons acting on our behalf, are expressly qualified in their entirety by the cautionary statements contained in this report under the heading *Item 1A – Risk Factors*, as well as other cautionary statements that are made from time to time in our other filings with the Securities and Exchange Commission and public communications. You should evaluate all forward-looking statements made in this report in the context of these risks and uncertainties.

We caution you that the important factors referenced above may not contain all of the factors that are important to you. In addition, we cannot assure you that we will realize the results or developments we expect or anticipate or, even if substantially realized, that they will result in the consequences or affect us or our operations in the way we expect. The forward-looking statements included in this report are made only as of the date hereof. We undertake no obligation to publicly update or revise any forward-looking statement as a result of new information, future events or otherwise, except as otherwise required by law.

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## PART I

### ITEM 1. BUSINESS

Unless expressly indicated or the context requires otherwise, the terms “Ichor,” “Company,” “we,” “us,” “our,” and similar terms in this report refer to Ichor Holdings, Ltd. and its consolidated subsidiaries.

We use a 52- or 53-week fiscal year ending on the last Friday in December. The following table details our fiscal periods included elsewhere in this report. All references to 2021, 2020, and 2019, including the quarters thereto, relate to our fiscal period as so detailed.

| <u>Fiscal Period</u> | <u>Period Ending</u> | <u>Weeks in Period</u> |
|----------------------|----------------------|------------------------|
| Fiscal Year 2021:    | December 31, 2021    | 53                     |
| First Quarter        | March 26, 2021       | 13                     |
| Second Quarter       | June 25, 2021        | 13                     |
| Third Quarter        | September 24, 2021   | 13                     |
| Fourth Quarter       | December 31, 2021    | 14                     |
| Fiscal Year 2020:    | December 25, 2020    | 52                     |
| First Quarter        | March 27, 2020       | 13                     |
| Second Quarter       | June 26, 2020        | 13                     |
| Third Quarter        | September 25, 2020   | 13                     |
| Fourth Quarter       | December 25, 2020    | 13                     |
| Fiscal Year 2019:    | December 27, 2019    | 52                     |
| First Quarter        | March 29, 2019       | 13                     |
| Second Quarter       | June 28, 2019        | 13                     |
| Third Quarter        | September 27, 2019   | 13                     |
| Fourth Quarter       | December 27, 2019    | 13                     |

#### **Company Overview**

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We are a leader in the design, engineering, and manufacturing of critical fluid delivery subsystems and components for semiconductor capital equipment. Our product offerings include gas and chemical delivery systems and subsystems, collectively known as fluid delivery systems and subsystems, which are key elements of the process tools used in the manufacturing of semiconductor devices. Our gas delivery subsystems deliver, monitor, and control precise quantities of the specialized gases used in semiconductor manufacturing processes such as etch and deposition. Our chemical delivery systems and subsystems precisely blend and dispense the reactive liquid chemistries used in semiconductor manufacturing processes such as chemical-mechanical planarization, electroplating, and cleaning. We also provide precision-machined components, weldments, electron beam (“e-beam”) and laser-welded components, precision vacuum and hydrogen brazing and surface treatment technologies, and other proprietary products. This vertically integrated portion of our business is primarily focused on metal and plastic parts that are used in gas and chemical systems, respectively.

Fluid delivery subsystems ensure accurate measurement and uniform delivery of specialty gases and chemicals at critical steps in the semiconductor manufacturing processes. Any malfunction or material degradation in fluid delivery reduces yields and increases the likelihood of manufacturing defects in these processes. Most original equipment manufacturers (“OEMs”) outsource all or a portion of the design, engineering, and manufacturing of their gas delivery subsystems to a few specialized suppliers, including us. Additionally, many OEMs are outsourcing the design, engineering, and manufacturing of their chemical delivery subsystems due to the increased fluid expertise required to manufacture these subsystems. Outsourcing these subsystems has allowed OEMs to leverage the suppliers’ highly specialized engineering, design, and production skills while focusing their internal resources on their own value-added processes. We believe that this outsourcing trend has enabled OEMs to reduce their costs and development time, as well as provide growth opportunities for specialized subsystems suppliers like us.

Our goal is to be a leading supplier of fluid delivery subsystems and components to OEMs engaged in manufacturing capital equipment to produce semiconductors and to leverage our technology and products to expand the share of our addressable markets. To achieve this goal, we engage with our customers early in their design and development processes and utilize our deep engineering resources and operating expertise, as well as our expanded product portfolio, to jointly create innovative and advanced solutions that meet the current and future needs of our customers. We employ this approach with three of the largest manufacturers of semiconductor capital equipment in the world. We believe this approach enables us to design products that meet the precise specifications our customers demand, allows us to often be the sole supplier of these subsystems during the initial production ramp, and positions us to be the preferred supplier for the full five to ten-year lifespan of the process tool.

The broad technical expertise of our engineering team, coupled with our early customer engagement approach, enables us to offer innovative and reliable solutions to complex fluid delivery challenges. With two decades of experience developing complex fluid delivery subsystems and meeting the constantly changing production requirements of leading semiconductor OEMs, we have developed expertise in fluid delivery that we offer to our OEM customers. In addition, our capital efficient model provides us the flexibility to fulfill increased demand and meet changing customer requirements with relatively low levels of capital expenditures. With an aim to provide superior customer service, we have a global footprint with many facilities strategically located in close proximity to our customers. We have long standing relationships with top tier OEM customers, including Lam Research, Applied Materials, and ASML, which were our three largest customers by sales in 2021.

We generated revenue of \$1,096.9 million, \$914.2 million, and \$620.8 million in 2021, 2020, and 2019, respectively. We generated net income of \$70.9 million, \$33.3 million, and \$10.7 million on a GAAP basis in 2021, 2020, and 2019, respectively, and \$97.7 million, \$59.0 million, and \$28.3 million on a non-GAAP basis, respectively. See *Item 7 – Management's Discussion and Analysis of Financial Condition and Results of Operations, Non-GAAP Results* for a discussion of non-GAAP net income, an accompanying presentation of the most directly comparable financial measure calculated in accordance with generally accepted accounting principles in the United States, net income, and a reconciliation of the differences between non-GAAP net income and net income.

## **Our Competitive Strengths**

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As a leader in the fluid delivery industry, we believe that our key competitive strengths include the following:

### *Deep Fluids Engineering Expertise*

We believe that our engineering team, comprised of chemical, mechanical, electrical, software, and systems engineers, has positioned us to expand the scope of our solutions, provide innovative products and subsystems, and strengthen our incumbent position at our OEM customers. Our engineering team acts as an extension of our customers' product development teams, providing our customers with technical expertise that is outside of their core competencies.

### *Early Engagement with Customers on Product Development*

We seek to engage with our customers and potential customers very early in their process for new product development. We believe this approach enables us to collaborate on product design, qualification, manufacturing, and testing in order to provide a comprehensive, customized solution. Through early engagement during the complex design stages, our engineering team gains early insight into our customers' technology roadmaps which enables us to pioneer innovative and advanced solutions. In many cases, our early engagement with our customers enables us to be the sole source supplier when the product is initially introduced.

### *Long History and Strong Relationships with Top Tier Customers*

We have established deep relationships with top tier OEMs such as Lam Research, Applied Materials, and ASML, which were our three largest customers by sales in 2021. Our customers are global leaders by sales in the semiconductor capital equipment industry. Our existing relationships with our customers have enabled us to effectively compete for new fluid delivery subsystems for our customers' next generation products in development. We leverage our deep-rooted existing customer relationships with these market leaders to penetrate new business opportunities created through industry consolidation. Our close collaboration with them has contributed to our established market position and several key supplier awards.

### *Operational Excellence with Scale to Support the Largest Customers*

Over our 20-plus year experience in designing and building fluid delivery systems, we have developed deep capabilities in operations. We have strategically located our manufacturing facilities near our customers' locations in order to provide fast and efficient responses to new product introductions and accommodate configuration or design changes late in the manufacturing process. We will continue to add capacity as needed to support future growth. In addition to providing high quality and reliable fluid delivery subsystems, one of our principal strategies is delivering the lead-times that provide our customers the required flexibility needed in their production processes. We have accomplished this by investing in manufacturing systems and processes and an efficient supply chain. Our focus on operational efficiency and flexibility allows us to reduce manufacturing cycle times in order to respond quickly to customer requests and lead-times that are often less than four weeks.

### *Capital Efficient and Scalable Business Model*

In general, our business is not capital intensive and we are able to grow sales with a low investment in property, plant, and equipment. In 2021, 2020, and 2019, our total capital expenditures were \$20.8 million, \$10.3 million, and \$12.3 million, respectively, representing only 1.9%, 1.1%, and 2.0%, of sales, respectively. The semiconductor capital equipment market has historically been cyclical. We have structured our business to minimize fixed manufacturing overhead and operating expenses to enable us to grow net income at a higher rate than sales during periods of growth. Conversely, our low fixed cost approach allows us to minimize the impact of cyclical downturns on our net income but results in a lower level of gross margin leverage or improvement as a percentage of sales in times of increased demand.

### **Our Growth Strategy**

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Our objective is to enhance our position as a leader in providing fluid delivery solutions, including subsystems, components, and legacy tool refurbishment, to our customers by leveraging our core strengths. The key elements of our growth strategy are:

#### *Grow Our Market Share within Existing Customer Base*

We intend to grow our position within our existing customers by continuing to leverage our specialized engineering talent, early collaboration approach with OEMs to foster long-term relationships, and expanded product offerings. Each of our customers produces many different process tools for various process steps. At each customer, we are an outsourced supplier of fluid delivery subsystems and components for a subset of their entire process tool offerings. We are constantly looking to expand our market share at our existing customers. We believe that our early collaborative approach with customers positions us to deliver innovative and dynamic solutions, offer timely deployment and meet competitive cost targets, further increasing our market share. Through our acquisition of IMG Companies, LLC and its subsidiaries (“IMG”), a precision machining and specialty component manufacturing company, in November 2021, our acquisition of a precision machining operation in December 2020, an intellectual property (“IP”) purchase of developed flow controller technology in 2019, and our acquisitions of a weldment company and a precision machining company in 2017, we significantly expanded our product offerings within our served customer base, including entering the market for chemical delivery subsystems for wet process tools where we had only limited engagement in the past. Using this and our existing engineering capability, we developed a liquid delivery module for use on a wet process equipment system that met the specifications of, and was qualified by, one of our largest customers and a market leader in this space.

#### *Grow Our Total Available Market and Share of the Market with Expanded Product Offerings*

We continue to work with our existing core customers on additional opportunities, including chemical delivery, one of our important potential growth areas. We believe that wet processes, including clean and electrochemical deposition (“ECD”), that require precise chemical delivery are currently an underpenetrated market opportunity for us. By leveraging our existing customer relationships and strong reputation in fluid mechanics, we intend to increase our chemical delivery module market share and introduce additional related products. Through our acquisition of a precision machining operation in December 2020, our IP purchase of developed flow controller technology in 2019, our acquisition of a Korean gas panel supplier in 2018, and our acquisitions of a weldment company and a precision machining company in 2017, we significantly expanded our served customer base with expanded product offerings. The acquisitions allow us to manufacture and assemble the complex plastic and metal products and precision machined components for the semiconductor equipment, including our existing customer base, as well as medical device, and general-industrial industries, while providing us exposure to and growth opportunities in the Korean and Japanese semiconductor capital equipment market.

Through our acquisition of IMG in November 2021, we have opened up adjacent opportunities within semiconductor capital equipment, including large format machining, hydrogen brazing, and e-beam and laser welding. Additionally, our acquisition of IMG gave us entrance into new sectors, including medical, aerospace defense, and scientific research, which require our critical machining and joining expertise.

#### *Expand Our Total Customer Base within Fluid Delivery Market*

We have expanded our customer base and are currently a supplier of gas delivery systems for a leading lithography system manufacturer, a leading atomic layer deposition (“ALD”) system manufacturer, and Korean process tool OEMs. Our acquisition of IMG further expands our total customer base with new customers in medical, aerospace, and defense. We continue to actively engage with new customers that are considering outsourcing their gas and chemical delivery needs as well as expanding our components business.

*Continue to Improve Our Manufacturing Process Efficiency*

We continually strive to improve our processes to reduce our manufacturing process cycle time, improve our ability to respond to short lead-time and last minute configuration changes, reduce our manufacturing costs, and improve our inventory efficiency requirements in order to improve profitability and make our product offerings more attractive to new and existing customers.

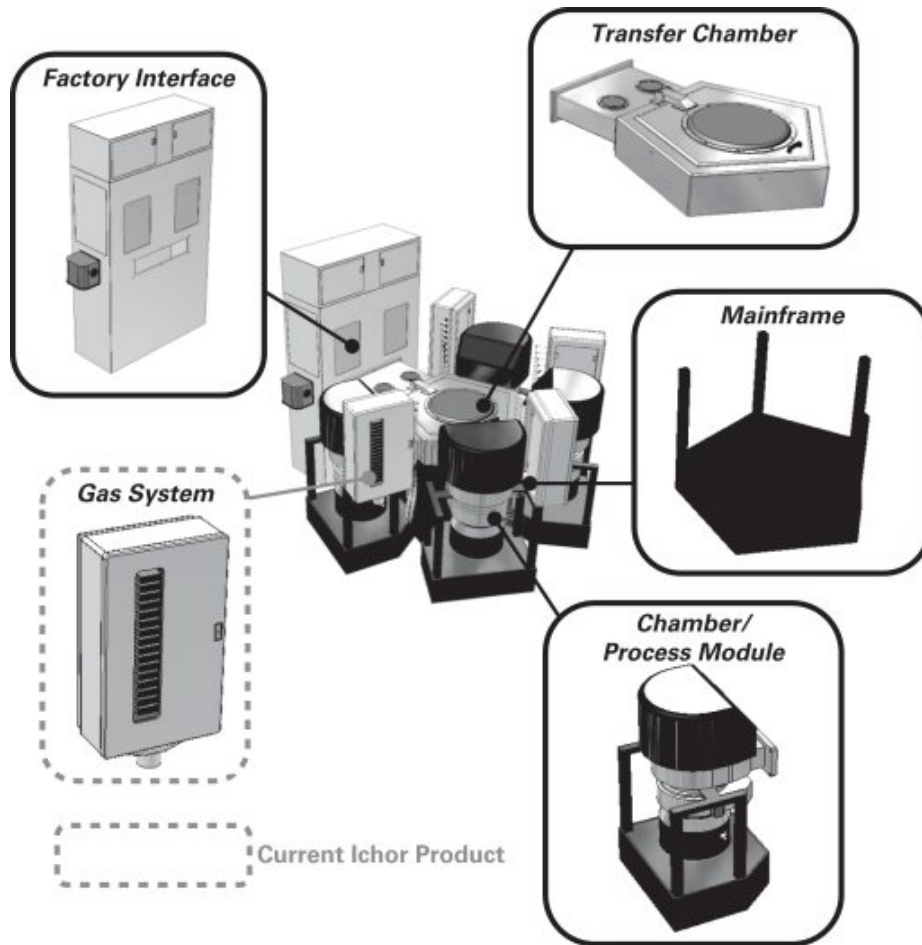
**Our Products and Services**

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We are a leader in the design, engineering and manufacturing of critical fluid delivery subsystems. Our product and service offerings are classified in the following categories:

*Gas Delivery Subsystems*

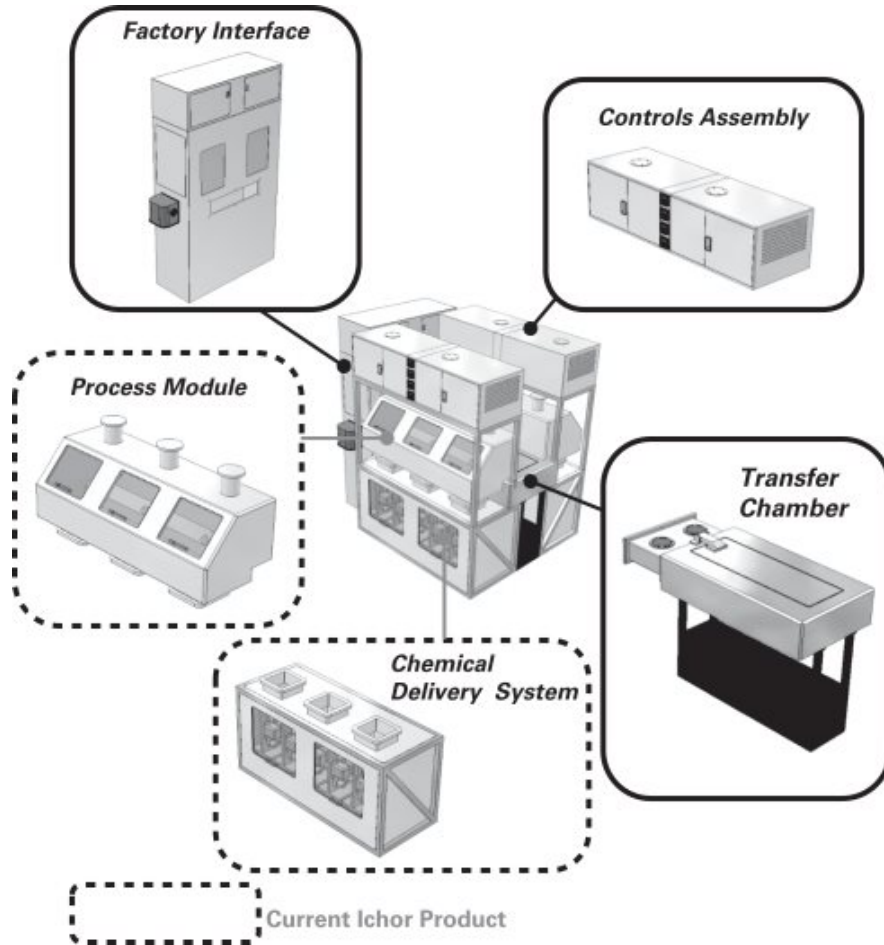
Gas delivery is among the most technologically complex functions in semiconductor capital equipment and is used to deliver, monitor and control precise quantities of the vapors and gases critical to the manufacturing process. Our gas delivery systems consist of a number of gas lines, each controlled by a series of mass flow controllers, regulators, pressure transducers, and valves, and an integrated electronic control system. Our gas delivery subsystems are primarily used in equipment for “dry” manufacturing processes, such as etch, chemical vapor deposition, physical vapor deposition, epitaxy, and strip.



### *Chemical Delivery Products and Subsystems*

Our chemical delivery products and subsystems are used to precisely blend and dispense reactive chemistries and colloidal slurries critical to the specific “wet” front-end process, such as wet clean, electro chemical deposition, and chemical-mechanical planarization (“CMP”). In addition to the chemical delivery subsystem, we also manufacture the process modules that apply the various chemicals directly to the wafer in a process and application-unique manner to create the desired chemical reaction.

The image below shows a typical wet-process front end semiconductor tool, with a chemical delivery subsystem and corresponding application process module highlighted:



### *Weldments and Specialty Joining*

Our complete offering of weldments support the delivery of gases through the process tool. We have developed both automated and manual welding processes to support world class workmanship on all types of metals needed to support fluid delivery within the semiconductor market. The welded assemblies are used in both wet and dry processes, non-semi applications including aerospace and defense, medical, and general industrial markets. We offer a wide range of specialty joining technologies including orbital, tungsten inert gas (“TIG”), e-beam, and laser welding, as well as hydrogen and vacuum brazing.

### *Precision Machining*

Precision machining provides us the ability to supply our customers with components used in our gas delivery systems and weldments, while also providing custom machined solutions throughout customers’ equipment. Many of these items are used downstream of the gas system and in process critical applications. Our precision machined products can be used in both wet and dry applications and include both small- and large-format machining applications. Machined components are also provided to other critical non-semiconductor markets, including aerospace and medical.



## History

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We were originally incorporated as Celerity, Inc. (“Celerity”) in 1999. Our business of designing and manufacturing critical systems for semiconductor capital equipment manufacturers operated as a standalone business until 2009 when Celerity sold the business to a private equity fund. Francisco Partners (“FP”) acquired the business in December 2011 and formed Ichor Holdings, Ltd., an exempt company incorporated in the Cayman Islands, in March 2012 to serve as the parent company as part of a restructuring to accommodate the expansion of our business in Singapore and Malaysia. We completed the initial public offering of our ordinary shares in December 2016. We have grown through opportunistic acquisitions, which include:

- In April 2012, we acquired Semi Scenic UK Limited to provide refurbishment services for legacy tools.
- In April 2016, we purchased Ajax-United Patterns & Molds, Inc. (“Ajax”) for \$17.6 million to add chemical delivery subsystem capabilities with existing customers.
- In July 2017 we acquired Cal-Weld, Inc. (“Cal-Weld”) for \$56.2 million to add to our gas delivery subsystem and weldment capabilities.
- In December 2017 we acquired Talon Innovations Corporation (“Talon”) for \$137.8 million to add to our gas delivery subsystem, precision machining, and component manufacturing capabilities.
- In April 2018, we acquired IAN Engineering Co., Ltd. (“IAN”) for \$6.5 million to provide us exposure to and growth opportunities in the Korean semiconductor capital equipment market.
- In December 2020, we acquired certain operating assets and assumed the operations of a business in Nogales, Mexico for \$5.0 million to increase our precision machined component manufacturing capacity.
- In November 2021, we acquired IMG for approximately \$270.0 million to increase our precision machining capacity and capabilities with existing customers, as well as increase our served customer base.

We intend to continue to evaluate opportunistic acquisitions to supplement our organic growth.

## Customers, Sales and Marketing

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We primarily market and sell our products directly to equipment OEMs in the semiconductor equipment market. In Japan, we utilize a value-added reseller to market and sell our chemical delivery system. We are dependent upon a small number of customers, as the semiconductor equipment manufacturer market is highly concentrated with five companies accounting for over 80% of all process tool revenues. For 2021, our two largest customers were Lam Research and Applied Materials, which accounted for 53% and 32% of sales, respectively. We do not have long-term contracts that require customers to place orders with us in fixed or minimum volumes, and we generally operate on a purchase order basis with customers.

Our sales and marketing efforts focus on fostering close business relationships with our customers. As a result, we locate many of our account managers near the customer they support. Our sales process involves close collaboration between our account managers and engineering and operations teams. Account managers and engineers work together with customers and in certain cases provide on-site support, including attending customers’ internal meetings related to production and engineering design. Each customer project is supported by our account managers and customer support team who ensure we are aligned with all of the customer’s quality, cost, and delivery expectations.

## Operations, Manufacturing and Supply Chain Management

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We have developed a highly flexible manufacturing model with cost-effective locations situated nearby the manufacturing facilities of our largest customers. We have facilities in the United States, Singapore, Malaysia, the United Kingdom, Korea, and Mexico.

### *Operations*

Our product cycle engagements begin by working closely with our customers to outline the solution specifications before design and prototyping even begin. Our design and manufacturing process is highly flexible, enabling our customers to make alterations to their final requirements throughout the design, engineering, and manufacturing process. This flexibility results in significantly decreased order-to-delivery cycle times for our customers. For instance, it can take as little as 20 to 30 days for us to manufacture a gas delivery system with fully evaluated performance metrics after receiving an order.

## *Manufacturing*

We are ISO 9001 certified or compliant at our manufacturing locations, and our manufactured subsystems and modules adhere to strict design tolerances and specifications. We operate Class 100 and Class 10,000 clean room facilities for customer-specified testing, assembly, and integration of high-purity gas and chemical delivery systems at our locations in Singapore, Oregon, Texas, and Korea. We operate additional facilities in Malaysia, Oregon, Texas, and California for weldments and related components used in our gas delivery subsystems, and we operate facilities in Oregon and Malaysia for critical components used in our chemical delivery subsystems. We operate facilities in California, Minnesota, and Mexico for precision machining of components for sale to our customers and internal use, as well as specialty joining and plating technologies. Many of our facilities are located in close proximity to our largest customers to allow us to collaborate with them on a regular basis and to enable us to deliver our products on a just-in-time basis, regardless of order size or the degree of changes in the applicable configuration or specifications.

We qualify and test key components that are integrated into our subsystems and test our fluid delivery subsystems during the design process and again prior to shipping. Our quality management system allows us to access real-time corrective action reports, non-conformance reports, customer complaints, and controlled documentation. In addition, our senior management conducts quarterly reviews of our quality control system to evaluate effectiveness. Our customers also complete quarterly surveys which allow us to measure satisfaction.

## *Supply Chain Management*

We use a wide range of components and materials in the production of our gas and chemical delivery systems, including filters, mass flow controllers, regulators, pressure transducers, and valves. We obtain components and materials from a large number of sources, including single source and sole source suppliers.

We use consignment material and just-in-time stocking programs to better manage our component inventories and better respond to changing customer requirements. These approaches enable us to significantly reduce our inventory levels and maintain flexibility in responding to changes in product demand. A key part of our strategy is to identify multiple suppliers with a strong global reach that are located within close proximity to our manufacturing locations.

## **Technology Development and Engineering**

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We have a long history of engineering innovation and development. We continue to transition from being an integration engineering and components company into a gas and chemical delivery system and subsystem leader with product development and systems engineering, as well as integration expertise. Our industry continues to experience rapid technological change, requiring us to continuously invest in technology and product development and regularly introduce new products and features that meet our customers' evolving requirements.

We have built a team of fluid delivery experts. As of December 31, 2021, our engineering team consisted of approximately 90 engineers and designers with mechanical, electrical, chemical, systems, and software expertise. Our engineers are closely connected with our customers and typically work at our customers' sites and operate as an extension of our customers' design team. We engineer within our customers' processes, design vaults, drawing standards, and part numbering systems. These development efforts are designed to meet specific customer requirements in the areas of subsystem design, materials, component selection, and functionality. The majority of our sales are generated from projects during which our engineers cooperated with our customer early in the design cycle. Through this early collaborative process, we become an integral part of our customers' design and development processes, and we are able to quickly anticipate and respond to our customers' changing requirements.

Our engineering team also works directly with our suppliers to help them identify new component technologies and make necessary changes in, and enhancements to, the components that we integrate into our products. Our analytical and testing capabilities enable us to evaluate multiple supplier component technologies and provide customers with a wide range of appropriate component and design choices for their gas and chemical delivery systems and other critical subsystems. Our analytical and testing capabilities also help us anticipate technological changes and the requirements in component features for next-generation gas delivery systems and other critical subsystems.

## **Competition**

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The markets for our products are very competitive. When we compete for new business, we face competition from other suppliers of gas or chemical delivery subsystems, and in some cases with the internal manufacturing groups of OEMs. While many OEMs have outsourced the design and manufacturing of their gas and chemical delivery systems, we would face additional competition if in the future these OEMs elected to develop and build these systems internally.

The fluid delivery subsystem market is concentrated, and we face competition primarily from Ultra Clean Technology, with additional competition from regional suppliers. The chemical delivery subsystem, weldments, and precision machining industries are fragmented, and we face competition from numerous smaller suppliers. In addition, the market for tool refurbishment is fragmented, and we compete with many regional competitors. The primary competitive factors we emphasize include:

- customer relationships;
- early engagement with customers;
- large and experienced engineering staff;
- design-to-delivery cycle times; and
- flexible manufacturing capabilities.

We expect our competitors to continue to improve the performance of their current products and to introduce new products or new technologies that could adversely affect sales of our current and future products. In addition, the limited number of potential customers in our industry further intensifies competition. We anticipate that increased competitive pressures may cause intensified price-based competition and we may have to reduce the prices of our products. In addition, we expect to face new competitors as we enter new markets.

## **Intellectual Property**

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Our success depends, in part, upon our ability to develop, maintain, and protect our technology and products and to conduct our business without infringing the proprietary rights of others. We continue to invest in securing intellectual property protection for our technology and products and protect our technology by, among other things, filing patent applications. We also rely on a combination of trade secrets and confidentiality provisions, and to a much lesser extent, copyrights and trademarks, to protect our proprietary rights. We have historically focused our patent protection efforts in the United States. As of December 31, 2021, we had 58 granted patents and 31 pending patent applications, of which 27 and 21 are U.S. patents, respectively. While we consider our patents to be valuable assets, we do not believe the success of our business or our overall operations are dependent upon any single patent or group of related patents. In addition, we do not believe that the loss or expiration of any single patent or group of related patents would materially affect our business.

We develop intellectual property for our own use in our products, as well as for our customers. Intellectual property developed on behalf of our customers is generally owned exclusively by those customers. In addition, we have agreed to indemnify certain of our customers against claims of infringement of the intellectual property rights of others with respect to our products. Historically, we have not paid any claims under these indemnification obligations, and we do not have any pending indemnification claims against us.

## **Human Capital Resources**

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As a globally successful company, we believe that we must be a good corporate citizen, socially responsible, and provide a safe and thriving environment for our employees, who we consider our most important asset. All employees of Ichor are committed to a set of core values that define company culture, represent what we believe, and guide our actions. We recognize and value each person's diverse background and unique skill set and seek to foster an environment that encourages personal growth and professional development. We continue to extend our commitment to diversity, inclusion, and equity through specific policies, practices, employee and manager training, and dedicated executive leadership. Below are details demonstrating our commitment in this area.

### *Demographics*

As of December 31, 2021, we had approximately 1,850 full-time employees and 690 contract or temporary workers, which allow flexibility as business conditions and geographic demand change. Of our total workforce, approximately 90 are engineers, 80 are engaged in sales and marketing, 2,240 are engaged in manufacturing, and 130 perform executive and administrative functions. Our employees are not unionized, and we have no participation in works councils. We have not experienced any material work stoppages at any of our facilities, with the exception of temporary shutdowns at our Malaysia facility in June and July 2021 due to the COVID-19 pandemic. We believe our relationship with our employees to be good.

### *Total Rewards*

As part of our total rewards philosophy, we believe in offering market-competitive compensation and benefits programs for our employees to attract and retain a talented and productive workforce. Our programs are designed to be externally competitive, internally fair and equitable, and our pay-for-performance philosophy aims to reward each individual for their contributions while striving for equal pay for work regardless of gender, race, or ethnicity. We offer a combination of fixed and variable pay, which can vary by business and function. For our leadership and key talent, we provide equity based long-term compensation to create retention and incentive towards the company's strategies and objectives. We provide benefits that are locally competitive, including retirement and savings plans with company contributions, health and welfare plans aimed to provide protection for employees, and in some instances, protection for employees' families, and we provide a discounted employee stock purchase plan. We invest in wellness programs to promote physical, emotional, and financial well-being. In 2021, we continued our employee cash spot bonus program, which recognizes employee contributions to our business.

### *Learning and Development*

We support our employees in their career development by providing a multi-dimensional approach to learning and development, including internal and external opportunities for professional development. This includes tuition reimbursement, online training, on the job training, diversity and inclusion training, and managerial coaching. We actively invest in leadership development, cultivating involvement, engagement, and empowerment of our future leaders in an active investment in succession planning and development. We also believe that maintaining an effective employee review and appraisal process, with regular managerial feedback and coaching, is critical to cultivating a learning organization.

### *Health and Safety*

We are committed to monitoring and maintaining a healthy and safe environment for our employees. We facilitate "skip level" sessions, periodically survey employees, and use other communication forums to allow employees to express their opinions and concerns to management. We maintain a professional Human Resources department and provide a "whistle blower" hotline available to all employees for communicating concerns, including those involving health and safety. During the COVID-19 pandemic, we took necessary steps to ensure the health and safety of our employees and extended communities by following and often exceeding CDC and other government health organization guidelines from around the world. We adopted a policy to support remote and hybrid working options for office staff and made a significant investment in our IT infrastructure to enable uninterrupted virtual communication. For factory workers, we maintain strict guidelines to uphold safety of our workforce and business continuity, including health screenings, social distancing protocols, the use of personal protective equipment, and in certain regions testing protocols.

### *Community Involvement*

We continued our charitable contributions this past year to include educational scholarships specifically earmarked for under-represented minority groups attending college. We invest in local community colleges in the regions where we live and work to support the education and development opportunities supporting the advancement of manufacturing skill sets, such as machinists and welding. We support local foodbanks and other local charities in the communities in which we operate.

### **Environmental, Health, and Safety Regulations**

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Our operations and facilities are subject to federal, state, and local regulatory requirements and foreign laws and regulations, relating to environmental, waste management, and health and safety matters, including those relating to the release, use, storage, treatment, transportation, discharge, disposal, and remediation of contaminants, hazardous substances, and wastes, as well as practices and procedures applicable to the construction and operation of our facilities. We believe that our business is operated in substantial compliance with applicable regulations. However, in the future we could incur substantial costs, including cleanup costs, fines or civil or criminal sanctions, or third-party property damage, or personal injury claims, in the event of violations or liabilities under these laws and regulations, or non-compliance with the environmental permits required at our facilities. Potentially significant expenditures could be required in order to comply with environmental laws that may be adopted or imposed in the future. We are not aware of any threatened or pending environmental investigations, lawsuits, or claims involving us, our operations, or our current or former facilities.

## Available Information

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Our internet address is [ichorsystems.com](http://ichorsystems.com). We make a variety of information available, free of charge, at our Investor Relations website, [ir.ichorsystems.com](http://ir.ichorsystems.com). This information includes our Annual Reports on Form 10-K, our Quarterly Reports on Form 10-Q, our Current Reports on Form 8-K, and any amendments to those reports as soon as reasonably practicable after we electronically file those reports with or furnish them to the Securities and Exchange Commission (“SEC”), as well as our Code of Business Ethics and Conduct and other governance documents.

The SEC maintains an internet site that contains reports, proxy and information statements, and other information regarding issuers that file documents electronically with the SEC at [sec.gov](http://sec.gov).

The contents of these websites, or the information connected to those websites, are not incorporated into this report. References to websites in this report are provided as a convenience and do not constitute, and should not be viewed as, incorporation by reference of the information contained on, or available through, the website.

## ITEM 1A. RISK FACTORS

*There are many factors that affect our business and the results of operations, some of which are beyond our control. The following is a description of some important factors that may cause the actual results of operations in future periods to differ materially from those currently expected or desired.*

### Risk Factor Summary

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The following is a summary of some important risk factors that could adversely affect our business, operations, and financial results.

#### *Economic and Strategic Risks*

- Our business depends significantly on expenditures by manufacturers in the semiconductor capital equipment industry.
- We rely on a very small number of OEM customers for a significant portion of our sales.
- Our customers exert a significant amount of negotiating leverage over us.
- The industries in which we participate are highly competitive and rapidly evolving.
- We are exposed to risks associated with weakness in the global economy and geopolitical instability.
- Our business has been adversely affected by the COVID-19 pandemic and we continue to face risks related to COVID-19.
- If we do not keep pace with developments in the industries we serve and with technological innovation generally, our products and services may not be competitive.
- We must design, develop, and introduce new products that are accepted by OEMs in order to retain our existing customers and obtain new customers.
- Acquisitions may present integration challenges, and the goodwill, indefinite-lived intangible assets, and other long-term assets recorded in connection with such acquisitions may become impaired.
- We are subject to fluctuations in foreign currency exchange rates.

#### *Operational Risks*

- The manufacturing of our products is highly complex.
- Defects in our products could damage our reputation, decrease market acceptance of our products, and result in potentially costly litigation.
- We may incur unexpected warranty and performance guarantee claims.
- Our dependence on a limited number of suppliers may harm our production output and increase our costs.
- We are subject to order and shipment uncertainties.
- Our customers generally require that they qualify our engineering, documentation, manufacturing and quality control procedures.
- We may be subject to interruptions or failures in our information technology systems.
- Certain of our customers require that we consult with them in connection with specified fundamental changes in our business.
- Our business is largely dependent on the know-how of our employees, and we generally do not have an intellectual property position that is protected by patents.
- The technology labor market is very competitive.
- Labor disruptions could materially adversely affect our business.
- Our business is subject to the risks of catastrophic events.

### *Legal and Regulatory Risks*

- Our business is subject to a variety of U.S. and international laws, rules, policies, and other obligations regarding privacy, data protection, and other matters.
- Third parties have claimed and may in the future claim we are infringing their intellectual property.
- From time to time, we may become involved in other litigation and regulatory proceedings.
- As a global company, we are subject to the risks of doing business internationally.
- Changes in U.S. trade policy, tariffs, and import/export regulations may have a material adverse effect on our business.
- We are subject to numerous environmental laws and regulations.
- Failure to maintain effective internal controls in accordance with Section 404 of the Sarbanes-Oxley Act could have a material adverse effect on our business.
- We previously identified material weaknesses in our internal control over financial reporting, and the failure to maintain an effective system of internal controls and procedures may cause investors to lose confidence in our financial reporting.
- The failure of our control systems may materially impact us.
- Compliance with SEC rules relating to “conflict minerals” may require us and our suppliers to incur substantial expense.
- Changes in tax laws, tax rates or tax assets and liabilities could materially adversely affect our financial condition and results of operations.

### *Liquidity and Capital Resources Risks*

- Restrictive covenants under our credit facilities may limit our current and future operations.
- We may not be able to generate sufficient cash to service all of our indebtedness.

### *Ordinary Share Ownership Risks*

- Our quarterly sales and operating results fluctuate significantly from period to period.
- The price of our ordinary shares may fluctuate substantially.
- Future sales of our ordinary shares, or the perception in the public markets that these sales may occur, may depress our share price.
- Our articles of association contain anti-takeover provisions that could adversely affect the rights of our shareholders.
- The issuance of preferred shares could adversely affect holders of ordinary shares.
- Our shareholders may face difficulties in protecting their interests under the laws of the Cayman Islands compared to the laws of the United States.
- Certain judgments obtained against us by our shareholders may not be enforceable.
- There can be no assurance that we will not be a passive foreign investment company for any taxable year.
- If a U.S. person is treated as owning at least 10% of our shares, such person may be subject to adverse U.S. federal income tax consequences.

### **Economic and Strategic Risks**

**Our business depends significantly on expenditures by manufacturers in the semiconductor capital equipment industry, which, in turn, is dependent upon the semiconductor device industry. When that industry experiences cyclical downturns, demand for our products and services is likely to decrease, which would likely result in decreased sales. We may also be forced to reduce our prices during cyclical downturns without being able to proportionally reduce costs.**

Our business, financial condition and results of operations depend significantly on expenditures by manufacturers in the semiconductor capital equipment industry. In turn, the semiconductor capital equipment industry depends upon the current and anticipated market demand for semiconductor devices. The semiconductor device industry is subject to cyclical and volatile fluctuations in supply and demand and in the past has periodically experienced significant downturns, which often occur in connection with declines in general economic conditions, and which have resulted in significant volatility in the semiconductor capital equipment industry. The semiconductor device industry has also experienced recurring periods of over-supply of products that have had a severe negative effect on the demand for capital equipment used to manufacture such products. We have experienced, and anticipate that we will continue to experience, significant fluctuations in customer orders for our products and services as a result of such fluctuations and cycles. Any downturns in the semiconductor device industry could have a material adverse effect on our business, financial condition and results of operations.

In addition, we must be able to appropriately align our cost structure with prevailing market conditions, effectively manage our supply chain and motivate and retain employees, particularly during periods of decreasing demand for our products. We may be forced to reduce our prices during periods of decreasing demand. While we operate under a low fixed cost model, we may not be able to proportionally reduce all of our costs if we are required to reduce our prices. If we are not able to timely and appropriately adapt to the changes in our business environment, our business, financial condition and results of operations will be materially adversely affected. The cyclical and volatile nature of the semiconductor device industry and the absence of long-term fixed or minimum volume contracts make any effort to project a material reduction in future sales volume difficult.

**We rely on a very small number of OEM customers for a significant portion of our sales. Any adverse change in our relationships with these customers could materially adversely affect our business, financial condition and results of operations.**

The semiconductor capital equipment industry is highly concentrated and has experienced significant consolidation in recent years. As a result, a relatively small number of OEM customers have historically accounted for a significant portion of our sales, and we expect this trend to continue for the foreseeable future. For 2021, our top two customers accounted for approximately 53% and 32%, respectively, of sales, and we expect that our sales will continue to be concentrated among a very small number of customers. We do not have any long-term contracts that require customers to place orders with us in fixed or minimum volumes.

Accordingly, the success of our business depends on the success of our customers and those customers and other OEMs continuing to outsource the manufacturing of critical subsystems and process solutions to us. Because of the small number of OEMs in the markets we serve, a number of which are already our customers, it would be difficult to replace lost sales resulting from the loss of, or the reduction, cancellation or delay in purchase orders by, any one of these customers, whether due to a reduction in the amount of outsourcing they do, their giving orders to our competitors, their acquisition by an OEM who is not a customer or with whom we do less business, or otherwise. We have in the past lost business from customers for a number of these reasons. If we are unable to replace sales from customers who reduce the volume of products and services they purchase from us or terminate their relationship with us entirely, such events could have a material adverse impact on our business, financial condition and results of operations.

Additionally, if one or more of the largest OEMs were to decide to single- or sole-source all or a significant portion of manufacturing and assembly work to a single equipment manufacturer, such a development would heighten the risks discussed above.

**Our customers exert a significant amount of negotiating leverage over us, which may require us to accept lower prices and gross margins or take on increased liability risk in order to retain or expand our market share with them.**

By virtue of our largest customers' size and the significant portion of our sales that is derived from them, as well as the competitive landscape, our customers are able to exert significant influence and pricing pressure in the negotiation of our commercial arrangements and the conduct of our business with them. Our customers often require reduced prices or other pricing, quality or delivery commitments as a condition to their purchasing from us in any given period or increasing their purchase volume, which can, among other things, result in reduced gross margins in order to maintain or expand our market share. Our customers' negotiating leverage also can result in customer arrangements that may contain significant liability risk to us. For example, some of our customers require that we provide them indemnification against certain liabilities in our arrangements with them, including claims of losses by their customers caused by our products. Any increase in our customers' negotiating leverage may expose us to increased liability risk in our arrangements with them, which, if realized, may have a material adverse effect on our business, financial condition and results of operations. In addition, new products often carry lower gross margins than existing products for several quarters following their introduction. If we are unable to retain and expand our business with our customers on favorable terms, or if we are unable to achieve gross margins on new products that are similar to or more favorable than the gross margins we have historically achieved, our business, financial condition and results of operations may be materially adversely affected.

**The industries in which we participate are highly competitive and rapidly evolving, and if we are unable to compete effectively, our business, financial condition and results of operations could be materially adversely affected.**

We face intense competition from other suppliers of gas or chemical delivery subsystems, as well as the internal manufacturing groups of OEMs. Increased competition has in the past resulted, and could in the future result, in price reductions, reduced gross margins or loss of market share, any of which would materially adversely affect our business, financial condition and results of operations. We are subject to significant pricing pressure as we attempt to maintain and increase market share with our existing customers. Our competitors may offer reduced prices or introduce new products or services for the markets currently served by our products and services. These products may have better performance, lower prices and achieve broader market acceptance than our products. OEMs also typically own the design rights to their products. Further, if our competitors obtain proprietary rights to these designs such that we are unable to obtain the designs necessary to manufacture products for our OEM customers, our business, financial condition and results of operations could be materially adversely affected.

Certain of our competitors may have or may develop greater financial, technical, manufacturing and marketing resources than we do. As a result, they may be able to respond more quickly to new or emerging technologies and changes in customer requirements, devote greater resources to the development, promotion, sale and support of their products and services, and reduce prices to increase market share. In addition to organic growth by our competitors, there may be merger and acquisition activity among our competitors and potential competitors that may provide our competitors and potential competitors with an advantage over us by enabling them to expand their product offerings and service capabilities to meet a broader range of customer needs. The introduction of new technologies and new market entrants may also increase competitive pressures.

**We are exposed to risks associated with weakness in the global economy and geopolitical instability.**

Our business is dependent upon manufacturers of semiconductor capital equipment, whose businesses in turn ultimately depend largely on consumer spending on semiconductor devices. Continuing uncertainty regarding the global economy continues to pose challenges to our business. Economic uncertainty and related factors, including current unemployment levels, uncertainty in debt markets, geopolitical instability in various parts of the world, fiscal uncertainty in the U.S. economy, market volatility and the slow rate of recovery of many countries from recent recessions, exacerbate negative trends in business and consumer spending and may cause certain of our customers to push out, cancel or refrain from placing orders for products or services, which may reduce sales and materially adversely affect our business, financial condition and results of operations. Difficulties in obtaining capital, uncertain market conditions or reduced profitability may also cause some customers to scale back operations, exit businesses, merge with other manufacturers, or file for bankruptcy protection and potentially cease operations, leading to customers' reduced research and development funding and/or capital expenditures and, in turn, lower orders from our customers and/or additional slow moving or obsolete inventory or bad debt expense for us. These conditions may also similarly affect our key suppliers, which could impair their ability to deliver parts and result in delays for our products or require us to either procure products from higher-cost suppliers, or if no additional suppliers exist, to reconfigure the design and manufacture of our products, and we may be unable to fulfill some customer orders. Any of these conditions or events could have a material adverse effect on our business, financial condition and results of operations.

The withdrawal of the United Kingdom ("U.K.") from the European Union ("E.U.") (commonly referred to as "Brexit") took effect on January 31, 2020. On December 30, 2020, the U.K. passed legislation giving effect to a trade and cooperation agreement with the E.U., which became effective on May 1, 2021. Under the trade and cooperation agreement, U.K. service suppliers no longer benefit from automatic access to the entire E.U. single market, U.K. goods no longer benefit from the free movement of goods and there is no longer the free movement of people between the U.K. and the E.U. Brexit may also lead to legal uncertainty and potentially divergent national laws and regulations as the U.K. determines which E.U. laws to replace or replicate, and those laws and regulations may be cumbersome, difficult or costly in terms of compliance. Any of these effects of Brexit, among others, could adversely affect our business, financial condition, operating results and cash flows.

**Our business has been adversely affected by the COVID-19 pandemic and we continue to face risks related to COVID-19 which could significantly disrupt our operations, customer demand, and our suppliers' ability to support us, resulting in material adverse impacts to our business, financial condition, operating results, and cash flows.**

COVID-19 has had, and continues to have, a significant impact around the world, prompting governments and businesses to take unprecedented measures in response. Such measures have included restrictions on travel and business operations, temporary closures of businesses, and quarantine and shelter-in-place orders. The COVID-19 pandemic has at times significantly curtailed global economic activity and caused significant volatility and disruption in global financial markets.

Shelter-in-place orders and other measures, including work-from-home and social distancing policies implemented to protect employees, have resulted in reduced workforce availability at product manufacturing sites, construction delays, and reduced output at some of our vendors and suppliers. Restrictions on our access to or operation of manufacturing facilities or on our support operations or workforce, or similar limitations for our vendors and suppliers, can impact our ability to meet customer demand and could have a material adverse effect on our financial condition and results of operations, particularly if prolonged. Similarly, current and future restrictions or disruptions of transportation, such as reduced availability of air transport, port closures, and increased border controls or closures, can also impact our ability to meet demand and could materially adversely affect us. Our customers have experienced, and may continue to experience, disruptions in their operations and supply chains, which can result in delayed, reduced, or canceled orders, or collection risks, and which may adversely affect our results of operations.



The spread of COVID-19 has caused us to modify our business practices (including employee travel, employee work locations, cancellation of physical participation in meetings, events and conferences, and social distancing measures), and we may take further actions as may be required by government authorities or that we determine are in the best interests of our employees, customers, partners, vendors, and suppliers. Work-from-home and other measures introduce additional operational risks, including cybersecurity risks, and have affected the way we conduct our product development, validation, and qualification, customer support, and other activities, which could have an adverse effect on our operations. There is no certainty that such measures will be sufficient to mitigate the risks posed by the virus, and illness and workforce disruptions could lead to unavailability of key personnel and harm our ability to perform critical functions.

The extent of the impact of COVID-19 on our operational and financial performance will depend on future developments outside our control, including, but not limited to, the timing, extent, trajectory and duration of the pandemic; the emergence of new variants; the development, availability and effectiveness of vaccines and treatments; and the imposition of protective public safety measures, including travel advisories and restrictions. In most countries in which we operate, the local government authorities have designated our operations as an “essential business,” which allows us to continue to operate our factories and business under specific rules and protocols designed to ensure the health and safety of our employees, suppliers, and visitors to our facilities. However, changes to this classification may result in potential closure of our operations for an uncertain duration, in turn impacting our business. Preventing the effects from, and responding to, this market disruption or any other public health threat, related or otherwise, may further increase costs of our business and may have a material adverse effect on our business, financial condition, and results of operations.

**If we do not keep pace with developments in the industries we serve and with technological innovation generally, our products and services may not be competitive.**

Rapid technological innovation in the markets we serve requires us to anticipate and respond quickly to evolving customer requirements and could render our current product offerings, services and technologies obsolete. In particular, the design and manufacturing of semiconductors is constantly evolving and becoming more complex in order to achieve greater power, performance and efficiency with smaller devices. Capital equipment manufacturers need to keep pace with these changes by refining their existing products and developing new products.

We believe that our future success will depend upon our ability to design, engineer and manufacture products that meet the changing needs of our customers. This requires that we successfully anticipate and respond to technological changes in design, engineering and manufacturing processes in a cost-effective and timely manner. If we are unable to integrate new technical specifications into competitive product designs, develop the technical capabilities necessary to manufacture new products or make necessary modifications or enhancements to existing products, our business, financial condition and results of operations could be materially adversely affected.

The timely development of new or enhanced products is a complex and uncertain process which requires that we:

- design innovative and performance-enhancing features that differentiate our products from those of our competitors;
- identify emerging technological trends in the industries we serve, including new standards for our products;
- accurately identify and design new products to meet market needs;
- collaborate with OEMs to design and develop products on a timely and cost-effective basis;
- ramp-up production of new products, especially new subsystems, in a timely manner and with acceptable yields;
- manage our costs of product development and the costs of producing the products that we sell;
- successfully manage development production cycles; and
- respond quickly and effectively to technological changes or product announcements by others.

If we are unsuccessful in keeping pace with technological developments for the reasons above or other reasons, our business, financial condition and results of operations could be materially adversely affected.

**We must design, develop, and introduce new products that are accepted by OEMs in order to retain our existing customers and obtain new customers.**

The introduction of new products is inherently risky because it is difficult to foresee the adoption of new standards, coordinate our technical personnel and strategic relationships and win acceptance of new products by OEMs. We attempt to mitigate this risk by collaborating with our customers during their design and development processes. We cannot, however, assure you that we will be able to successfully introduce, market and cost-effectively manufacture new products, or that we will be able to develop new or enhanced products and processes that satisfy customer needs. In addition, new capital equipment typically has a lifespan of five to ten years, and OEMs frequently specify which systems, subsystems, components and instruments are to be used in their equipment. Once a specific system, subsystem, component or instrument is incorporated into a piece of capital equipment, it will often continue to be purchased for that piece of equipment on an exclusive basis for 18 to 24 months before the OEM generates enough sales volume to consider adding alternative suppliers. Accordingly, it is important that our products are designed into the new systems introduced by the OEMs. If any of the new products we develop are not launched or successful in the market, our business, financial condition and results of operations could be materially adversely affected.

**Acquisitions may present integration challenges, and if the goodwill, indefinite-lived intangible assets, and other long-term assets recorded in connection with such acquisitions may become impaired, we would be required to record impairment charges, which may be significant.**

We have acquired strategic businesses in the past and if we find appropriate opportunities in the future, we may acquire businesses, products or technologies that we believe are strategic. The process of integrating an acquired business, product or technology may produce unforeseen operating difficulties and expenditures, fail to result in expected synergies or other benefits or absorb significant attention of our management that would otherwise be available for the ongoing development of our business. Our ability to realize anticipated benefits of acquisitions and other strategic initiatives may also be affected by the incurrence of additional indebtedness in connection with financing, regulatory challenges or our ability to retain key employees and customers of the acquired company. In addition, we may record a portion of the assets we acquire as goodwill, other indefinite-lived intangible assets or finite-lived intangible assets. We do not amortize goodwill and indefinite-lived intangible assets, but rather review them for impairment on an annual basis or whenever events or changes in circumstances indicate that their carrying value may not be recoverable. The recoverability of goodwill and indefinite-lived intangible assets is dependent on our ability to generate sufficient future earnings and cash flows. Changes in estimates, circumstances or conditions, resulting from both internal and external factors, could have a significant impact on our fair valuation determination, which could then have a material adverse effect on our business, financial condition and results of operations.

**We are subject to fluctuations in foreign currency exchange rates, which could cause operating results and reported financial results to vary significantly from period to period.**

The vast majority of our sales are denominated in U.S. dollars. Many of the costs and expenses associated with our Singapore, Malaysian and U.K. operations are paid in Singapore dollars, Malaysian ringgit, British pounds, or euros, respectively, and we expect our exposure to these currencies to increase as we increase our operations in those countries. As a result, our risk exposure from transactions denominated in non-U.S. currencies is primarily related to the Singapore dollar, Malaysian ringgit, British pound and euro. In addition, because the majority of our sales are denominated in the U.S. dollar, if one or more of our competitors sells to our customers in a different currency than the U.S. dollar, we are subject to the risk that the competitors' products will be relatively less expensive than our products due to exchange rate effects. We have not historically established transaction-based hedging programs. Foreign currency exchange risks inherent in doing business in foreign countries could have a material adverse effect on our business, financial condition and results of operations.

## Operational Risks

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**The manufacturing of our products is highly complex, and if we are not able to manage our manufacturing and procurement process effectively, our business, financial condition and results of operations may be materially adversely affected.**

The manufacturing of our products is a highly complex process that involves the integration of multiple components and requires effective management of our supply chain while meeting our customers' design-to-delivery cycle time requirements. Through the course of the manufacturing process, our customers may modify design and system configurations in response to changes in their own customers' requirements. In order to rapidly respond to these modifications and deliver our products to our customers in a timely manner, we must effectively manage our manufacturing and procurement process. If we fail to manage this process effectively, we risk losing customers and damaging our reputation. We may also be subject to liability under our agreements with our customers if we or our suppliers fail to re-configure manufacturing processes or components in response to these modifications. In addition, if we acquire inventory in excess of demand or that does not meet customer specifications, we could incur excess or obsolete inventory charges. We have from time to time experienced bottlenecks and production difficulties that have caused delivery delays and quality control problems. These risks are even greater as we seek to expand our business into new subsystems. In addition, certain of our suppliers have been, and may in the future be, forced out of business as a result of the economic environment. In such cases, we may be required to procure products from higher-cost suppliers or, if no additional suppliers exist, reconfigure the design and manufacture of our products. This could materially limit our growth, adversely impact our ability to win future business and have a material adverse effect on our business, financial condition and results of operations.

**Defects in our products could damage our reputation, decrease market acceptance of our products, and result in potentially costly litigation.**

A number of factors, including design flaws, material and component failures, contamination in the manufacturing environment, impurities in the materials used and unknown sensitivities to process conditions, such as temperature and humidity, as well as equipment failures, may cause our products to contain undetected errors or defects. Errors, defects or other problems with our products may:

- cause delays in product introductions and shipments;
- result in increased costs and diversion of development resources;
- cause us to incur increased charges due to unusable inventory;
- require design modifications;
- result in liability for the unintended release of hazardous materials;
- create claims for rework, replacement and/or damages under our contracts with customers, as well as indemnification claims from customers;
- decrease market acceptance of, or customer satisfaction with, our products, which could result in decreased sales and increased product returns; or
- result in lower yields for semiconductor manufacturers.

If any of our products contain defects or have reliability, quality or compatibility problems, our reputation may be damaged and customers may be reluctant to buy our products. We may also face a higher rate of product defects as we increase our production levels in periods of significant growth. Product defects could result in warranty and indemnification liability or the loss of existing customers or impair our ability to attract new customers. In addition, we may not find defects or failures in our products until after they are installed in a manufacturer's fabrication facility. We may have to invest significant capital and other resources to correct these problems. Our current or potential customers also might seek to recover from us any losses resulting from defects or failures in our products. In addition, hazardous materials flow through and are controlled by certain of our products and an unintended release of these materials could result in serious injury or death. Liability claims could require us to spend significant time and money in litigation or pay significant damages.

**We may incur unexpected warranty and performance guarantee claims that could materially adversely affect our business, financial condition and results of operations.**

In connection with our products and services, we provide various product warranties, performance guarantees and indemnification rights. Warranty or other performance guarantee or indemnification claims against us could cause us to incur significant expense to repair or replace defective products or indemnify the affected customer for losses. In addition, quality issues can have various other ramifications, including delays in the recognition of sales, loss of sales, loss of future sales opportunities, increased costs associated with repairing or replacing products, and a negative impact on our reputation, all of which could materially adversely affect our business, financial condition and results of operations.

**Our dependence on a limited number of suppliers may harm our production output and increase our costs, and may prevent us from delivering acceptable products on a timely basis.**

Our ability to meet our customers' demand for our products depends upon obtaining adequate supplies of quality components and other raw materials on a timely basis. In addition, our customers often specify components from particular suppliers that we must incorporate into our products. We also use consignment and just-in-time stocking programs, which means we carry very little inventory of components or other raw materials, and we rely on our suppliers to deliver necessary components and raw materials in a timely manner. However, our suppliers are under no obligation to provide us with components or other raw materials. As a result, the loss of or failure to perform by any of our key suppliers could materially adversely affect our ability to deliver products on a timely basis. In addition, if a supplier was unable to provide the volume of components we require on a timely basis and at acceptable prices and quality, we would have to identify and qualify replacements from alternative sources of supply. However, the process of qualifying new suppliers for complex components is also lengthy and could delay our production. We may also experience difficulty in obtaining sufficient supplies of components and raw materials in times of significant growth in our business. If we are unable to procure sufficient quantities of components or raw materials from suppliers, our customers may elect to delay or cancel existing orders or not place future orders, which could have a material adverse effect on our business, financial condition and results of operations.

**We are subject to order and shipment uncertainties, and any significant reductions, cancellations or delays in customer orders could have a material adverse effect on our business, financial condition and results of operations.**

Our sales are difficult to forecast because we generally do not have a material backlog of unfilled orders and because of the short time frame within which we are often required to manufacture and deliver products to our customers. Most of our sales for a particular quarter depend on customer orders placed during that quarter or shortly before it commences. Our contracts generally do not require our customers to commit to minimum purchase volumes. While most of our customers provide periodic rolling forecasts for product orders, those forecasts do not become binding until a formal purchase order is submitted, which generally occurs only a short time prior to shipment. As a result of the foregoing and the cyclical nature and volatility of the industries we serve, it is difficult to predict future orders with precision. Occasionally, we order component inventory and build products in advance of the receipt of actual customer orders. Customers may cancel order forecasts, change production quantities from forecasted volumes or delay production for reasons beyond our control. Furthermore, reductions, cancellations or delays in customer order forecasts usually occur without penalty to, or compensation from, the customer. Reductions, cancellations or delays in forecasted orders could cause us to hold inventory longer than anticipated, which could reduce our gross profit, restrict our ability to fund our operations and result in unanticipated reductions or delays in sales. If we do not obtain orders as we anticipate, we could have excess components for a specific product and/or finished goods inventory that we would not be able to sell to another customer, likely resulting in inventory write-offs, which could have a material adverse effect on our business, financial condition and results of operations.

**Because our customers generally require that they qualify our engineering, documentation, manufacturing and quality control procedures, our ability to add new customers quickly is limited.**

We are generally required to qualify and maintain our status as a supplier for each of our customers. This is a time-consuming process that involves the inspection and approval by a customer of our engineering, documentation, manufacturing and quality control procedures before that customer will place orders with us. Our ability to lessen the adverse effect of any loss of, or reduction in sales to, an existing customer through the rapid addition of one or more new customers is limited in part because of these qualification requirements. Consequently, the risk that our business, financial condition and results of operations would be materially adversely affected by the loss of, or any reduction in orders by, any of our significant customers is increased. Moreover, if we lost our existing status as a qualified supplier to any of our customers, such customer could cancel its orders from us or otherwise terminate its relationship with us, which could have a material adverse effect on our business, financial condition and results of operations.

**We may be subject to interruptions or failures in our information technology systems.**

We rely on our information technology systems to process transactions, summarize our operating results and manage our business. Our information technology systems are subject to damage or interruption from power outages, computer and telecommunications failures, computer viruses, cyber-attack or other security breaches, catastrophic events, such as fires, floods, earthquakes, tornadoes, hurricanes, severe weather, acts of war or terrorism, and usage errors by our employees. If our information technology systems are damaged or cease to function properly, we may have to make a significant investment to fix or replace them, and we may suffer loss of critical data and interruptions or delays in our operations.

We may be the target of attempted cyber-attacks, computer viruses, malicious code, phishing attacks, denial of service attacks and other information security threats. To date, cyber-attacks have not had a material impact on our financial condition, results or business; however, we could suffer material financial or other losses in the future and we are not able to predict the severity of these attacks. Our risk and exposure to these matters remains heightened because of, among other things, the evolving nature of these threats, the current global economic and political environment, our prominent size and scale, the outsourcing of some of our business operations, the ongoing shortage of qualified cyber-security professionals, and the interconnectivity and interdependence of third parties to our systems. The occurrence of a cyber-attack, breach, unauthorized access, misuse, computer virus or other malicious code or other cyber-security event could jeopardize or result in the unauthorized disclosure, gathering, monitoring, misuse, corruption, loss or destruction of confidential and other information that belongs to us, our customers, our counterparties, third-party service providers or borrowers that is processed and stored in, and transmitted through, our computer systems and networks. The occurrence of such an event could also result in damage to our software, computers or systems, or otherwise cause interruptions or malfunctions in our, our customers', our counterparties' or third parties' operations. This could result in significant losses, loss of customers and business opportunities, reputational damage, litigation, regulatory fines, penalties or intervention, reimbursement or other compensatory costs, or otherwise adversely affect our business, financial condition or results of operations.

The reliability and capacity of our information technology systems is critical to our operations and the implementation of our growth initiatives. Any material disruption in our information technology systems, or delays or difficulties in implementing or integrating new systems or enhancing current systems, could have an adverse effect on our business, and results of operations.

**Certain of our customers require that we consult with them in connection with specified fundamental changes in our business, and address any concerns or requests such customer may have in connection with a fundamental change.**

Certain of our key customers require that we consult with them in connection with specified fundamental changes in our business, including, among other things:

- entering into any new line of business;
- amending or modifying our organizational documents;
- selling all or substantially all of our assets, or merging or amalgamating with a third party;
- incur borrowings in excess of a specific amount;
- making senior management changes;
- entering into any joint venture arrangement; and
- effecting an initial public offering.

These customers do not have contractual approval or veto rights with respect to any fundamental changes in our business. However, our failure to consult with such customers or to satisfactorily respond to their requests in connection with any such fundamental change could constitute a breach of contract or otherwise be detrimental to our relationships with such customers, which could have a material adverse effect on our business, financial condition and results of operations.

**Our business is largely dependent on the know-how of our employees, and we generally do not have an intellectual property position that is protected by patents.**

We believe that the success of our business depends in part on our proprietary technology, information, processes and know-how and on our ability to operate without infringing on the proprietary rights of third parties. We rely on a combination of trade secrets and contractual confidentiality provisions and, to a much lesser extent, patents, copyrights and trademarks to protect our proprietary rights. Accordingly, our intellectual property position is more vulnerable than it would be if it were protected primarily by patents. We cannot assure you that we have adequately protected or will be able to adequately protect our technology, that our competitors will not be able to utilize our existing technology or develop similar technology independently, that the claims allowed with respect to any patents held by us will be broad enough to protect our technology or that foreign intellectual property laws will adequately protect our intellectual property rights. If we fail to protect our proprietary rights successfully, our competitive position could suffer. Any future litigation to enforce patents issued to us, to protect trade secrets or know-how possessed by us or to defend ourselves or to indemnify others against claimed infringement of the rights of others could have a material adverse effect on our business, financial condition and results of operations.

**The technology labor market is very competitive, and our business will suffer if we are unable to hire and retain key personnel.**

Our future success depends in part on the continued service of our key executive officers, as well as our research, engineering, sales and manufacturing personnel, most of whom are not subject to employment or non-competition agreements. Competition for qualified personnel in the technology industry is particularly intense, and we operate in geographic locations in which labor markets are competitive. Our management team has significant industry experience and deep customer relationships, and therefore would be difficult to replace. In addition, our business is dependent to a significant degree on the expertise and relationships which only a limited number of engineers possess. Many of these engineers often work at our customers' sites and serve as an extension of our customers' product design teams. The loss of any of our key executive officers or key engineers and other personnel, including our engineers working at our customers' sites, or the failure to attract additional personnel as needed, could have a material adverse effect on our business, financial condition and results of operations and could lead to higher labor costs, the use of less-qualified personnel and the loss of customers. In addition, if any of our key executive officers or other key employees were to join a competitor or form a competing company, we could lose customers, suppliers, know-how and key personnel.

We do not maintain key-man life insurance with respect to any of our employees. Our business will suffer if we are unable to attract, employ and retain highly skilled personnel.

**Labor disruptions could materially adversely affect our business, financial condition and results of operations.**

As of December 31, 2021, we had approximately 1,850 full time employees and 690 contract or temporary workers worldwide. None of our employees are unionized, but in various countries, local law requires our participation in works councils. While we have not experienced any material work stoppages at any of our facilities, any stoppage or slowdown could cause material interruptions in manufacturing, and we cannot assure you that alternate qualified capacity would be available on a timely basis, or at all. As a result, labor disruptions at any of our facilities could materially adversely affect our business, financial condition and results of operations.

**Our business is subject to the risks of severe weather, earthquakes, fire, power outages, floods, and other catastrophic events, including weather events resulting from climate change, and to interruption by man-made disruptions, such as terrorism.**

Our facilities could be subject to a catastrophic loss caused by natural disasters, including severe weather, fires, earthquakes or other events, including a terrorist attack, a pandemic, epidemic or outbreak of a disease (including COVID-19). Increasing concentrations of greenhouse gasses in the Earth's atmosphere and climate change may produce significant physical effects on weather conditions, such as increased frequency and severity of droughts, storms, floods, and other climatic events. While we maintain disaster recovery plans, they might not adequately protect us. Despite any precautions we take for natural disasters or other catastrophic events, these events, including terrorist attack, a pandemic, epidemic or outbreak of a disease (including COVID-19), hurricanes, fire, floods and ice and snow storms, could result in damage to and closure of our or our customers' facilities or the infrastructure on which such facilities rely. Additionally, it could delay production and shipments, reduce sales, result in large expenses to repair or replace the facility and we may experience extended power outages at our facilities. Disruption in supply resulting from natural disasters or other causalities or catastrophic events may result in certain of our suppliers being unable to deliver sufficient quantities of components or raw materials at all or in a timely manner, disruptions in our operations or disruptions in our customers' operations. Although we carry business interruption insurance policies and typically have provisions in our contracts that protect us in certain events, our coverage might not be adequate to compensate us for all losses that may occur. To the extent that natural disasters or other calamities or causalities should result in delays or cancellations of customer orders, or the delay in the manufacture or shipment of our products, our business, financial condition and results of operations would be adversely affected.

## Legal and Regulatory Risks

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### **Our business is subject to a variety of U.S. and international laws, rules, policies, and other obligations regarding privacy, data protection, and other matters.**

We are subject to federal, state, and international laws relating to the collection, use, retention, security, and transfer of customer, employee, and business partner personally identifiable information (“PII”), including the European Union’s General Data Protection Regulation (“GDPR”), which came into effect in May 2018 and the California Consumer Privacy Act (“CCPA”), which came into effect on January 1, 2020. In many cases, these laws apply not only to third-party transactions, but also to transfers of information between one company and its subsidiaries, and among the subsidiaries and other parties with which we have commercial relations. The introduction of new products or expansion of our activities in certain jurisdictions may subject us to additional laws and regulations. Foreign data protection, privacy, and other laws and regulations, including GDPR, can be more restrictive than those in the United States. These U.S. federal and state and foreign laws and regulations, including GDPR, which can be enforced by private parties or government entities, are constantly evolving and can be subject to significant change. In addition, the application and interpretation of these laws and regulations, including GDPR, are often uncertain, particularly in the new and rapidly evolving industry in which we operate, and may be interpreted and applied inconsistently from country to country and inconsistently with our current policies and practices. These existing and proposed laws and regulations can be costly to comply with and can delay or impede the development of new products, result in negative publicity, increase our operating costs, require significant management time and attention, and subject us to inquiries or investigations, claims or other remedies, including fines, which may be significant, or demands that we modify or cease existing business practices.

A failure by us, our suppliers, or other parties with whom we do business to comply with posted privacy policies or with other federal, state, or international privacy-related or data protection laws and regulations, including GDPR and CCPA, could result in proceedings against us by governmental entities or others, which could have a material adverse effect on our business, results of operations, and financial condition.

### **Third parties have claimed and may in the future claim we are infringing their intellectual property, which could subject us to litigation or licensing expenses, and we may be prevented from selling our products if any such claims prove successful.**

We may in the future receive claims that our products, processes or technologies infringe the patents or other proprietary rights of third parties. In addition, we may be unaware of intellectual property rights of others that may be applicable to our products. Any litigation regarding our patents or other intellectual property could be costly and time-consuming and divert our management and key personnel from our business operations, any of which could have a material adverse effect on our business, financial condition and results of operations. The complexity of the technology involved in our products and the uncertainty of intellectual property litigation increase these risks. Claims of intellectual property infringement may also require us to enter into costly license agreements. However, we may not be able to obtain licenses on terms acceptable to us, or at all. We also may be subject to significant damages or injunctions against the development, manufacture and sale of certain of our products if any such claims prove successful. We also rely on design specifications and other intellectual property of our customers in the manufacture of products for such customers. While our customer agreements generally provide for indemnification of us by a customer if we are subjected to litigation for third-party claims of infringement of such customer’s intellectual property, such indemnification provisions may not be sufficient to fully protect us from such claims, or our customers may breach such indemnification obligations to us, which could result in costly litigation to defend against such claims or enforce our contractual rights to such indemnification.

### **From time to time, we may become involved in other litigation and regulatory proceedings, which could require significant attention from our management and result in significant expense to us and disruptions in our business.**

In addition to any litigation related to our intellectual property rights, we may in the future be named as a defendant from time to time in other lawsuits and regulatory actions relating to our business, such as commercial contract claims, employment claims and tax examinations, some of which may claim significant damages or cause us reputational harm. Due to the inherent uncertainties of litigation and regulatory proceedings, we cannot predict the ultimate outcome of any such proceeding. An unfavorable outcome could have a material adverse effect on our business, financial condition and results of operations or limit our ability to engage in certain of our business activities. In addition, regardless of the outcome of any litigation or regulatory proceeding, such proceedings are often expensive, time-consuming and disruptive to normal business operations and require significant attention from our management. As a result, any such lawsuits or proceedings could materially adversely affect our business, financial condition and results of operations.

**As a global company, we are subject to the risks of doing business internationally, including periodic foreign economic downturns and political instability, which may adversely affect our sales and cost of doing business in those regions of the world.**

Foreign economic downturns have adversely affected our business and results of operations in the past and could adversely affect our business and results of operations in the future. In addition, other factors relating to the operation of our business outside of the United States may have a material adverse effect on our business, financial condition and results of operations in the future, including:

- the imposition of governmental controls or changes in government regulations, including tax regulations;
- difficulties in enforcing our intellectual property rights;
- difficulties in developing relationships with local suppliers;
- difficulties in attracting new international customers;
- difficulties in complying with foreign and international laws and treaties;
- restrictions on the export of technology;
- compliance with U.S. and international laws involving international operations, including the Foreign Corrupt Practices Act, export control laws and export license requirements;
- difficulties in achieving headcount reductions due to unionized labor and works councils;
- restrictions on transfers of funds and assets between jurisdictions;
- geo-political instability; and
- trade restrictions and changes in taxes and tariffs.

In the future, we may seek to expand our presence in certain foreign markets or enter emerging markets. Evaluating or entering into an emerging market may require considerable management time, as well as start-up expenses for market development before any significant sales and earnings are generated. Operations in new foreign markets may achieve low margins or may be unprofitable, and expansion in existing markets may be affected by local political, economic and market conditions. As we continue to operate our business globally, our success will depend, in part, on our ability to anticipate and effectively manage these and the other risks noted above. The impact of any one or more of these factors could materially adversely affect our business, financial condition and results of operations.

**Changes in U.S. trade policy, tariffs, and import/export regulations may have a material adverse effect on our business, financial condition and results of operations.**

Our international operations and transactions also depend upon favorable trade relations between the United States and the foreign countries in which our customers and suppliers have operations. Changes in U.S. or international social, political, regulatory and economic conditions or in laws and policies governing foreign trade, manufacturing, development and investment in the territories or countries where we currently sell our products or conduct our business, as well as any negative sentiment toward the U.S. as a result of such changes, could adversely affect our business. Legislators in the U.S. may institute or propose changes in trade policies that include the negotiation or termination of trade agreements, the imposition of higher tariffs on imports into the U.S., economic sanctions on individuals, corporations or countries, and other government regulations affecting trade between the U.S. and other countries where we conduct our business. It may be time-consuming and expensive for us to alter our business operations in order to adapt to or comply with any such changes.

As a result of recent trade policy changes in the U.S., there may be greater restrictions and economic disincentives on international trade. The recent tariffs and other changes in U.S. trade policy could trigger retaliatory actions by affected countries, and certain foreign governments have instituted or are considering imposing trade sanctions on certain U.S. goods. We do a significant amount of business that would be impacted by changes to the trade policies of the U.S. and foreign countries (including governmental action related to tariffs, international trade agreements, or economic sanctions). Such changes have the potential to adversely impact the U.S. economy or certain sectors thereof, our industry and the global demand for our products. We may not succeed in developing and implementing policies and strategies to counter the foregoing factors effectively in each location where we do business and the foregoing factors may cause a reduction in our sales, profitability or cash flows, or cause an increase in our liabilities.



**We are subject to numerous environmental laws and regulations, including laws and regulations addressing climate change, which could require us to incur environmental liabilities, increase our manufacturing and related compliance costs or otherwise adversely affect our business.**

We are subject to a variety of federal, state, local and foreign laws and regulations governing the protection of the environment or addressing climate change. These environmental laws and regulations include those relating to the use, storage, handling, discharge, emission, disposal and reporting of toxic, volatile or otherwise hazardous materials used in our manufacturing processes. These materials may have been or could be released into the environment at properties currently or previously owned or operated by us, at other locations during the transport of materials or at properties to which we send substances for treatment or disposal. In addition, we may not be aware of all environmental laws or regulations that could subject us to liability in the United States or internationally. If we were to violate or become liable under environmental laws and regulations or become non-compliant with permits required at some of our facilities, we could be held financially responsible and incur substantial costs, including cleanup costs, fines and civil or criminal sanctions, third-party property damage or personal injury claims. Concern over climate change may result in new or increased legal and regulatory requirements to reduce or mitigate the effects of climate change. Increased costs of energy or compliance with emissions standards due to legal or regulatory requirements related to climate change may cause disruptions in or increased costs associated with manufacturing our products.

**Failure to maintain effective internal controls in accordance with Section 404 of the Sarbanes-Oxley Act could have a material adverse effect on our business and stock price.**

As a publicly traded company, we are required to comply with the SEC's rules implementing Section 302 and 404 of the Sarbanes-Oxley Act, which require management to certify financial and other information in our quarterly and annual reports and provide an annual management report on the effectiveness of controls over financial reporting. Because we are no longer an emerging growth company, our independent registered public accounting firm is required to attest to the effectiveness of our internal control over financial reporting under Section 404(b) of the Sarbanes-Oxley Act. Accordingly, we may incur additional costs to comply with Section 404(b).

If we identify weaknesses in our internal control over financial reporting, are unable to comply with the requirements of Section 404 in a timely manner or to assert that our internal control over financial reporting is effective, or if our independent registered public accounting firm is unable to express an unqualified opinion as to the effectiveness of our internal control over financial reporting, investors may lose confidence in the accuracy and completeness of our financial reports and the market price of our common stock could be negatively affected, and we could become subject to investigations by NASDAQ, the SEC or other regulatory authorities, which could require additional financial and management resources.

**We previously identified material weaknesses in our internal control over financial reporting, and if we fail to maintain an effective system of internal controls, disclosure controls, and procedures, we may not be able to accurately report our financial results, prevent fraud, or file our periodic reports in a timely manner, which may cause investors to lose confidence in our reported financial information and may lead to a decline in our share price.**

In 2021, we identified material weaknesses related to ineffective information technology general controls ("ITGCs") in the areas of user access and program change management over certain information technology systems ("IT Systems") that support our financial reporting processes. For a detailed summary of these material weaknesses, including our remediation steps, please refer to *Item 9A – Controls and Procedures*. In addition, we have identified material weaknesses in our internal controls over financial reporting in prior years. If we are unable to maintain effective internal control over financial reporting or disclosure controls and procedures, our ability to record, process, and report financial information accurately and to prepare financial statements within required time periods could be adversely affected, which could subject us to litigation, investigations, or penalties; negatively affect our liquidity, our access to capital markets, perceptions of our creditworthiness, our ability to complete acquisitions, our ability to maintain compliance with covenants under our debt instruments or derivative arrangements regarding the timely filing of periodic reports, or investor confidence in our financial reporting, any of which may divert management resources or cause our stock price to decline. Further, remediation of a material weakness does not provide assurance that our remediation or other controls will continue to operate properly or remain adequate.

**There are limitations on the effectiveness of controls, and the failure of our control systems may materially and adversely impact us.**

We do not expect that disclosure controls or internal controls over financial reporting will prevent all errors and all fraud. A control system, no matter how well designed and operated, can provide only reasonable, not absolute, assurance that the control system's objectives will be met. Further, the design of a control system must reflect the fact that there are resource constraints and the benefits of controls must be considered relative to their costs. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, have been detected. Failure of our control systems to prevent error or fraud could have a material adverse effect on our business, financial condition and results of operations.

**Compliance with SEC rules relating to "conflict minerals" may require us and our suppliers to incur substantial expense and may result in disclosure by us that certain minerals used in products we manufacture are not "DRC conflict free."**

Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, or the Dodd-Frank Act, required the SEC to promulgate rules requiring disclosure by a public company of any "conflict minerals" (tin, tungsten, tantalum and gold) necessary to the functionality or production of a product manufactured or contracted to be manufactured by such company. The SEC adopted final rules in 2012 which took effect at the end of January 2013. Because we manufacture products which may contain tin, tungsten, tantalum or gold, we are required under these rules to determine whether those minerals are necessary to the functionality or production of our products and, if so, conduct a country of origin inquiry with respect to all such minerals. If any such minerals may have originated in the Democratic Republic of the Congo, or the DRC, or any of its adjoining countries, or the "covered countries," then we and our suppliers must conduct diligence on the source and chain of custody of the conflict minerals to determine if they did originate in one of the covered countries and, if so, whether they financed or benefited armed groups in the covered countries. Disclosures relating to the products which may contain conflict minerals, the country of origin of those minerals and whether they are "DRC conflict free" must be provided in a Form SD (and accompanying conflict minerals report if one is required to disclose the diligence undertaken by us in sourcing the minerals and our conclusions relating to such diligence). If we are required to submit a conflict minerals report, that report must be audited by an independent auditor pursuant to existing government auditing standards, unless (for the first two years) we are unable to determine whether the minerals are "DRC conflict free." Compliance with this disclosure rule may be very time consuming for management and our supply chain personnel (as well as time consuming for our suppliers) and could involve the expenditure of significant amounts of money and resources by us and them. Disclosures by us mandated by the rules which are perceived by the market to be "negative" may cause customers to refuse to purchase our products. We are currently unable to assess the cost of compliance with this rule, and we cannot assure you that such cost will not have a material adverse effect on our business, financial condition and results of operations.

**Changes in tax laws, tax rates or tax assets and liabilities could materially adversely affect our financial condition and results of operations.**

As a global company, we are subject to taxation in the United States and various other countries. Significant judgment is required to determine and estimate worldwide tax liabilities. Our future annual and quarterly tax rates could be affected by numerous factors, including changes in applicable tax laws, the amount and composition of pre-tax income in countries with differing tax rates or valuation of our deferred tax assets and liabilities. We have significant operations in the United States and our holding company structure includes entities organized in the Cayman Islands, Netherlands, Singapore and Scotland. As a result, changes in applicable tax laws in these jurisdictions could have a material adverse effect on our financial condition and results of operations.

We are also subject to regular examination by the Internal Revenue Service and other tax authorities, and from time to time we initiate amendments to previously filed tax returns. We regularly assess the likelihood of favorable or unfavorable outcomes resulting from these examinations and amendments to determine the adequacy of our provision for income taxes, which requires estimates and judgments. Although we believe our tax estimates are reasonable, we cannot assure you that the tax authorities will agree with such estimates. We may have to engage in litigation to achieve the results reflected in the estimates, which may be time-consuming and expensive. We cannot assure you that we will be successful or that any final determination will not be materially different from the treatment reflected in our historical income tax provisions and accruals, which could materially and adversely affect our financial condition and results of operations.

## Liquidity and Capital Resources Risks

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**Restrictive covenants under our credit facilities may limit our current and future operations. If we fail to comply with those covenants, the lenders could cause outstanding amounts, which are currently substantial, to become immediately due and payable, and we might not have sufficient funds and assets to pay such loans.**

As of December 31, 2021, we had total principal outstanding of \$150.0 million under our term loan facility and \$145.0 million under our revolving credit facility (collectively “credit facilities”). We may incur additional indebtedness in the future. Our credit facilities contain certain restrictive covenants and conditions, including limitations on our ability to, among other things:

- incur additional indebtedness or contingent obligations;
- create or incur liens, negative pledges or guarantees;
- make investments;
- make loans;
- sell or otherwise dispose of assets;
- merge, consolidate or sell substantially all of our assets;
- make certain payments on indebtedness;
- pay dividends on or make distributions in respect of capital stock or make certain other restricted payments or investments;
- enter into certain agreements that restrict distributions from restricted subsidiaries;
- enter into transactions with affiliates;
- change the nature of our business; and
- amend the terms of our organizational documents.

As a result of these covenants, we may be restricted in our ability to pursue new business opportunities or strategies or to respond quickly to changes in the industries that we serve. A violation of any of these covenants would be deemed an event of default under our credit facilities. In such event, upon the election of the lenders, the loan commitments under our credit facilities would terminate and the principal amount of the loans and accrued interest then outstanding would be due and payable immediately. A default may also result in the acceleration of any other debt to which a cross-acceleration or cross-default provision applies. In the event our lenders accelerate the repayment of our borrowings, we cannot assure you that we and our subsidiaries would have sufficient funds to repay such indebtedness or be able to obtain replacement financing on a timely basis or at all. These events could force us into bankruptcy or liquidation, which could have a material adverse effect on our business, financial condition and results of operations.

We also may need to negotiate changes to the covenants in the agreements governing our credit facilities in the future if there are material changes in our business, financial condition or results of operations, but we cannot assure you that we will be able to do so on terms favorable to us or at all.

**We may not be able to generate sufficient cash to service all of our indebtedness, including under our credit facilities, and may be forced to take other actions to satisfy our obligations under our indebtedness, which may not be successful.**

Our ability to make scheduled payments on or to refinance our indebtedness, including under our credit facilities, depends on our financial condition and results of operations, which are subject to prevailing economic and competitive conditions and other factors beyond our control. We may be unable to maintain a level of cash flows from operating activities sufficient to permit us to fund our day-to-day operations or to pay the principal, premium, if any, and interest on our indebtedness. If our cash flows and capital resources are insufficient to fund our debt service obligations, we could face substantial liquidity problems and could be forced to reduce or delay investments and capital expenditures or to sell assets or operations, seek additional capital or restructure or refinance our indebtedness. If we cannot make scheduled payments on our debt, we will be in default and, as a result, the lenders under our credit facilities could terminate their commitments to loan money, or foreclose against the assets securing such borrowings, and we could be forced into bankruptcy or liquidation, in each case, which would have a material adverse effect on our business, financial condition and results of operations.

## Ordinary Share Ownership Risks

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**Our quarterly sales and operating results fluctuate significantly from period to period, and this may cause volatility in our share price.**

Our quarterly sales and operating results have fluctuated significantly in the past, and we expect them to continue to fluctuate in the future for a variety of reasons, including the following:

- demand for and market acceptance of our products as a result of the cyclical nature of the industries we serve or otherwise, often resulting in reduced sales during industry downturns and increased sales during periods of industry recovery or growth;
- overall economic conditions;

- changes in the timing and size of orders by our customers;
- strategic decisions by our customers to terminate their outsourcing relationship with us or give market share to our competitors;
- consolidation by our customers;
- cancellations and postponements of previously placed orders;
- pricing pressure from either our competitors or our customers, resulting in the reduction of our product prices or loss of market share;
- disruptions or delays in the manufacturing of our products or in the supply of components or raw materials that are incorporated into or used to manufacture our products, thereby causing us to delay the shipment of products;
- decreased margins for several or more quarters following the introduction of new products, especially as we introduce new subsystems or other products or services;
- changes in design-to-delivery cycle times;
- inability to reduce our costs quickly in step with reductions in our prices or in response to decreased demand for our products;
- changes in our mix of products sold;
- write-offs of excess or obsolete inventory;
- one-time expenses or charges; and
- announcements by our competitors of new products, services or technological innovations, which may, among other things, render our products less competitive.

As a result of the foregoing, we believe that quarter-to-quarter comparisons of our sales and results of operations may not be meaningful and that these comparisons may not be an accurate indicator of our future performance. Changes in the timing or terms of a small number of transactions could disproportionately affect our results of operations in any particular quarter. Moreover, our results of operations in one or more future quarters may fail to meet our guidance or the expectations of securities analysts or investors. If this occurs, we would expect to experience an immediate and significant decline in the trading price of our ordinary shares.

**The price of our ordinary shares may fluctuate substantially.**

You should consider an investment in our ordinary shares to be risky, and you should invest in our ordinary shares only if you can withstand a significant loss and wide fluctuations in the market value of your investment. Some factors that may cause the market price of our ordinary shares to fluctuate, in addition to the other risks mentioned in this report, are:

- our announcements or our competitors' announcements regarding new products or services, enhancements, significant contracts, acquisitions or strategic investments;
- changes in earnings estimates or recommendations by securities analysts, if any, who cover our ordinary shares;
- speculation about our business in the press or investment community;
- failures to meet external expectations or management guidance;
- fluctuations in our quarterly financial results or the quarterly financial results of companies perceived to be similar to us;
- changes in our capital structure or dividend policy, future issuances of securities, sales of large blocks of ordinary shares by our shareholders, our incurrence of additional debt or our failure to comply with the agreements governing our Credit Facilities;
- our decision to enter new markets;
- reputational issues;
- changes in general economic and market conditions in any of the regions in which we conduct our business;
- material litigation or government investigations;
- changes in industry conditions or perceptions; and
- changes in applicable laws, rules or regulations.

In addition, if the market for stocks in our industry or industries related to our industry, or the stock market in general, experiences a loss of investor confidence, the trading price of our ordinary shares could decline for reasons unrelated to our business, financial condition and results of operations. If any of the foregoing occurs, it could cause our share price to fall and may expose us to lawsuits that, even if unsuccessful, could be costly to defend and a distraction to management.

**Future sales of our ordinary shares, or the perception in the public markets that these sales may occur, may depress our share price.**

We may seek to raise additional capital from time to time in the future, which may involve the issuance of additional ordinary shares, or securities convertible into ordinary shares. Sales of substantial amounts of our ordinary shares in the public market, or the perception that these sales could occur, could adversely affect the price of our ordinary shares and could impair our ability to raise capital through the sale of additional shares.

**Our articles of association contain anti-takeover provisions that could adversely affect the rights of our shareholders.**

Our articles of association contain provisions to limit the ability of others to acquire control of our company or cause us to engage in change-of control transactions, including, among other things:

- provisions that authorize our Board of Directors, without action by our shareholders, to issue additional ordinary shares and preferred shares with preferential rights determined by our Board of Directors;
- provisions that permit only a majority of our Board of Directors or the chairman of our Board of Directors to call shareholder meetings and therefore do not permit shareholders to call shareholder meetings;
- provisions that impose advance notice requirements, minimum shareholding periods and ownership thresholds, and other requirements and limitations on the ability of shareholders to propose matters for consideration at shareholder meetings; and
- a staggered board whereby our directors are divided into three classes, with each class subject to re-election once every three years on a rotating basis.

These provisions could have the effect of depriving our shareholders of an opportunity to sell their shares at a premium over prevailing market prices by discouraging third parties from seeking to obtain control of our company in a tender offer or similar transaction. With our staggered Board of Directors, at least two annual meetings of shareholders are generally required in order to effect a change in a majority of our directors. Our staggered Board of Directors can discourage proxy contests for the election of our directors and purchases of substantial blocks of our shares by making it more difficult for a potential acquirer to gain control of our Board of Directors in a relatively short period of time.

**The issuance of preferred shares could adversely affect holders of ordinary shares.**

Our Board of Directors is authorized to issue preferred shares without any action on the part of holders of our ordinary shares. Our Board of Directors also has the power, without shareholder approval, to set the terms of any such preferred shares that may be issued, including voting rights, dividend rights, and preferences over our ordinary shares with respect to dividends or if we liquidate, dissolve or wind up our business and other terms. If we issue preferred shares in the future that have preference over our ordinary shares with respect to the payment of dividends or upon our liquidation, dissolution or winding up, or if we issue preferred shares with voting rights that dilute the voting power of our ordinary shares, the rights of holders of our ordinary shares or the price of our ordinary shares could be adversely affected.

**Our shareholders may face difficulties in protecting their interests as a shareholder, as Cayman Islands law provides substantially less protection when compared to the laws of the United States.**

Our corporate affairs are governed by our amended and restated memorandum and articles of association and by the Companies Law (2013 Revision) and common law of the Cayman Islands. The rights of shareholders to take legal action against our directors and us, actions by minority shareholders and the fiduciary responsibilities of our directors to us under Cayman Islands law are to a large extent governed by the common law of the Cayman Islands. The common law of the Cayman Islands is derived in part from comparatively limited judicial precedent in the Cayman Islands as well as from English common law, which has persuasive, but not binding, authority on a court in the Cayman Islands. The rights of our shareholders and the fiduciary responsibilities of our directors under Cayman Islands law are not as clearly established as they would be under statutes or judicial precedents in the United States. In particular, the Cayman Islands have a less exhaustive body of securities laws as compared to the United States. In addition, Cayman Islands companies may not have standing to initiate a shareholder derivative action before the United States federal courts.

As a result of all of the above, our shareholders may have more difficulty in protecting their interests through actions against us or our officers, directors or major shareholders than would shareholders of a corporation incorporated in a jurisdiction in the United States.

**Certain judgments obtained against us by our shareholders may not be enforceable.**

We are a Cayman Islands company and a portion our assets are located outside of the United States. As a result, it may be difficult or impossible for you to bring an action against us in the United States in the event that you believe that your rights have been infringed under U.S. federal securities laws or otherwise. Even if you are successful in bringing an action of this kind, the laws of the Cayman Islands may render you unable to enforce a judgment against our assets. There is no statutory recognition in the Cayman Islands of judgments obtained in the United States, although the courts of the Cayman Islands will generally recognize and enforce a non-penal judgment of a foreign court of competent jurisdiction without retrial on the merits.

**There can be no assurance that we will not be a passive foreign investment company for any taxable year, which could result in adverse U.S. federal income tax consequences to U.S. Holders of our ordinary shares.**

A non-U.S. corporation will be a passive foreign investment company, or PFIC, for any taxable year if either (i) at least 75% of its gross income for such year is passive income or (ii) at least 50% of the value of its assets (generally based on an average of the quarterly values of the assets) during such year is attributable to assets that produce or are held for the production of passive income. Our PFIC status for any taxable year can be determined only after the close of that year.

Based on the value of our assets and the composition of our income and assets, we do not believe we were treated as a PFIC for U.S. federal income purposes for our taxable year ended December 31, 2021. The determination of PFIC status is based on an annual determination that cannot be made until the close of a taxable year, involves extensive factual investigation, including ascertaining the fair market value of all of our assets on a quarterly basis and the character of each item of income that we earn, and is subject to uncertainty in several respects. Accordingly, we cannot assure you that we were not treated as a PFIC for our taxable year ended December 31, 2021 or any prior taxable year, that we will not be treated as a PFIC for the current or any future taxable year or that the IRS will not take a position contrary to any position that we take.

If we are a PFIC for any taxable year during which a U.S. person holds ordinary shares, certain adverse U.S. federal income tax consequences could apply to such U.S. person. You are strongly urged to consult your tax advisors as to whether or not we will be a PFIC and the consequences of such status on an investment in our shares in your particular circumstances.

**If a U.S. person is treated as owning at least 10% of our shares, such person may be subject to adverse U.S. federal income tax consequences.**

If a U.S. person is treated as owning (directly, indirectly, or constructively) at least 10% of the value or voting power of our shares, such person may be treated as a “United States shareholder” with respect to each “controlled foreign corporation” in our group (if any). Because our group includes one or more U.S. subsidiaries, in certain circumstances we could be treated as a controlled foreign corporation and/or certain of our non-U.S. subsidiaries could be treated as controlled foreign corporations (regardless of whether we are or are not treated as a controlled foreign corporation).

A United States shareholder of a controlled foreign corporation may be required to annually report and include in its U.S. taxable income its pro rata share of “Subpart F income,” “global intangible low-taxed income” and investments in United States property by controlled foreign corporations, whether or not we make any distributions. An individual that is a United States shareholder with respect to a controlled foreign corporation generally would not be allowed certain tax deductions or foreign tax credits that would be allowed to a United States shareholder that is a U.S. corporation. A failure to comply with these reporting obligations may subject a United States shareholder to significant monetary penalties and may prevent starting of the statute of limitations with respect to such shareholder’s U.S. federal income tax return for the year for which reporting was due. We do not intend to monitor whether we are or any of our current or future non-U.S. subsidiaries is treated as a controlled foreign corporation or whether any investor is treated as a United States shareholder with respect to us or any of our controlled foreign corporation subsidiaries. In addition, we cannot provide assurances that we will furnish to any United States shareholders information that may be necessary to comply with the aforementioned reporting and tax paying obligations.

A U.S. investor should consult its tax advisors regarding the potential application of these rules to an investment in our shares in its particular circumstances.

**ITEM 1B. UNRESOLVED STAFF COMMENTS**

None.

**ITEM 2. PROPERTIES**

Our principal executive office is located at 3185 Laurelview Ct., Fremont, California 94538. As of December 31, 2021, our principal manufacturing and administrative facilities, including our executive offices, are comprised of approximately 753,200 square feet. All

of our facilities are leased, which allows for flexibility as business conditions and geographic demand change. The table below sets forth the approximate square footage of each of our facilities.

| <b>Location</b> | <b>Approximate<br/>Square<br/>Footage</b> |
|-----------------|---|
| California      | 255,000                                   |
| Oregon          | 138,300                                   |
| Singapore       | 97,700                                    |
| Minnesota       | 80,900                                    |
| Texas           | 47,800                                    |
| Mexico          | 37,900                                    |
| Scotland        | 37,700                                    |
| Malaysia        | 31,900                                    |
| Korea           | 18,500                                    |
| Nevada          | 7,500                                     |

We do not anticipate difficulty in either retaining occupancy of any of our facilities through lease renewals prior to expiration or through month-to-month occupancy or replacing them with equivalent facilities. We believe that our existing facilities and equipment are well maintained, in good operating condition, and are adequate to meet our currently anticipated requirements.

### **ITEM 3. LEGAL PROCEEDINGS**

We may be subject to various legal claims and proceedings which arise in the ordinary course of our business involving claims incidental to our business, including employment-related claims.

### **ITEM 4. MINE SAFETY DISCLOSURES**

Not applicable.

## **PART II**

### **ITEM 5. MARKET FOR THE REGISTRANT'S COMMON EQUITY, RELATED SHAREHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES**

#### **Holders of Record**

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As of February 22, 2022, all of our issued ordinary shares were held in "nominee" or "street" name or in our treasury account.

#### **Dividends**

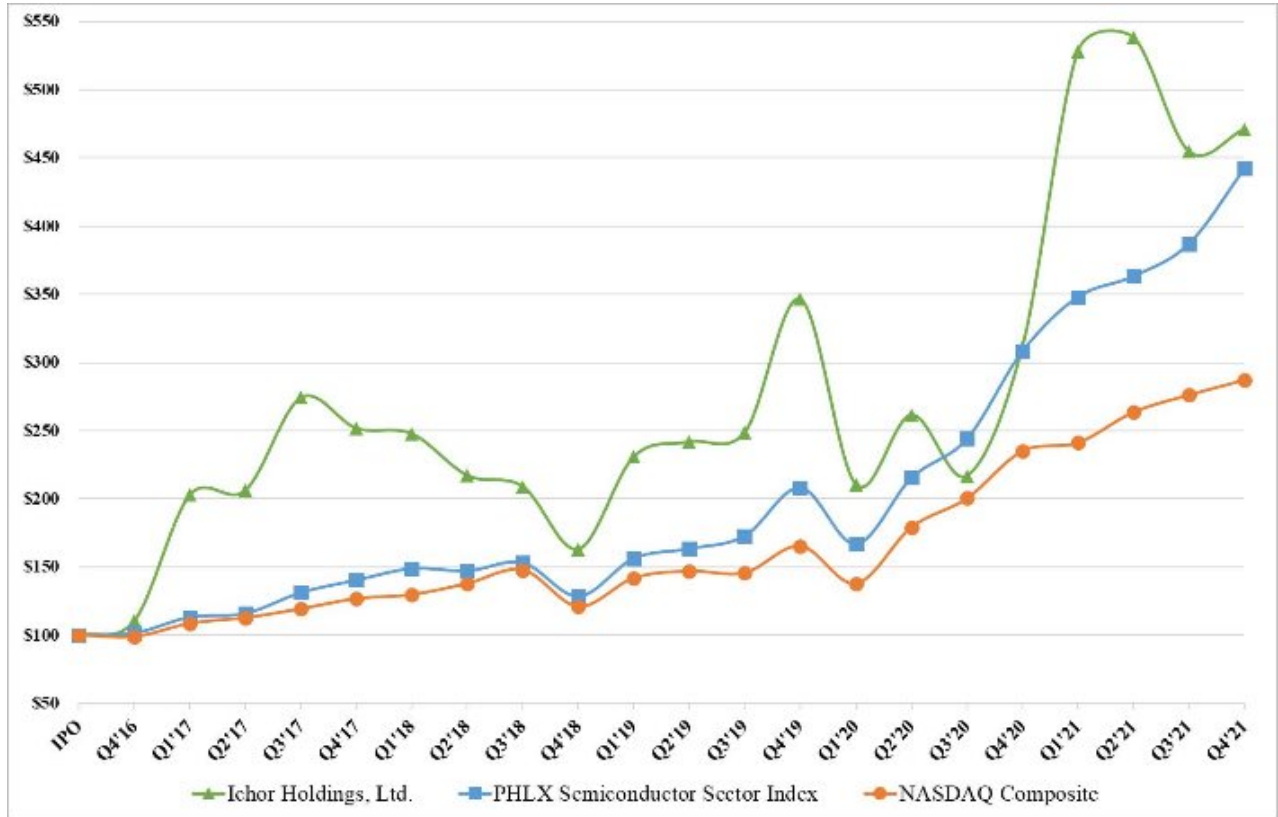
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We do not anticipate that we will pay any cash dividends on our ordinary shares for the foreseeable future. Any determination to pay dividends in the future will be at the discretion of our Board of Directors and will depend upon our financial condition, results of operations, contractual restrictions (including those under our credit facilities and any potential indebtedness we may incur in the future), restrictions imposed by applicable law, tax considerations, and other factors our Board of Directors deems relevant.

## Stock Performance Graph

The information included under the heading *Item 5 – Stock Performance Graph* is “furnished” and not “filed” for purposes of Section 18 of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), or otherwise subject to the liabilities of that section, nor shall it be deemed to be “soliciting material” subject to Regulation 14A or incorporated by reference in any filing under the Securities Act or the Exchange Act.

Our ordinary shares are listed for trading on the NASDAQ under the symbol “ICHR.” The Stock Price Performance Graph set forth below plots the cumulative total shareholder return on a quarterly basis of our ordinary shares from December 9, 2016, the date on which our shares began trading, through December 31, 2021, with the cumulative total return of the Nasdaq Composite Index and the PHLX Semiconductor Sector Index over the same period. The comparison assumes \$100 was invested on December 9, 2016 in the ordinary shares of Ichor Holdings, Ltd., in the Nasdaq Composite Index, and in the PHLX Semiconductor Sector Index and assumes reinvestment of dividends, if any.



The stock price performance shown on the graph above is not necessarily indicative of future price performance. Information used in the graph was obtained from the Nasdaq Stock Market, a source believed to be reliable, but we are not responsible for any errors or omissions in such information.

**ITEM 6. [RESERVED]**



## ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

You should read the following discussion and analysis of our financial condition and results of operations in conjunction with our consolidated financial statements and related notes included elsewhere in this report. The following discussion contains forward-looking statements based upon our current plans, expectations and beliefs that involve risks and uncertainties. Our actual results may differ materially from those anticipated in these forward-looking statements. Factors that could cause or contribute to these differences include those discussed below and elsewhere in this report, particularly in the section entitled Item 1A – Risk Factors. For a comparison of our financial condition, results of operations, and cash flows for 2020 to 2019, refer to Part II, Item 7 in our 2020 Annual Report on Form 10-K, which was filed with the Securities and Exchange Commission on March 5, 2021.

### Overview

We are a leader in the design, engineering, and manufacturing of critical fluid delivery subsystems and components for semiconductor capital equipment. Our product offerings include gas and chemical delivery systems and subsystems, collectively known as fluid delivery systems and subsystems, which are key elements of the process tools used in the manufacturing of semiconductor devices. Our gas delivery subsystems deliver, monitor, and control precise quantities of the specialized gases used in semiconductor manufacturing processes such as etch and deposition. Our chemical delivery systems and subsystems precisely blend and dispense the reactive liquid chemistries used in semiconductor manufacturing processes such as chemical-mechanical planarization, electroplating, and cleaning. We also provide precision-machined components, weldments, e-beam and laser-welded components, precision vacuum and hydrogen brazing and surface treatment technologies, and other proprietary products. This vertically integrated portion of our business is primarily focused on metal and plastic parts that are used in gas and chemical systems, respectively.

Fluid delivery subsystems ensure accurate measurement and uniform delivery of specialty gases and chemicals at critical steps in the semiconductor manufacturing processes. Any malfunction or material degradation in fluid delivery reduces yields and increases the likelihood of manufacturing defects in these processes. Most OEMs outsource all or a portion of the design, engineering, and manufacturing of their gas delivery subsystems to a few specialized suppliers, including us. Additionally, many OEMs are outsourcing the design, engineering, and manufacturing of their chemical delivery subsystems due to the increased fluid expertise required to manufacture these subsystems. Outsourcing these subsystems has allowed OEMs to leverage the suppliers' highly specialized engineering, design, and production skills while focusing their internal resources on their own value-added processes. We believe that this outsourcing trend has enabled OEMs to reduce their costs and development time, as well as provide growth opportunities for specialized subsystems suppliers like us.

We have a global footprint with production facilities in California, Minnesota, Oregon, Texas, Singapore, Malaysia, the United Kingdom, Korea, and Mexico.

The following table summarizes key financial information for the periods indicated. Amounts are presented in accordance with GAAP unless explicitly identified as being a non-GAAP metric. For a description of our non-GAAP metrics and reconciliations to the most comparable GAAP metrics, please refer to *Item 7 – Management's Discussion and Analysis of Financial Condition and Results of Operations – Non-GAAP Financial Results* within this Annual Report.

|                       | Year Ended  |                      |
|-----------------------|---|----------------------|
|                       | December 31,<br>2021                                    | December 25,<br>2020 |
|                       | <i>(dollars in thousands, except per share amounts)</i> |                      |
| Net sales             | \$ 1,096,917  | \$ 914,236           |
| Gross profit          | \$ 177,480  | \$ 124,892           |
| Gross margin          | 16.2%   | 13.7%                |
| Non-GAAP gross margin | 16.7%   | 14.6%                |
| Operating expenses    | \$ 96,466   | \$ 83,340            |
| Operating income      | \$ 81,014   | \$ 41,552            |
| Net income            | \$ 70,899   | \$ 33,279            |
| Non-GAAP net income   | \$ 97,698   | \$ 59,042            |
| Diluted EPS           | \$ 2.45   | \$ 1.42              |
| Non-GAAP diluted EPS  | \$ 3.37   | \$ 2.52              |

## Key Factors Affecting Our Business

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### *Investment in Semiconductor Manufacturing Equipment*

The design and manufacturing of semiconductor devices is constantly evolving and becoming more complex in order to achieve greater performance and efficiency. To keep pace with these changes, OEMs need to refine their existing products and invest in developing new products. In addition, semiconductor device manufacturers will continue to invest in new wafer fabrication equipment to expand their production capacity and to support new manufacturing processes.

### *Outsourcing of Subsystems by Semiconductor OEMs*

Faced with increasing manufacturing complexities, more complex subsystems, shorter product lead times, shorter industry spend cycles, and significant capital requirements, outsourcing of subsystems and components by OEMs has continued to grow. In the past two decades, OEMs have outsourced most of their gas delivery systems to suppliers such as us. OEMs have also started to outsource their chemical delivery systems in recent years. Our results will be affected by the degree to which outsourcing of these fluid delivery systems by OEMs continues to grow.

### *Cyclicalities of Semiconductor Capital Equipment Industry*

Our business is subject to the cyclicalities of the capital expenditures of the semiconductor industry, which drives cyclicalities in the semiconductor capital equipment industry in which we operate. In 2021, we derived over 95% of our sales from the semiconductor capital equipment industry. Demand for semiconductor capital equipment can fluctuate significantly based on changes in general economic conditions, including consumer spending, demand for semiconductor products, pricing, and other factors. In the past, these fluctuations have resulted in significant variations in the levels of spending within the semiconductor capital equipment industry, and as a result, our results of operations. The cyclicalities of the semiconductor industry will continue to impact our results of operations in the future.

### *Customer Concentration*

The number of capital equipment manufacturers for the semiconductor device industry is significantly consolidated, resulting in a small number of large manufacturers. Our customers are a significant component of this consolidation, resulting in our sales being concentrated in a few customers. In 2021, our top two customers were Lam Research and Applied Material, accounting for approximately 53% and 32% of sales, respectively. Our customers often require reduced prices or other pricing, quality, or delivery commitments as a condition to their purchasing from us in any given period or increasing their purchase volume, which can, among other things, result in reduced gross margins in order to maintain or expand our market share. Although we do not have any long-term contracts that require customers to place orders with us, Lam Research and Applied Materials have been our customers for over a decade.

### *Acquisitions*

In November 2021, we acquired IMG, and California-based leader in precision machining and specialty joining and plating, for approximately \$270.0 million. Between 2017 and 2020, we engaged in four separate business combinations for a combined investment of approximately \$200.0 million. These acquisitions continue to have a significant impact on our financial position and results of operations. We intend to continue to evaluate opportunistic acquisitions to supplement our organic growth, and any such acquisitions could have a material impact on our business and results of operations.

### *COVID-19 Pandemic and Global Supply Chain*

The COVID-19 pandemic and related economic repercussions have created, and are expected to continue to create, significant volatility, uncertainty, and turmoil in our industry. While our facilities are currently not subject to any site-wide government shutdowns, in June 2021, the Malaysian government instituted an Enhanced Movement Control Order (“EMCO”), which impacted our weldment facility in Malaysia through both on-site employee restrictions as well as a complete shutdown of all manufacturing in the region during early July. While we were able to reopen our factory in mid-July, once the government confirmed we were an essential business, we remained under headcount limitations until the third week of August. With 50% of our weldment capacity located in Malaysia, our overall output in the country was reduced by 40% in the third quarter of 2021 due to the EMCO restrictions.

In addition to the recent impacts in Malaysia, we experienced increases in direct costs within our factories associated with employee personal protective equipment (“PPE”), facility cleaning and layout changes, together with increases in logistics costs and employee labor costs, as well as other operating inefficiencies. Additionally, our supply chain has been negatively impacted as a result of the larger, ongoing global supply chain disruption, impacting our ability to source certain components timely. These factors have resulted

in, and may continue to result in, lower revenues and operating margins. The extent and duration of these impacts cannot be specifically quantified given the dynamic nature and breadth of the pandemic's impact on our operations and that of our customers and suppliers.

## **Components of Our Results of Operations**

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The following discussion sets forth certain components of our statements of operations as well as significant factors that impact those items.

### *Sales*

We generate sales primarily from the design, manufacture, and sale of subsystems and components primarily for semiconductor capital equipment. Sales are recognized when control of promised goods or services is transferred to our customers, in an amount that reflects the consideration we expect to be entitled to in exchange for those goods or services. Our shipping terms are generally "shipping point." Accordingly, control transfers, and sales are recognized, at the point-in-time of shipment.

### *Cost of Sales and Gross Profit*

Cost of sales consists primarily of purchased materials, direct labor, indirect labor, factory overhead cost, and depreciation expense for our manufacturing facilities and equipment. Our business has a highly variable cost structure with low fixed overhead as a percentage of cost of sales. In addition, our existing global manufacturing plant capacity is scalable, and we are able to adjust to increased customer demand for our products without significant additional capital investment. We operate our business in this manner to avoid having excessive fixed costs during a cyclical downturn while retaining flexibility to expand our production volumes during periods of growth. However, this approach results in a smaller increase in gross margin as a percentage of sales in times of increased demand.

Since the gross margin on each of our products differs, our overall gross margin as a percentage of our sales changes based on the mix of products we sell in any period.

### *Operating Expenses*

Our operating expenses primarily include research and development and sales, general, and administrative expenses. Personnel costs are the most significant component of operating expenses and consist of salaries, benefits, bonuses, and share-based compensation. Operating expenses also include overhead costs for facilities, IT, and depreciation. In addition, our operating expenses include amortization expense of acquired intangible assets and certain non-recurring costs, including facility shutdown costs and executive transition-related costs.

*Research and development* – Research and development expense consists primarily of activities related to product design and other development activities, new component testing and evaluation, and test equipment and fixture development. We expect research and development expense will continue to increase in absolute dollars due to continued development of our own IP and product offerings for existing and new customer markets and increases in our customers' demand for new product designs.

*Selling, general, and administrative* – Selling expense consists primarily of salaries and commissions paid to our sales and sales support employees and other costs related to the sales of our products. General and administrative expense consists primarily of salaries and overhead associated with our administrative staff, professional fees, and depreciation and other allocated facility related costs. We expect selling expenses to increase in absolute dollars as we continue to invest in expanding our markets and as we expand our international operations. We expect general and administrative expenses to also increase in absolute dollars due to an increase in employee-related costs, regulatory compliance, and accounting expenses.

*Amortization of intangibles* – Amortization of intangible assets is related to our finite-lived intangible assets and is computed using the straight-line method over the estimated economic life of the asset.

### *Interest Expense*

Interest expense consists of interest on our outstanding debt under our credit facilities, including amortization of debt issuance costs, and any other indebtedness we may incur in the future.

### *Other Expense (Income), Net*

The functional currency of our international operations is the U.S. dollar. Transactions denominated in currencies other than the functional currency generate foreign exchange gains and losses that are included in other expense (income), net on the accompanying consolidated statements of operations. Substantially all of our sales contracts, and most of our agreements with third-party suppliers, provide for pricing and payment in U.S. dollars. Accordingly, these transactions are not subject to material exchange rate fluctuations.

### *Income Tax Expense (Benefit)*

Income tax expense (benefit) consists primarily of taxes on our taxable income related to our domestic and foreign operations, offset by the benefit of our tax holiday in Singapore, which was extended through 2026. In 2021, the benefit related to our Singapore tax holiday, compared to the Singapore statutory tax rate, was \$9.7 million. Income tax is also impacted by certain withholding taxes, stock option and RSU activity, and credit generation. Stock options and RSUs have historically provided a discrete benefit to our provision for income taxes in the period they were exercised or vested, respectively, due to increases in our stock price.

### **Critical Accounting Estimates**

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Our consolidated financial statements have been prepared in accordance with U.S. generally accepted accounting principles. The preparation of these consolidated financial statements requires us to make estimates and assumptions that affect the reported amounts of assets, liabilities, sales, expenses, and related disclosures. We base our estimates on historical experience and on various other assumptions that we believe are reasonable under the circumstances. We evaluate our estimates and assumptions on an ongoing basis. Actual results may differ from these estimates. To the extent that there are material differences between these estimates and our actual results, our future financial statements will be affected.

The critical accounting policies requiring estimates, assumptions, and judgments that we believe have the most significant impact on our consolidated financial statements are described below.

#### *Inventory Valuation*

Inventories are stated at the lower of cost or net realizable value. The majority of our inventory values are based upon standard costs. On a quarterly basis, we analyze the value of our inventory and periodically record write-downs for estimated excess and obsolete inventory. This analysis is based on estimated future consumption compared to inventory quantities on-hand. The estimate is based on how assumptions of historical consumption, recency of purchases, backlog, and other factors indicate future consumption. Once the value of inventory is adjusted, the original cost of our inventory, less the write-down, represents its new cost basis. Reversal of these write-downs are recognized only when the related inventory has been scrapped or sold. During 2021, 2020, and 2019, we wrote down inventory determined to be excessive or obsolete by \$1.9 million, \$4.6 million, and \$1.1 million, respectively.

#### *Business Combinations*

We account for business combinations using the acquisition method of accounting, which requires that assets acquired and liabilities assumed are recorded at fair value. Any excess of the purchase price over the fair value of specifically identifiable assets is recorded as goodwill.

Significant judgment is required in estimating the fair value of intangible assets. Our typical intangible assets acquired include customer relationships and order backlogs. The most critical areas of judgment in applying the acquisition method include selecting the appropriate valuation techniques and assumptions that are used to measure the acquired assets and assumed liabilities at fair value. There are several methods that can be used to determine the fair value of intangible assets. We typically use an income approach to value the specifically identifiable intangible assets, which is based on forecasts of expected future cash flows. Under the income approach, we utilize a multi-period excess earnings methodology to value the primary intangible asset of a business combination. Assumptions around expected future cash flows used in the fair value estimates are based on available historical information and industry, market, and peer data to inform our future expectations. We typically consult with an independent advisor to assist in the valuation of intangible assets. While we use our best estimates and assumptions to accurately value assets acquired and liabilities assumed at the acquisition dates, our estimates are inherently uncertain and subject to refinement. In addition, unanticipated market or macroeconomic events and circumstances may occur that could affect the accuracy or validity of the estimates and assumptions. If the estimates do not reflect future results or assumptions utilized in the valuation are inaccurate, then our recorded intangible assets and goodwill may become impaired. In November 2021, in connection with our acquisition of IMG, we recorded identifiable intangibles and preliminary goodwill of \$65.0 million and \$161.0 million, respectively.

## Results of Operations

The following table sets forth our results of operations for the periods presented. The period-to-period comparison of results is not necessarily indicative of results for future periods.

|                                      | Year Ended            |                      |
|--------------------------------------|-----------------------|----------------------|
|                                      | December 31,<br>2021  | December 25,<br>2020 |
|                                      | <i>(in thousands)</i> |                      |
| Net sales                            | \$ 1,096,917          | \$ 914,236           |
| Cost of sales                        | 919,437               | 789,344              |
| Gross profit                         | 177,480               | 124,892              |
| Operating expenses:                  |                       |                      |
| Research and development             | 15,691                | 13,361               |
| Selling, general, and administrative | 65,857                | 56,614               |
| Amortization of intangible assets    | 14,918                | 13,365               |
| Total operating expenses             | 96,466                | 83,340               |
| Operating income                     | 81,014                | 41,552               |
| Interest expense, net                | 6,451                 | 8,727                |
| Other expense, net                   | 807                   | 534                  |
| Income before income taxes           | 73,756                | 32,291               |
| Income tax expense (benefit)         | 2,857                 | (988)                |
| Net income                           | \$ 70,899             | \$ 33,279            |

The following table sets forth our results of operations as a percentage of our total sales for the periods presented.

|                                      | Year Ended           |                      |
|--------------------------------------|----------------------|----------------------|
|                                      | December 31,<br>2021 | December 25,<br>2020 |
| Net sales                            | 100.0                | 100.0                |
| Cost of sales                        | 83.8                 | 86.3                 |
| Gross profit                         | 16.2                 | 13.7                 |
| Operating expenses:                  |                      |                      |
| Research and development             | 1.4                  | 1.5                  |
| Selling, general, and administrative | 6.0                  | 6.2                  |
| Amortization of intangible assets    | 1.4                  | 1.5                  |
| Total operating expenses             | 8.8                  | 9.1                  |
| Operating income                     | 7.4                  | 4.5                  |
| Interest expense, net                | 0.6                  | 1.0                  |
| Other expense, net                   | 0.1                  | 0.1                  |
| Income before income taxes           | 6.7                  | 3.5                  |
| Income tax expense (benefit)         | 0.3                  | (0.1)                |
| Net income                           | 6.5                  | 3.6                  |

## Comparison of 2021 and 2020

### Net Sales

|           | Year Ended           |                      | Change                        |       |
|-----------|----------------------|----------------------|-------------------------------|-------|
|           | December 31,<br>2021 | December 25,<br>2020 | Amount                        | %     |
|           |                      |                      | <i>(dollars in thousands)</i> |       |
| Net sales | \$ 1,096,917         | \$ 914,236           | \$ 182,681                    | 20.0% |

The increase in net sales from 2020 to 2021 was primarily due to strong demand from our customers as a result of continued growth in the global wafer fabrication equipment market, partially offset by production constraints as a result of challenges in our supply chain, as noted above in the commentary above under the heading, *Item 7 – Management’s Discussion and Analysis of Financial Condition and Results of Operations – Key Factors Affecting Our Business – COVID-19 Pandemic and Global Supply Chain*.

Net sales to U.S. customers increased by \$53.1 million in 2021 to \$544.1 million. On a relative basis, net sales to U.S. customers as a percent of total net sales decreased from 53.7% in 2020 to 49.6% in 2021.

Net sales to international customers increased by \$129.5 million in 2021 to 552.8 million. On a relative basis, net sales to international customers as a percent of total net sales increased from 46.4% in 2020 to 50.4% in 2021.

### Cost of Sales and Gross Profit

|               | Year Ended           |                      | Change                        |           |
|---------------|----------------------|----------------------|-------------------------------|-----------|
|               | December 31,<br>2021 | December 25,<br>2020 | Amount                        | %         |
|               |                      |                      | <i>(dollars in thousands)</i> |           |
| Cost of sales | \$ 919,437           | \$ 789,344           | \$ 130,093                    | 16.5%     |
| Gross profit  | \$ 177,480           | \$ 124,892           | \$ 52,588                     | 42.1%     |
| Gross margin  | 16.2%                | 13.7%                |                               | + 250 bps |

The increase in the gross amounts of cost of sales and gross profit from 2020 to 2021 was primarily due to the factors mentioned in the commentary above under the above heading, *Net Sales*.

The 250 basis point increase in our gross margin from 2020 to 2021 was primarily due to was primarily due to increased factory utilization, cost reduction initiatives, and customer mix, partially offset by increased materials and logistics costs and increased factory inefficiency due to challenges in our supply chain, as noted above in the commentary above under the heading, *Item 7 – Management’s Discussion and Analysis of Financial Condition and Results of Operations – Key Factors Affecting Our Business – COVID-19 Pandemic and Global Supply Chain*.

Additionally, our gross margin for 2021 was impacted by the following discrete items on a year-over-year basis: We incurred a \$1.4 million contract settlement loss in 2020 that did not recur in 2021, favorably impacting gross margin, and we incurred \$1.7 million in charges related to acquired-inventory being recorded at fair value, the majority of which was from our acquisition of IMG, unfavorably impacting gross margin..

### Research and Development

|                          | Year Ended           |                      | Change                        |       |
|--------------------------|----------------------|----------------------|-------------------------------|-------|
|                          | December 31,<br>2021 | December 25,<br>2020 | Amount                        | %     |
|                          |                      |                      | <i>(dollars in thousands)</i> |       |
| Research and development | \$ 15,691            | \$ 13,361            | \$ 2,330                      | 17.4% |

The increase in research and development expenses from 2020 to 2021 was primarily due to increased employee-related expense, as we expand our engineering team to design and engineer next generation high performance solutions for our customers.

*Selling, General, and Administrative*

|                                      | Year Ended                    |                      | Change   |       |
|--------------------------------------|-------------------------------|----------------------|----------|-------|
|                                      | December 31,<br>2021          | December 25,<br>2020 | Amount   | %     |
|                                      | <i>(dollars in thousands)</i> |                      |          |       |
| Selling, general, and administrative | \$ 65,857                     | \$ 56,614            | \$ 9,243 | 16.3% |

The increase in selling, general, and administrative expense from 2020 to 2021 was primarily due to (i) \$4.4 million in transaction costs associated with our acquisition of IMG in November 2021, a (ii) \$4.3 million in employee-related costs (excluding share-based compensation expense) due to increased headcount, salaries, and bonus charges, (iii) \$1.3 million in increased IT hardware, software, and service costs, and (iv) \$0.8 million in increased share-based compensation expense, partially offset by \$1.8 million in executive transition costs that we incurred in 2020 that did not recur in 2021.

*Amortization of Intangible Assets*

|                                    | Year Ended                    |                      | Change   |       |
|------------------------------------|-------------------------------|----------------------|----------|-------|
|                                    | December 31,<br>2021          | December 25,<br>2020 | Amount   | %     |
|                                    | <i>(dollars in thousands)</i> |                      |          |       |
| Amortization of intangibles assets | \$ 14,918                     | \$ 13,365            | \$ 1,553 | 11.6% |

The increase in amortization expense from 2020 to 2021 was due to incremental amortization expense from intangible assets acquired in connection with our acquisition of IMG in November 2021.

*Interest Expense*

|                       | Year Ended                    |                      | Change     |        |
|-----------------------|-------------------------------|----------------------|------------|--------|
|                       | December 31,<br>2021          | December 25,<br>2020 | Amount     | %      |
|                       | <i>(dollars in thousands)</i> |                      |            |        |
| Interest expense, net | \$ 6,451                      | \$ 8,727             | \$ (2,276) | -26.1% |

The decrease in interest expense from 2020 to 2021 was primarily due to a 101 basis point decrease in our weighted average interest rate during the year, from 3.75% to 2.74%, and a \$10.7 million decrease in the average amount borrowed during the year. The decrease in our weighted average interest rate from 2020 to 2021 was primarily due to decreases in the applicable margin component of our all-in borrowing rate due to continuous decreases in our leverage ratio during 2020 and 2021 and a lower overall applicable margin we incur for borrowings under our October 2021 amended and restated credit agreement.

*Other Expense, Net*

|                             | Year Ended                    |                      | Change |       |
|-----------------------------|-------------------------------|----------------------|--------|-------|
|                             | December 31,<br>2021          | December 25,<br>2020 | Amount | %     |
|                             | <i>(dollars in thousands)</i> |                      |        |       |
| Other expense (income), net | \$ 807                        | \$ 534               | \$ 273 | 51.1% |

The increase in other expense, net from 2020 to 2021 was primarily due to a \$0.7 million loss on extinguishment of debt we incurred in connection with entering into an amended and restated credit agreement in October 2021, partially offset by favorable foreign currency fluctuations for transaction denominated in currencies other than the U.S. dollar.

## Income Tax Benefit

|                              | Year Ended           |                      | Change   |     |
|------------------------------|----------------------|----------------------|----------|-----|
|                              | December 31,<br>2021 | December 25,<br>2020 | Amount   | %   |
| Income tax expense (benefit) | \$ 2,857             | \$ (988)             | \$ 3,845 | n/m |

The increase in tax expense from 2020 to 2021 was primarily due to increased taxable income in the U.S, partially offset by increased discrete benefits from share-based compensation activity.

## Non-GAAP Results

Management uses non-GAAP metrics to evaluate our operating and financial results. We believe the presentation of non-GAAP results is useful to investors for analyzing business trends and comparing performance to prior periods, along with enhancing investors' ability to view our results from management's perspective. Non-GAAP gross margin is defined as non-GAAP gross profit divided by net sales. Non-GAAP gross profit and non-GAAP net income are defined as: gross profit or net income excluding, as applicable, (1) amortization of intangible assets, share-based compensation expense, and non-recurring expenses, including contract settlement losses and facility shutdown costs, to the extent they are present in gross profit or net income; and (2) the tax impacts associated with our non-GAAP adjustments, as well as non-recurring discrete tax items. Non-GAAP diluted earnings per share ("EPS") is defined as non-GAAP net income divided by weighted average diluted ordinary shares outstanding during the period.

Non-GAAP results have limitations as an analytical tool, and you should not consider them in isolation or as a substitute for our results reported under GAAP. Other companies may calculate non-GAAP results differently or may use other measures to evaluate their performance, both of which could reduce the usefulness of our non-GAAP results as a tool for comparison.

Because of these limitations, you should consider non-GAAP results alongside other financial performance measures and results presented in accordance with GAAP. In addition, in evaluating non-GAAP results, you should be aware that in the future we will incur expenses such as those that are the subject of adjustments in deriving non-GAAP results and you should not infer from our presentation of non-GAAP results that our future results will not be affected by these expenses or any unusual or non-recurring items.

The following table presents our unaudited non-GAAP gross profit and non-GAAP gross margin and a reconciliation from gross profit, the most comparable GAAP measure, for the periods indicated:

|  | Year Ended           |                      |
|--|----------------------|----------------------|
|  | December 31,<br>2021 | December 25,<br>2020 |
| U.S. GAAP gross profit                                   | \$ 177,480           | \$ 124,892           |
| Non-GAAP adjustments:                                    |                      |                      |
| Share-based compensation                                 | 1,384                | 991                  |
| Facility shutdown costs (1)                              | 2,611                | 2,215                |
| Contract settlement loss (2)                             | —                    | 1,386                |
| Fair value adjustment to inventory from acquisitions (3) | 1,652                | —                    |
| Other non-recurring expense, net (4)                     | 106                  | 3,743                |
| Non-GAAP gross profit                                    | \$ 183,233           | \$ 133,227           |
| U.S. GAAP gross margin                                   | 16.2%                | 13.7%                |
| Non-GAAP gross margin                                    | 16.7%                | 14.6%                |

- (1) During the second quarter of 2020, we announced the closure of our manufacturing facility in Union City, California, which we completed during the second quarter of 2021.

Included in this amount for 2021 are (i) write-off costs associated with inventories determined during the period to be obsolete of \$2.9 million and (ii) severance costs associated with affected employees of \$0.2 million, partially offset by (iii) a gain realized upon the sale of equipment and other fixed assets of \$0.5 million.

Included in this amount for 2020 are (i) write-off costs associated with inventories determined during the period to be obsolete of \$1.3 million, (ii) severance costs associated with affected employees of \$0.5 million, and (iii) accelerated depreciation charges associated with property and equipment that was expected to be abandoned at the time of facility closure of \$0.4 million.



- (2) During the first quarter of 2020, we reached a mutual settlement with the counterparty of a contract dispute and, accordingly, recorded a \$1.4 million contract settlement loss to cost of sales.
- (3) As part of our purchase price allocation for our acquisition of IMG in November 2021 and our acquisition of a precision machining operation in Mexico in December 2020, we recorded acquired-inventories at fair value, resulting in a fair value step-up of \$3.9 million (preliminary) and \$0.2 million, respectively. These amounts are released to cost of sales as acquired-inventories are sold.
- (4) Included in this amount for 2021 is primarily a non-recurring settlement charge. Included in this amount for the 2020 is a \$3.6 million loss on the sale of inventories and property and equipment from our Tampa, Florida facility, as well as costs associated with restructuring and transitioning key leadership roles.

The following table presents our unaudited non-GAAP net income and non-GAAP diluted EPS and a reconciliation from net income, the most comparable GAAP measure, for the periods indicated:

|  | <b>Year Ended</b>                                       |                              |
|--|---|------------------------------|
|  | <b>December 31,<br/>2021</b>                            | <b>December 25,<br/>2020</b> |
|  | <i>(dollars in thousands, except per share amounts)</i> |                              |
| U.S. GAAP net income                                     | \$ 70,899   | \$ 33,279                    |
| Non-GAAP adjustments:                                    |   |                              |
| Amortization of intangible assets                        | 14,918  | 13,365                       |
| Share-based compensation                                 | 11,473  | 9,875                        |
| Facility shutdown costs (1)                              | 2,996   | 2,463                        |
| Contract settlement loss (2)                             | —   | 1,386                        |
| Fair value adjustment to inventory from acquisitions (3) | 1,652   | —                            |
| Acquisition costs (4)                                    | 4,386   | —                            |
| Other non-recurring expense, net (5)                     | 498   | 7,181                        |
| Loss on extinguishment of debt (6)                       | 737   | —                            |
| Tax adjustments related to non-GAAP adjustments (7)      | (9,861)   | (8,507)                      |
| Non-GAAP net income                                      | <u>\$ 97,698</u>  | <u>\$ 59,042</u>             |
| U.S. GAAP diluted EPS                                    | <u>\$ 2.45</u>  | <u>\$ 1.42</u>               |
| Non-GAAP diluted EPS                                     | <u>\$ 3.37</u>  | <u>\$ 2.52</u>               |
| Shares used to compute diluted EPS                       | 28,979,352  | 23,460,105                   |

- (1) During the second quarter of 2020, we announced the closure of our manufacturing facility in Union City, California, which we completed during the second quarter of 2021.
- Included in this amount for 2021 are (i) write-off costs associated with inventories determined during the period to be obsolete of \$2.9 million, (ii) other shutdown related charges of \$0.3 million, and (iii) severance costs associated with affected employees of \$0.2 million, partially offset by (iv) a gain realized upon the sale of equipment and other fixed assets of \$0.5 million.
- Included in this amount for 2020 are (i) write-off costs associated with inventories determined during the period to be obsolete of \$1.3 million, (ii) severance costs associated with affected employees of \$0.5 million, and (iii) accelerated depreciation charges associated with property and equipment that was expected to be abandoned at the time of facility closure of \$0.6 million.
- (2) See footnote 2 to the reconciliation of U.S. GAAP gross profit to non-GAAP gross profit above.
- (3) See footnote 2 to the reconciliation of U.S. GAAP gross profit to non-GAAP gross profit above.
- (4) Included in this amount are incremental transaction-related costs incurred in connection with our acquisition of IMG in November 2021.
- (5) Included in this amount for 2021 are primarily non-capitalized costs incurred in connection with our implementation of a new ERP system and a Sarbanes Oxley (“SOX”) compliance program and a non-recurring settlement charge.

Included in this amount for 2020 are primarily (i) a \$3.6 million loss on the sale of inventories and property and equipment from our Tampa, Florida facility, (ii) non-capitalized costs incurred in connection with our implementation of a new ERP system and a SOX compliance program, and (iii) costs associated with restructuring and transitioning key leadership roles, including a \$1.8 million bonus payment to our former Chief Executive Officer in connection with his transition to executive chairman.

- (6) In October 2021, we entered into an amended and restated credit agreement, which includes a group of financial institutions as direct lenders underlying the agreement. Under the debt modification literature codified in ASC 470, a portion of the refinance was treated as an extinguishment. Accordingly, \$0.7 million of existing capitalized deferred issuance costs were written off as a loss on extinguishment of debt.
- (7) Adjusts U.S. GAAP income tax expense (benefit) for impact of our non-GAAP adjustments, as defined, including the impacts of excluding share-based compensation, amortization of intangible assets, and other non-recurring expenses. This adjustment also excludes the impact of non-recurring discrete tax items.

## Liquidity and Capital Resources

The following section discusses our liquidity and capital resources, including our primary sources of liquidity and our material cash requirements. Our cash and cash equivalents are maintained in highly liquid and accessible accounts with no significant restrictions.

### Material Cash Requirements

Our primary liquidity requirements arise from: (i) working capital requirements, including procurement of raw materials inventory for use in our factories and employee-related costs, (ii) business acquisitions, (iii) interest and principal payments under our credit facilities, (iv) research and development investments and capital expenditures, and (v) payment of income taxes. We have no significant long-term purchase commitments related to procuring raw materials inventory. Our ability to fund these requirements will depend, in part, on our future cash flows, which are determined by our future operating performance and are therefore subject to prevailing global macroeconomic conditions and financial, business, and other factors, some of which are beyond our control.

We believe that our cash and cash equivalents, the amounts available under our credit facilities, and our operating cash flow will be sufficient to fund our business and our current obligations for at least the next 12 months and beyond.

### Sources and Conditions of Liquidity

Our ongoing sources of liquidity to fund our material cash requirements are primarily derived from: (i) sales to our customers and the related changes in our net operating assets and liabilities and (ii) proceeds from our credit facilities and equity offerings, when applicable.

### Summary of Cash Flows

We ended 2021 with cash and cash equivalents of \$75.5 million, a decrease of \$177.4 million from December 25, 2020. The decrease was primarily due to cash paid of \$268.8 million, net of acquired-cash, to acquire IMG in November 2021 and capital expenditures of \$20.8 million, partially offset by net proceeds from our credit facilities of \$90.9 million, and cash provided by operating activities of \$15.3 million.

The following table sets forth a summary of operating, investing, and financing activities for the periods presented:

|   | Year Ended            |                      |                      |
|---|-----------------------|----------------------|----------------------|
|   | December 31,<br>2021  | December 25,<br>2020 | December 27,<br>2019 |
|   | <i>(in thousands)</i> |                      |                      |
| Cash provided by operating activities           | \$ 15,272             | \$ 38,259            | \$ 57,150            |
| Cash used in investing activities               | (289,585)             | (14,597)             | (20,490)             |
| Cash provided by (used in) financing activities | 96,909                | 168,625              | (19,882)             |
| Net increase (decrease) in cash                 | <u>\$ (177,404)</u>   | <u>\$ 192,287</u>    | <u>\$ 16,778</u>     |

Our cash provided by operating activities of \$15.3 million during 2021 consisted of net income of \$70.9 million, net non-cash charges of \$37.2 million, primarily consisting of depreciation and amortization of \$26.0 million and share-based compensation expense of \$11.5 million, and an increase in our net operating assets and liabilities, net of acquisitions, of \$92.8 million.

The increase in our net operating assets and liabilities, net of acquisitions, was primarily due to an increase in inventories of \$89.2 million and an increase in accounts receivable of \$33.5 million, partially offset by an increase in accounts payable of \$38.6 million. The increase in our inventories, net of acquired inventories, is primarily driven by elevated purchasing activity pursuant to strong customer demand and certain supply chain component constraints. The increase in accounts receivable, net of acquired receivables, was primarily due to increased revenue in the fourth quarter of 2021 compared to the fourth quarter of 2020 and timing of customer payments. The increase in accounts payable, net of acquired payables, is primarily due to higher purchases during the fourth quarter of 2021 compared to the fourth quarter of 2020 and payment timing.

Cash used in investing activities during 2021 consists of cash paid to acquire IMG in November 2021 of \$268.8 million, net of cash acquired, capital expenditures of \$20.8 million, and net proceeds from the purchase and sale of marketable securities of \$0.5 million, partially offset by proceeds from the sale of property and equipment of \$0.5 million.

Cash provided by financing activities during 2021 consists of net proceeds from our credit facilities of \$90.9 million, which includes \$1.9 million in fees incurred associated with effecting an amended and restated credit agreement in October 2021, and net proceeds from share-based compensation activity of \$6.0 million.

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### **Recent Accounting Pronouncements**

From time to time, the Financial Accounting Standards Board (“FASB”) or other standards setting bodies issue new accounting pronouncements. Updates to the FASB Accounting Standards Codification are communicated through issuance of an Accounting Standards Update (“ASU”). Unless otherwise discussed, we believe that the impact of recently issued guidance, whether adopted or to be adopted in the future, is not expected to have a material impact on our Consolidated Financial Statements upon adoption.

To understand the impact of recently issued guidance, whether adopted or to be adopted, please review the information provided in *Note 1 – Organization and Summary of Significant Accounting Policies* of our consolidated financial statements in Part IV, Item 15 of this report.

### **ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK**

We are exposed to financial market risks, including changes in currency exchange rates and interest rates.

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#### **Foreign Currency Exchange Risk**

Currently, substantially all of our sales and arrangements with third-party suppliers provide for pricing and payment in U.S. dollars and, therefore, are not subject to material exchange rate fluctuations. As a result, we do not expect foreign currency exchange rate fluctuations to have a material effect on our results of operations. However, increases in the value of the U.S. dollar relative to other currencies would make our products more expensive relative to competing products priced in such other currencies, which could negatively impact our ability to compete. Conversely, decreases in the value of the U.S. dollar relative to other currencies could result in our foreign suppliers raising their prices in order to continue doing business with us.

While not currently significant, we do have certain operating expenses that are denominated in currencies of the countries in which our operations are located, and may be subject to fluctuations due to foreign currency exchange rates, particularly the Singapore dollar, Malaysian ringgit, British pound, and euro. Fluctuations in foreign currency exchange rates may cause us to recognize transaction gains and losses in our statement of operations. To date, foreign currency transaction gains and losses have not been material to our financial statements, and we have not engaged in any foreign currency hedging transactions.

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#### **Interest Rate Risk**

We had total indebtedness of \$295.0 million as of December 31, 2021, exclusive of \$2.2 million in debt issuance costs, of which \$7.5 million is due within 12 months. We do not enter into investments for trading or speculative purposes and have not used any derivative financial instruments to manage our interest rate risk exposure. We have not been exposed to, nor do we anticipate being exposed to, material risks due to changes in interest rates. As of December 31, 2021, the interest rate on our outstanding debt is based on BSBY, plus an applicable rate depending on our leverage ratio. A hypothetical 100 basis point change in the interest rate on our outstanding debt would have resulted in a \$1.9 million and \$2.0 million change to interest expense during 2021 and 2020, respectively.

### **ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA**

The financial statements and supplementary financial information required to be filed under this Item 8 are presented beginning on page F-1 in Part IV, Item 15 of this annual report on Form 10-K and are incorporated herein by reference.

## ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE

None.

### ITEM 9A. CONTROLS AND PROCEDURES

#### **Evaluation of Disclosure Controls and Procedures**

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We carried out an evaluation under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer (the certifying officers), of the effectiveness of the design and operation of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Securities and Exchange Act, as amended (“the Exchange Act”)) as of December 31, 2021. There are inherent limitations to the effectiveness of any system of disclosure controls and procedures, including the possibility of human error and the circumvention or overriding of the controls and procedures. Accordingly, even effective disclosure controls and procedures can only provide reasonable assurance of achieving their control objectives. Based on this evaluation, our Chief Executive Officer and Chief Financial Officer concluded that, as a result of the material weaknesses in internal control over financial reporting as described below, our disclosure controls and procedures were not effective as of December 31, 2021.

#### **Management’s Report on Internal Control Over Financial Reporting**

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Our management is responsible for establishing and maintaining adequate internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act). With the participation of our Chief Executive Officer and Chief Financial Officer, our management, under the oversight of our Board of Directors, evaluated the effectiveness of our internal control over financial reporting as of December 31, 2021 using the framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (“COSO”) in Internal Control—Integrated Framework (2013). We completed our acquisition of IMG Companies, LLC, and its subsidiaries (“IMG”) on November 19, 2021. We are continuing to integrate IMG into our internal control over financial reporting, and management’s evaluation of the effectiveness of our internal control over financial reporting excluded IMG. IMG had total assets of approximately \$293.0 million as of December 31, 2021, and included in the results of our operations for 2021 are net sales of \$7.3 million from IMG.

Based on that evaluation, management concluded that our internal control over financial reporting was not effective as of December 31, 2021 due to the material weaknesses in internal control over financial reporting, described below. A material weakness is a deficiency, or a combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of our annual or interim financial statements will not be prevented or detected on a timely basis.

The identified material weaknesses related to ineffective information technology general controls (“ITGCs”) in the areas of user access and program change management over certain information technology systems (“IT”) systems that support our financial reporting processes. The control deficiencies were a result of: inadequate design of IT control processes that were lacking sufficient documentation such that successful operation of the ITGC’s were overly dependent upon knowledge and actions of certain individuals with IT expertise; insufficient training of IT personnel on the requirements to maintain evidence of ITGC control processes and procedures; and risk-assessment processes inadequate to identify and assess changes in IT environments that could impact internal control over financial reporting. Our automated and manual business process controls that are dependent on the affected ITGCs were also deemed ineffective because they could have been adversely impacted.

The material weaknesses did not result in any identified misstatements to the financial statements, and there were no changes to previously released financial results.

Our independent registered public accounting firm, KPMG LLP, who audited the consolidated financial statements included in this Annual Report on Form 10-K, issued an adverse opinion on the effectiveness of the Company’s internal control over financial reporting. KPMG LLP’s report appears on page F-3 of this Annual Report on Form 10-K.

#### **Remediation**

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Management is taking steps to remediate the ITGC deficiencies and will continue to take measures designed to ensure that control deficiencies contributing to the material weaknesses are remediated, such that these controls are designed, implemented, and operating effectively. The remediation actions include:

- designing and fully documenting ITGC processes and procedures specifically over user access and change management;

- developing a training program addressing ITGCs, including educating control owners concerning the principles and requirements of each control, with a focus on maintaining evidence for user access and change-management over IT systems impacting financial reporting;
- developing an IT compliance function that's responsible for the development, training, and testing of the global ITGCs; and
- developing enhanced risk assessment procedures and controls related to changes in IT environments.

The material weaknesses will not be considered remediated until the applicable controls operate for a sufficient period of time and management has concluded, through testing, that the control objective is achieved and the controls are operating effectively. We expect that the remediation of these material weaknesses will be completed prior to the end of fiscal year 2022.

### **Changes in Internal Control Over Financial Reporting**

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Other than the material weaknesses identified during the quarter, there have been no other changes in our internal control over financial reporting (as defined in Rules 13a-15(f) or 15d-15(f) of the Exchange Act) that occurred during the fourth quarter of December 31, 2021 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

### **Inherent Limitations on Effectiveness of Controls and Procedures**

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A company's internal control over financial reporting is a process designed by, or under the supervision of, a company's principal executive and principal financial officers, or persons performing similar functions, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements in accordance with GAAP. Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. In addition, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with policies or procedures may deteriorate. If we cannot provide reliable financial information, our business, operating results and share price could be negatively impacted.

### **ITEM 9B. OTHER INFORMATION**

None.

### **ITEM 9C. DISCLOSURE REGARDING FOREIGN JURISDICTIONS THAT PREVENT INSPECTIONS**

None.

## PART III

### ITEM 10. DIRECTORS, EXECUTIVE OFFICERS, AND CORPORATE GOVERNANCE

The information required by this item is incorporated by reference to our Proxy Statement for our 2022 General Meeting to be filed with the SEC within 120 days after the close of the year ended December 31, 2021.

#### *Code of Conduct*

We have adopted a code of business ethics and conduct (the “Code of Conduct”) that applies to all employees, officers, and directors, including the principal executive officer, principal financial officer, and principal accounting officer. The Code of Conduct is available on our investor relations website at [ir.ichorsystems.com](http://ir.ichorsystems.com). We intend to post all disclosures that are required by law or NASDAQ listing rules regarding any amendment to, or a waiver of, any provision of the Code of Conduct for the principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions.

### ITEM 11. EXECUTIVE COMPENSATION

The information required by this item is incorporated by reference to our Proxy Statement for our 2022 General Meeting to be filed with the SEC within 120 days after the close of the year ended December 31, 2021.

### ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED SHAREHOLDER MATTERS

The information required by this item is incorporated by reference to our Proxy Statement for our 2022 General Meeting to be filed with the SEC within 120 days after the close of the year ended December 31, 2021.

### ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE

The information required by this item is incorporated by reference to our Proxy Statement for our 2022 General Meeting to be filed with the SEC within 120 days after the close of the year ended December 31, 2021.

### ITEM 14. PRINCIPAL ACCOUNTING FEES AND SERVICES

The information required by this item is incorporated by reference to our Proxy Statement for our 2022 General Meeting to be filed with the SEC within 120 days after the close of the year ended December 31, 2021.

## PART IV

### ITEM 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES

(a) **The following documents are filed as a part of this report:**

(1) **Financial Statements.**

The following Consolidated Financial Statements are filed as part of this report under *Item 8 – Financial Statements and Supplementary Data*.

|  |     |
|--|-----|
| <a href="#">Reports of Independent Registered Public Accounting Firm</a> (KPMG LLP, Portland, Oregon, PCAOB ID: 185) | F-1 |
| <a href="#">Consolidated Balance Sheets</a>  | F-5 |
| <a href="#">Consolidated Statements of Operations</a>  | F-6 |
| <a href="#">Consolidated Statements of Shareholders' Equity</a>  | F-7 |
| <a href="#">Consolidated Statements of Cash Flows</a>  | F-8 |
| <a href="#">Notes to Consolidated Financial Statements</a>   | F-9 |

(2) **Exhibits.** Exhibits are listed on the Exhibit Index at the end of this report.

### ITEM 16. FORM 10-K SUMMARY

Not applicable.

## Report of Independent Registered Public Accounting Firm

To the Shareholders and Board of Directors  
Ichor Holdings, Ltd.:

### *Opinion on the Consolidated Financial Statements*

We have audited the accompanying consolidated balance sheets of Ichor Holdings, Ltd. and subsidiaries (the Company) as of December 31, 2021 and December 25, 2020, the related consolidated statements of operations, shareholders' equity, and cash flows for each of the years in the three-year period ended December 31, 2021, and the related notes (collectively, the consolidated financial statements). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2021 and December 25, 2020, and the results of its operations and its cash flows for each of the years in the three-year period ended December 31, 2021, in conformity with U.S. generally accepted accounting principles.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the Company's internal control over financial reporting as of December 31, 2021, based on criteria established in *Internal Control – Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission, and our report dated February 28, 2022 expressed an adverse opinion on the effectiveness of the Company's internal control over financial reporting.

### *Basis for Opinion*

These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements based on our audits. We are a public accounting firm registered with the PCAOB and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement, whether due to error or fraud. Our audits included performing procedures to assess the risks of material misstatement of the consolidated financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the consolidated financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements. We believe that our audits provide a reasonable basis for our opinion.

### *Critical Audit Matters*

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

#### *Evaluation of excess and obsolete inventory*

As discussed in Notes 1 and 3 to the consolidated financial statements, the Company reported net inventories of \$236.1 million as of December 31, 2021, including an adjustment for excess and obsolete inventory of \$14.1 million. The Company states its inventories at the lower of cost or net realizable value. The Company records an adjustment to the cost basis of inventory when evidence exists that the net realizable value of inventory is lower than its cost, which occurs when the Company has excess and/or obsolete inventory. The Company's model to estimate excess and/or obsolete inventory is based on an analysis of existing inventory quantities on-hand compared to estimated future consumption. Future consumption is estimated based upon assumptions about how historical consumption, recent purchases, backlog and other factors indicate future consumption.

We identified the evaluation of excess and obsolete inventory as a critical audit matter. There was subjective auditor judgement in evaluating whether historical consumption and recent purchases reasonably indicate future consumption used by the Company in their determination that inventory is recorded at the lower of its cost or net realizable value.

The following are the primary procedures we performed to address the critical audit matter. We evaluated the assumptions used to estimate future consumption by (1) examining historical write-down trends and (2) inspecting publicly available industry information to assess relevant changes to the overall business environment. Additionally, to evaluate whether recent purchases and historical consumption indicates future consumption we selected a sample of products within inventory and for each sample selection we calculated the rate of consumption for current quantity on hand based on (i) historical consumption and (ii) backlog.

*Fair value of certain acquired customer relationship intangible assets*

As discussed in Note 2 to the consolidated financial statements, on November 19, 2021, the Company acquired IMG Companies, LLC (IMG) and accounted for the transaction as a business combination. As a result of the transaction, the Company recorded intangible assets of \$62.4 million for customer relationships associated with the generation of future income from IMG's existing customers. The estimated fair value of the customer relationship intangible assets was determined using a discounted cash flow model.

We identified the evaluation of the fair value of certain customer relationships acquired in the IMG transaction as a critical audit matter due to the high degree of subjectivity in evaluating discounted future cash flows used to determine the fair value. Specifically, there was a high degree of auditor judgment required to evaluate the forecasted revenue attributable to customer relationships as changes in this assumption could have a significant impact on the fair value of the customer relationships.

The following are the primary procedures we performed to address the critical audit matter. We evaluated the design and tested the operating effectiveness of certain internal controls related to the Company's acquisition-date valuation process including controls over the development of forecasted revenue attributable to customer relationships. We evaluated the forecasted revenue assumptions attributable to customer relationships by comparing these assumptions to IMG's historical results, industry publications, as well as the revenue growth rates of guideline peer companies. In addition, we involved valuation professionals with specialized skills and knowledge who assisted in evaluating the relevance of the guideline peer companies based on financial and non-financial metrics.

/s/ KPMG LLP

We have served as the Company's auditor since 2011.

Portland, Oregon  
February 28, 2022



## Report of Independent Registered Public Accounting Firm

To the Shareholders and Board of Directors  
Ichor Holdings, Ltd.:

### *Opinion on Internal Control Over Financial Reporting*

We have audited Ichor Holdings, Ltd. and subsidiaries' (the Company) internal control over financial reporting as of December 31, 2021, based on criteria established in *Internal Control – Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission. In our opinion, because of the effect of the material weaknesses, described below, on the achievement of the objectives of the control criteria, the Company has not maintained effective internal control over financial reporting as of December 31, 2021, based on criteria established in *Internal Control – Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the consolidated balance sheets of the Company as of December 31, 2021 and December 25, 2020, the related consolidated statements of operations, shareholders' equity, and cash flows for each of the years in the three-year period ended December 31, 2021, and the related notes (collectively, the consolidated financial statements), and our report dated February 28, 2022 expressed an unqualified opinion on those consolidated financial statements.

A material weakness is a deficiency, or a combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of the company's annual or interim financial statements will not be prevented or detected on a timely basis. The material weaknesses relate to ineffective information technology general controls (ITGCs) in the areas of user access and program change-management over certain information technology systems that support the Company's financial reporting processes which have been identified and included in management's assessment. The material weaknesses were considered in determining the nature, timing, and extent of audit tests applied in our audit of the 2021 consolidated financial statements, and this report does not affect our report on those consolidated financial statements.

The Company acquired IMG Companies, LLC during 2021, and management excluded from its assessment of the effectiveness of the Company's internal control over financial reporting as of December 31, 2021, IMG Companies, LLC's internal control over financial reporting associated with total assets of \$293 million and total revenues of \$7.3 million included in the consolidated financial statements of the Company as of and for the year ended December 31, 2021. Our audit of internal control over financial reporting of the Company also excluded an evaluation of the internal control over financial reporting of IMG Companies, LLC.

### *Basis for Opinion*

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

We conducted our audit in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit of internal control over financial reporting included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, and testing and evaluating the design and operating effectiveness of internal control based on the assessed risk. Our audit also included performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

### *Definition and Limitations of Internal Control Over Financial Reporting*

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

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

/s/ KPMG LLP

Portland, Oregon  
February 28, 2022

**ICHOR HOLDINGS, LTD.**  
**Consolidated Balance Sheets**  
*(dollars in thousands, except per share data)*

|  | December 31,<br>2021 | December 25,<br>2020 |
|--|----------------------|----------------------|
| <b>Assets</b>  |                      |                      |
| Current assets:  |                      |                      |
| Cash and cash equivalents  | \$ 75,495            | \$ 252,899           |
| Accounts receivable, net   | 142,990              | 100,977              |
| Inventories  | 236,133              | 134,756              |
| Prepaid expenses and other current assets  | 8,153                | 7,082                |
| Total current assets   | <u>462,771</u>       | <u>495,714</u>       |
| Property and equipment, net  | 85,204               | 41,811               |
| Operating lease right-of-use assets  | 29,790               | 10,088               |
| Other noncurrent assets  | 9,166                | 5,503                |
| Deferred tax assets, net   | 8,116                | 6,324                |
| Intangible assets, net   | 89,927               | 39,845               |
| Goodwill   | 335,902              | 174,887              |
| Total assets   | <u>\$ 1,020,876</u>  | <u>\$ 774,172</u>    |
| <b>Liabilities and Shareholders' Equity</b>  |                      |                      |
| Current liabilities:   |                      |                      |
| Accounts payable   | \$ 159,727           | \$ 116,664           |
| Accrued liabilities  | 19,066               | 20,792               |
| Other current liabilities  | 14,377               | 10,700               |
| Current portion of long-term debt  | 7,500                | 8,750                |
| Current portion of lease liabilities   | 7,633                | 5,128                |
| Total current liabilities  | <u>208,303</u>       | <u>162,034</u>       |
| Long-term debt, less current portion, net  | 285,253              | 191,522              |
| Lease liabilities, less current portion  | 22,354               | 5,272                |
| Deferred tax liabilities, net  | 38                   | 109                  |
| Other non-current liabilities  | 4,213                | 3,546                |
| Total liabilities  | <u>520,161</u>       | <u>362,483</u>       |
| Shareholders' equity:  |                      |                      |
| Preferred shares (\$0.0001 par value; 20,000,000 shares authorized; zero shares issued and outstanding)  | —                    | —                    |
| Ordinary shares (\$0.0001 par value; 200,000,000 shares authorized; 28,551,160 and 27,907,077 shares outstanding, respectively; 32,988,599 and 32,344,516 shares issued, respectively) | 3                    | 3                    |
| Additional paid in capital   | 417,438              | 399,311              |
| Treasury shares at cost (4,437,439 shares)   | (91,578)             | (91,578)             |
| Retained earnings  | 174,852              | 103,953              |
| Total shareholders' equity   | <u>500,715</u>       | <u>411,689</u>       |
| Total liabilities and shareholders' equity   | <u>\$ 1,020,876</u>  | <u>\$ 774,172</u>    |

See accompanying notes to consolidated financial statements.

**ICHOR HOLDINGS, LTD.**  
**Consolidated Statements of Operations**  
*(dollars in thousands, except per share data)*

|  | Year Ended           |                      |                      |
|--|----------------------|----------------------|----------------------|
|  | December 31,<br>2021 | December 25,<br>2020 | December 27,<br>2019 |
| Net sales                                    | \$ 1,096,917         | \$ 914,236           | \$ 620,837           |
| Cost of sales                                | 919,437              | 789,344              | 534,473              |
| Gross profit                                 | <u>177,480</u>       | <u>124,892</u>       | <u>86,364</u>        |
| Operating expenses:                          |                      |                      |                      |
| Research and development                     | 15,691               | 13,361               | 11,102               |
| Selling, general, and administrative         | 65,857               | 56,614               | 47,270               |
| Amortization of intangible assets            | <u>14,918</u>        | <u>13,365</u>        | <u>13,015</u>        |
| Total operating expenses                     | <u>96,466</u>        | <u>83,340</u>        | <u>71,387</u>        |
| Operating income                             | 81,014               | 41,552               | 14,977               |
| Interest expense, net                        | 6,451                | 8,727                | 10,647               |
| Other expense, net                           | <u>807</u>           | <u>534</u>           | <u>55</u>            |
| Income before income taxes                   | 73,756               | 32,291               | 4,275                |
| Income tax expense (benefit)                 | <u>2,857</u>         | <u>(988)</u>         | <u>(6,454)</u>       |
| Net income                                   | <u>\$ 70,899</u>     | <u>\$ 33,279</u>     | <u>\$ 10,729</u>     |
| Net income per share:                        |                      |                      |                      |
| Basic  | \$ 2.51              | \$ 1.44              | \$ 0.48              |
| Diluted                                      | \$ 2.45              | \$ 1.42              | \$ 0.47              |
| Shares used to compute net income per share: |                      |                      |                      |
| Basic  | 28,259,607           | 23,172,961           | 22,418,802           |
| Diluted                                      | 28,979,352           | 23,460,105           | 22,766,903           |

See accompanying notes to consolidated financial statements.

**ICHOR HOLDINGS, LTD.**  
**Consolidated Statements of Shareholders' Equity**  
*(dollars in thousands)*

|   | <u>Ordinary Shares</u> |               | <u>Additional<br/>Paid-In<br/>Capital</u> | <u>Treasury Shares</u> |               | <u>Retained<br/>Earnings</u> | <u>Total<br/>Shareholders'<br/>Equity</u> |
|---|------------------------|---------------|---|------------------------|---------------|------------------------------|---|
|   | <u>Shares</u>          | <u>Amount</u> |   | <u>Shares</u>          | <u>Amount</u> |                              |   |
| Balance at December 28, 2018                                  | 22,234,508             | \$ 2          | \$ 228,358                                | 4,339,529              | \$ (89,979)   | \$ 59,945                    | \$ 198,326                                |
| Ordinary shares issued from exercise of stock options         | 353,027                | —             | 5,042                                     | —                      | —             | —                            | 5,042                                     |
| Ordinary shares issued from vesting of restricted share units | 81,438                 | —             | (290)                                     | —                      | —             | —                            | (290)                                     |
| Ordinary shares issued from employee share purchase plan      | 47,645                 | —             | 671                                       | —                      | —             | —                            | 671                                       |
| Repurchase of ordinary shares                                 | (97,910)               | —             | —   | 97,910                 | (1,599)       | —                            | (1,599)                                   |
| Share-based compensation expense                              | —                      | —             | 8,537                                     | —                      | —             | —                            | 8,537                                     |
| Net income  | —                      | —             | —   | —                      | —             | 10,729                       | 10,729                                    |
| Balance at December 27, 2019                                  | 22,618,708             | 2             | 242,318                                   | 4,437,439              | (91,578)      | 70,674                       | 221,416                                   |
| Ordinary shares issued, net of transaction costs              | 4,600,000              | 1             | 139,371                                   | —                      | —             | —                            | 139,372                                   |
| Ordinary shares issued from exercise of stock options         | 514,481                | —             | 8,849                                     | —                      | —             | —                            | 8,849                                     |
| Ordinary shares issued from vesting of restricted share units | 140,700                | —             | (1,829)                                   | —                      | —             | —                            | (1,829)                                   |
| Ordinary shares issued from employee share purchase plan      | 33,188                 | —             | 727                                       | —                      | —             | —                            | 727                                       |
| Share-based compensation expense                              | —                      | —             | 9,875                                     | —                      | —             | —                            | 9,875                                     |
| Net income  | —                      | —             | —   | —                      | —             | 33,279                       | 33,279                                    |
| Balance at December 25, 2020                                  | 27,907,077             | 3             | 399,311                                   | 4,437,439              | (91,578)      | 103,953                      | 411,689                                   |
| Ordinary shares issued from exercise of stock options         | 410,558                | —             | 8,288                                     | —                      | —             | —                            | 8,288                                     |
| Ordinary shares issued from vesting of restricted share units | 164,613                | —             | (3,616)                                   | —                      | —             | —                            | (3,616)                                   |
| Ordinary shares issued from employee share purchase plan      | 68,912                 | —             | 1,982                                     | —                      | —             | —                            | 1,982                                     |
| Share-based compensation expense                              | —                      | —             | 11,473                                    | —                      | —             | —                            | 11,473                                    |
| Net income  | —                      | —             | —   | —                      | —             | 70,899                       | 70,899                                    |
| Balance at December 31, 2021                                  | 28,551,160             | \$ 3          | \$ 417,438                                | 4,437,439              | \$ (91,578)   | \$ 174,852                   | \$ 500,715                                |

See accompanying notes to consolidated financial statements.

**ICHOR HOLDINGS, LTD.**  
**Consolidated Statements of Cash Flows**  
*(in thousands)*

|   | Year Ended           |                      |                      |
|---|----------------------|----------------------|----------------------|
|   | December 31,<br>2021 | December 25,<br>2020 | December 27,<br>2019 |
| <b>Cash flows from operating activities:</b>  |                      |                      |                      |
| Net income  | \$ 70,899            | \$ 33,279            | \$ 10,729            |
| Adjustments to reconcile net income to net cash provided by (used in) operating activities:                                 |                      |                      |                      |
| Depreciation and amortization   | 25,992               | 24,246               | 21,869               |
| Share-based compensation  | 11,473               | 9,875                | 8,537                |
| Deferred income taxes   | (1,863)              | (1,687)              | (7,131)              |
| Amortization of debt issuance costs   | 883                  | 968                  | 937                  |
| Gain on sale of asset disposal group  | (504)                | 3,575                | —                    |
| Loss on extinguishment of debt  | 737                  | —                    | —                    |
| Other   | 484                  | —                    | —                    |
| Changes in operating assets and liabilities, net of acquisitions:   |                      |                      |                      |
| Accounts receivable, net  | (33,454)             | (16,128)             | (44,562)             |
| Inventories   | (89,249)             | (8,527)              | (5,931)              |
| Prepaid expenses and other assets   | 786                  | (2,076)              | 6,067                |
| Accounts payable  | 38,649               | (14,509)             | 67,966               |
| Accrued liabilities   | (6,740)              | 7,722                | 3,214                |
| Other liabilities   | (2,821)              | 1,521                | (4,545)              |
| Net cash provided by operating activities   | <u>15,272</u>        | <u>38,259</u>        | <u>57,150</u>        |
| <b>Cash flows from investing activities:</b>  |                      |                      |                      |
| Capital expenditures  | (20,839)             | (10,301)             | (12,343)             |
| Cash paid for acquisitions, net of cash acquired  | (268,766)            | (5,035)              | —                    |
| Cash paid for intangible assets   | —                    | —                    | (8,147)              |
| Purchase of marketable securities   | (115,197)            | —                    | —                    |
| Proceeds from maturities and sales of marketable securities   | 114,713              | —                    | —                    |
| Proceeds from sale of property and equipment  | 504                  | 739                  | —                    |
| Net cash used in investing activities   | <u>(289,585)</u>     | <u>(14,597)</u>      | <u>(20,490)</u>      |
| <b>Cash flows from financing activities:</b>  |                      |                      |                      |
| Issuance of ordinary shares, net of fees  | —                    | 139,372              | —                    |
| Issuance of ordinary shares under share-based compensation plans  | 9,664                | 9,832                | 5,757                |
| Employees' taxes paid upon vesting of restricted share units  | (3,616)              | (1,829)              | (290)                |
| Repurchase of ordinary shares   | —                    | —                    | (1,599)              |
| Debt issuance and modification costs  | (1,852)              | —                    | —                    |
| Borrowings on revolving credit facility   | 137,591              | 30,000               | 13,000               |
| Repayments on revolving credit facility   | (41,753)             | —                    | (28,000)             |
| Proceeds from term loan   | 94,175               | —                    | —                    |
| Repayments on term loan   | (97,300)             | (8,750)              | (8,750)              |
| Net cash provided by (used in) financing activities   | <u>96,909</u>        | <u>168,625</u>       | <u>(19,882)</u>      |
| Net increase (decrease) in cash   | <u>(177,404)</u>     | <u>192,287</u>       | <u>16,778</u>        |
| Cash at beginning of period   | 252,899              | 60,612               | 43,834               |
| Cash at end of period   | <u>\$ 75,495</u>     | <u>\$ 252,899</u>    | <u>\$ 60,612</u>     |
| <b>Supplemental disclosures of cash flow information:</b>   |                      |                      |                      |
| Cash paid during the period for interest  | \$ 7,123             | \$ 8,235             | \$ 8,424             |
| Cash paid during the period for taxes, net of refunds   | \$ 5,642             | \$ 250               | \$ 896               |
| <b>Supplemental disclosures of non-cash activities:</b>   |                      |                      |                      |
| Capital expenditures included in accounts payable   | \$ 930               | \$ 369               | \$ 774               |
| Right-of-use assets obtained in exchange for new operating lease liabilities, including those acquired through acquisitions | \$ 24,643            | \$ 642               | \$ 817               |

See accompanying notes to consolidated financial statements.

**ICHOR HOLDINGS, LTD.**

**Notes to Financial Statements**

*(dollar figures in tables in thousands, except per share data)*

**Note 1 – Organization and Summary of Significant Accounting Policies**

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*Organization and Operations of the Company*

Ichor Holdings, Ltd. and Subsidiaries (the “we”, “us”, “our”, “Company”) designs, develops, manufactures, and distributes gas and liquid delivery subsystems and components purchased by capital equipment manufacturers for use in the semiconductor markets. We are headquartered in Fremont, California and have operations in the United States, the United Kingdom, Singapore, Malaysia, Korea, and Mexico.

On December 30, 2011, Ichor Systems Holdings, LLC consummated a sales transaction with Icicle Acquisition Holdings, LLC, a Delaware limited liability company. Shortly after consummation of the sale transaction, Icicle Acquisition Holdings, LLC changed its name to Ichor Holdings, LLC.

In March 2012, Ichor Holdings, LLC completed a reorganization of its legal structure, forming Ichor Holdings, Ltd., a Cayman Islands entity. Ichor Holdings, Ltd. is now the reporting entity and the ultimate parent company of the operating entities.

*Basis of Presentation*

These consolidated financial statements have been prepared in accordance with generally accepted accounting principles in the U.S. (“GAAP”). All intercompany balances and transactions have been eliminated upon consolidation. All dollar figures presented in tables in the notes to consolidated financial statements are in thousands, except per share amounts.

*Year End*

We use a 52- or 53-week fiscal year ending on the last Friday in December. The years ended December 31, 2021, December 25, 2020, and December 27, 2019 were all 53 weeks, 52 weeks, and 52 weeks, respectively. All references to 2021, 2020, and 2019 are references to the fiscal years then ended.

*Use of Estimates*

The preparation of consolidated financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenue and expenses during the reporting periods presented. We base our estimates and judgments on historical experience and on various other assumptions that we believe are reasonable under the circumstances. Actual results could differ from the estimates made by management. Significant estimates include the fair value of assets and liabilities acquired in acquisitions, estimated useful lives for long-lived assets, inventory valuation, uncertain tax positions, fair value assigned to stock options granted, and impairment analysis for both definite-lived intangible assets and goodwill.

*Cash and Cash Equivalents and Marketable Securities*

Cash and cash equivalents consist of deposits and financial instruments which are readily convertible into cash and have original maturities of 90 days or less at the time of acquisition. Marketable securities consist primarily of highly liquid investments with maturities of greater than 90 days when purchased. We classify our marketable securities as available-for-sale and, accordingly, report them at fair value with the related unrealized gains and losses included in accumulated other comprehensive income (loss). Any unrealized losses which are considered to be other-than-temporary are recorded in other income (expense), net. Realized gains and losses on the sale of marketable securities are determined using the specific-identification method and recorded in other income (expense), net. Although we had marketable securities outstanding during 2021, we had no marketable securities outstanding as of December 31, 2021 or December 25, 2020.

Available-for-sale investments are subject to a periodic impairment review. If an available-for-sale debt security’s fair value is less than its amortized cost basis, then we evaluate whether the decline is the result of a credit loss, in which case an impairment is recorded through an allowance for credit losses. Unrealized gains and losses not attributable to credit losses are included, net of tax, in accumulated other comprehensive income (loss). We have not recorded an allowance for credit losses in 2021.

### *Revenue Recognition*

We recognize revenue when control of promised goods or services is transferred to our customers, in an amount that reflects the consideration we expect to be entitled to in exchange for those goods or services. This amount is recorded as net sales in our consolidated statements of operations.

*Transaction price* – In most of our contracts, prices are generally determined by a customer-issued purchase order and generally remain fixed over the duration of the contract. Certain contracts contain variable consideration, including early-payment discounts and rebates. When a contract includes variable consideration, we evaluate the estimate of the variable consideration to determine whether the estimate needs to be constrained; therefore, we include the variable consideration in the transaction price only to the extent that it is probable that a significant reversal will not occur. Variable consideration estimates are updated at each reporting date. Historically, we have not incurred significant costs to obtain a contract. All amounts billed to a customer relating to shipping and handling are classified as net sales, while all costs incurred by us for shipping and handling are classified as cost of sales.

*Performance obligations* – Substantially all of our performance obligations pertain to promised goods (“products”), which are primarily comprised of fluid delivery subsystems, weldments, and other components. Most of our contracts contain a single performance obligation and are generally completed within twelve months. Product sales are recognized at a point-in-time, generally upon delivery, as such term is defined within the contract, as that is when control of the promised good has transferred. Products are covered by a standard assurance warranty, generally extended for a period of one to two years depending on the customer, which promises that delivered products conform to contract specifications. As such, we account for such warranties under ASC 460, *Guarantees*, and not as a separate performance obligation.

*Contract balances* – Accounts receivable represents our unconditional right to receive consideration from our customers. Accounts receivable are carried at invoice price less an estimate for doubtful accounts and estimated payment discounts. Payment terms vary by customer but are generally due within 15–60 days.

*Historically, we have not incurred significant payment issues with our customers. We had no significant contract assets or liabilities on our consolidated balance sheets in any of the periods presented.*

### *Commitments and Contingencies*

We are periodically involved in legal actions and claims that arise as a result of events that occur in the normal course of operations. The ultimate resolution of these actions is not expected to have a material adverse effect on our financial position or results of operations.

### *Concentrations*

Financial instruments that subject us to credit risk consist of accounts receivable, accounts payable, and long-term debt. At December 31, 2021 and December 25, 2020, two customers represented, in the aggregate, approximately 60% and 73%, respectively, of the balance of accounts receivable.

We establish an allowance for doubtful accounts based upon the credit risk of specific customers, historical trends, and other information. We require collateral, typically cash, in the normal course of business if customers do not meet the criteria established for offering credit. If the financial condition of our customers were to deteriorate and result in an impaired ability to make payments, additions to the allowance may be required. Accounts receivable are written off when deemed uncollectible. Recoveries of accounts receivable previously written off are recorded to income when received. Activity and balances related to our allowance for doubtful accounts was not significant during any period presented.

We use qualified manufacturers to supply many components and subassemblies of our products. We obtain the majority of our components from a limited group of suppliers. A majority of the purchased components used in our products are customer specified. An interruption in the supply of a particular component would have a temporary adverse impact on our operating results.

We maintain cash balances at both United States-based and foreign-based commercial banks. Cash balances in the United States exceed amounts that are insured by the Federal Deposit Insurance Corporation (FDIC). The majority of the cash maintained in foreign-based commercial banks is insured by the government where the foreign banking institutions are based. Cash held in foreign-based commercial banks totaled \$41.5 million and \$39.9 million at December 31, 2021 and December 25, 2020, respectively, and at times exceeds insured amounts. No losses have been incurred as of December 31, 2021 or December 25, 2020 for amounts exceeding the insured limits.



### *Fair Value Measurements*

We estimate the fair value of financial assets and liabilities based upon comparison of such assets and liabilities to the current market values for instruments of a similar nature and degree of risk. We utilize valuation techniques that maximize the use of observable inputs and minimize the use of unobservable inputs to the extent possible. We determine fair value based on assumptions that market participants would use in pricing an asset or liability in the principal or most advantageous market. When considering market participant assumptions in fair value measurements, the following fair value hierarchy distinguishes between observable and unobservable inputs, which are categorized in one of the following levels:

- Level 1 Inputs: Unadjusted quoted prices in active markets for identical assets or liabilities accessible to the reporting entity at the measurement date
- Level 2 Inputs: Other than quoted prices included in Level 1 inputs that are observable for the asset or liability, either directly or indirectly, for substantially the full term of the asset or liability
- Level 3 Inputs: Unobservable inputs for the asset or liability used to measure fair value to the extent that observable inputs are not available, thereby allowing for situations in which there is little, if any, market activity for the asset or liability at the measurement date

There were no changes to our valuation techniques during 2021. We estimate the recorded value of our financial assets and liabilities approximates fair value at December 31, 2021 and December 25, 2020.

We estimate the value of acquired intangible assets, on a nonrecurring basis, based on an income approach utilizing discounted cash flows. Under this approach, we estimate the future cash flows from our asset groups and discount the income stream to its present value to arrive at fair value. Future cash flows are based on recently prepared operating forecasts. Operating forecasts and cash flows include, among other things, revenue growth rates that are calculated based on management's forecasted sales projections. A discount rate is utilized to convert the forecasted cash flows to their present value equivalent. The discount rate applied to the future cash flows includes a subject-company risk premium, an equity market risk premium, a beta, and a risk-free rate. As this approach contains unobservable inputs, the measurement of fair value for intangible assets is classified as Level 3.

### *Inventories*

Inventories are stated at the lower of cost or net realizable value. The majority of our inventory values are based upon standard costs. On a quarterly basis, we analyze the value of our inventory and periodically record write-downs for estimated excess and obsolete inventory. This analysis is based on estimated future consumption compared to inventory quantities on-hand. The estimate is based on how assumptions of historical consumption, recency of purchases, backlog, and other factors indicate future consumption. Once the value of inventory is adjusted, the original cost of our inventory, less the write-down, represents its new cost basis. Reversal of these write-downs are recognized only when the related inventory has been scrapped or sold.

### *Property and Equipment*

Property and equipment are stated at cost, less accumulated depreciation. Depreciation is computed using the straight-line method over the following estimated useful lives:

|  | <b>Estimated useful<br/>lives of property<br/>&amp; equipment</b> |
|--|---|
| Machinery                                  | 5-10 years  |
| Leasehold improvements                     | 10 years  |
| Computer software, hardware, and equipment | 3-5 years   |
| Office furniture, fixtures, and equipment  | 5-7 years   |
| Vehicles                                   | 5 years   |

Maintenance and repairs that neither add material value to the asset nor appreciably prolong its useful life are charged to expense as incurred. Gains or losses on the disposal of property and equipment are included in selling, general, and administrative expenses on the consolidated statements of operations.

### Leases

We determine if an arrangement is a lease, or contains a lease, at the inception of the arrangement. If we determine the arrangement is a lease, or contains a lease, at lease inception, we then determine whether the lease is an operating lease or a finance lease. Operating and finance leases result in recording a right-of-use (“ROU”) asset and lease liability on our consolidated balance sheets. ROU assets represent our right to use an underlying asset for the lease term and lease liabilities represent our obligation to make lease payments arising from the lease. Operating lease ROU assets and liabilities are recognized at the commencement date based on the present value of lease payments over the lease term. For purposes of calculating operating lease ROU assets and operating lease liabilities, we use the non-cancellable lease term plus options to extend that we are reasonably certain to take. Lease expense for operating lease payments is recognized on a straight-line basis over the lease term. Our leases generally do not provide an implicit rate. As such, we use our incremental borrowing rate based on the information available at commencement date in determining the present value of lease payments. This rate is generally consistent with the interest rate we pay on borrowings under our credit facilities, as this rate approximates our collateralized borrowing capabilities over a similar term of lease payments. We utilize the consolidated group incremental borrowing rate for all leases, as we have centralized treasury operations. We have elected not to recognize ROU assets and lease liabilities that arise from short-term (12 months or less) leases for any class of underlying asset. We have elected not to separate lease and non-lease components for any class of underlying asset.

### Long-Lived Assets

Long-lived assets are reviewed for impairment whenever events or changes in circumstances indicate, in management’s judgment, that the carrying amount of an asset (or asset group) may not be recoverable. In analyzing potential impairments, projections of future cash flows from the asset group are used to estimate fair value. If the sum of the expected future undiscounted cash flows is less than the carrying amount of the asset group, a loss is recognized for the difference between the estimated fair value and the carrying value of the asset group. The projections are based on assumptions, judgments, and estimates of revenue growth rates for the related business; anticipated future economic, regulatory, and political conditions; the assignment of discount rates relative to risk; and estimates of terminal values. During 2021, 2020, and 2019, we did not identify any triggering events that would indicate impairment.

### Intangible Assets

We account for intangible assets that have a definite life and are amortized on a basis consistent with their expected cash flows over the following estimated useful lives:

|                        | <b>Estimated useful<br/>lives of intangible<br/>assets</b> |
|------------------------|--|
| Trademarks             | 10 years   |
| Customer relationships | 6-10 years   |
| Developed technology   | 7-10 years   |

### Goodwill

Goodwill represents the future economic benefits arising from other assets acquired in a business combination that are not individually identified and separately recognized. We review goodwill for impairment annually and whenever events or changes in circumstances indicate the carrying value of goodwill may not be recoverable. We first make a qualitative assessment of whether it is more likely than not that a reporting unit’s fair value is less than its carrying amount before applying a quantitative goodwill impairment test. Under the quantitative test, the fair value of the reporting unit is compared to its carrying value and an impairment loss is recognized for any excess of carrying amount over the reporting unit’s fair value. Fair value of the reporting unit is determined using a discounted cash flow analysis. For purposes of testing goodwill for impairment, we have concluded that we operate as one reporting unit.

We performed a qualitative goodwill assessment at December 31, 2021 and December 25, 2020. This assessment indicated that it was more likely than not our reporting unit’s fair value exceeded its carrying value.

### Research and Development Costs

Research and development costs are expensed as incurred.

### *Share-Based Payments*

We use the Black-Scholes option-pricing model to value awards on the date of grant. We use the simplified method to estimate the expected term of share-based awards for all periods as we do not have sufficient history to estimate the weighted average expected term. The risk-free interest rate is based on the U.S. Treasury rates in effect on the corresponding date of grant. Estimated volatility is based on the historical volatility of ours and similar entities' publicly traded shares.

### *Income Taxes*

We recognize deferred income taxes using the asset and liability method of accounting for income taxes. Under the asset and liability method, deferred income taxes are recognized for differences between the financial reporting and tax bases of assets and liabilities at enacted statutory tax rates in effect for the years in which the differences are expected to reverse. The effect on deferred taxes of a change in tax rates is recognized in income in the period that includes the enactment date. Valuation allowances are established when necessary to reduce deferred tax assets to the amount expected to be realized. Income tax expense for the current year differs from the statutory rate primarily as a result of the impact of foreign operations and discrete tax benefits recorded in connection with our historical acquisitions and stock option exercises.

When tax returns are filed, it is highly certain that some positions taken would be sustained upon examination by the taxing authorities, while others may be subject to uncertainty about the merits of the position taken or the amount of the position that would be ultimately sustained. The benefit of a tax position is recognized in the consolidated financial statements in the period during which, based on all available evidence, management believes it is more likely than not that the position will be sustained upon examination, including the resolution of appeals or litigation processes, if any. Tax positions taken are not offset or aggregated with other positions. Tax positions that meet the more-likely-than-not recognition threshold are measured as the largest amount of tax benefit that is more than 50% likely of being realized upon settlement with the applicable taxing authority. The portion of the benefits associated with tax positions taken that exceeds the amount measured as described above is reflected as a liability for unrecognized tax benefits in our consolidated balance sheets along with any associated interest and penalties that would be payable to the taxing authorities upon examination. We recognize interest and penalties as a component of income tax expense.

### *Foreign Operations*

The functional currency of our international operations is the U.S. dollar. Transactions denominated in currencies other than the functional currency generate foreign exchange gains and losses that are included in other expense (income), net on our consolidated statements of operations. Substantially all of our sales contracts, and most of our agreements with third-party suppliers, provide for pricing and payment in U.S. dollars. Accordingly, these transactions are not subject to material exchange rate fluctuations.

### *Accounting Pronouncements Recently Adopted*

In June 2016, the FASB issued ASU 2016-13, *Financial Instruments—Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments*. This standard changes the methodology for measuring credit losses on financial instruments and the timing of when such losses are recorded. We adopted the standard on the first day of 2020, and the adoption did not have a significant impact on our financial statements.

In August 2018, the FASB issued ASU 2018-15, *Intangibles—Goodwill and Other—Internal-Use Software (Subtopic 350-40): Customer's Accounting for Implementation Costs Incurred in a Cloud Computing Arrangement That Is a Service Contract*. The new guidance clarifies the accounting for implementation costs in cloud computing arrangements. We adopted the standard on the first day of 2020. During the 2020, we incurred capitalizable implementation costs of approximately \$4.4 million in connection with our implementation of a new company-wide ERP system that is classified as a hosting arrangement that is a service contract. Accordingly, these costs are included in Other noncurrent assets on our consolidated balance sheet as of December 25, 2020. Additionally, our cash provided by operating activities for 2020 includes \$3.3 million in cash outflows associated with these capitalized implementation costs. As the ERP system was not yet in-service as of December 25, 2020, there was no amortization expense recognized during 2020.

In December 2019, the FASB issued ASU 2019-12, *Income Taxes (Topic 740) – Simplifying the Accounting for Income Taxes*, as part of its initiative to reduce complexity in accounting standards. The amendments in the ASU include removing exceptions to incremental intraperiod tax allocation of losses and gains from different financial statement components, exceptions to the method of recognizing income taxes on interim period losses, and exceptions to deferred tax liability recognition related to foreign subsidiary investments. In addition, the ASU requires that entities recognize franchise tax based on an incremental method and requires an entity to evaluate the accounting for step-ups in the tax basis of goodwill as inside or outside of a business combination. We adopted the standard on the first day of 2021, and the adoption did not have a significant impact on our financial statements.

## Accounting Pronouncements Recently Issued

In October 2021, the FASB issued ASU No. 2021-08, *Accounting for Contract Assets and Contract Liabilities from Contracts with Customers (Topic 805)*. This ASU requires an acquirer in a business combination to recognize and measure contract assets and contract liabilities (deferred revenue) from acquired contracts using the revenue recognition guidance in Topic 606. At the acquisition date, the acquirer applies the revenue model as if it had originated the acquired contracts. The ASU is effective for annual periods beginning after December 15, 2022, including interim periods within those fiscal years. Adoption of the ASU should be applied prospectively. Early adoption is also permitted, including adoption in an interim period. If early adopted, the amendments are applied retrospectively to all business combinations for which the acquisition date occurred during the fiscal year of adoption. This ASU is currently not expected to have a material impact on our consolidated financial statements.

## Note 2 – Acquisitions

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### IMG Companies, LLC

On November 19, 2021 we completed the acquisition, via merger, of IMG Companies, LLC and its subsidiaries (“IMG”), a California-based precision machining, specialty joining, and plating company for an aggregate purchase price of \$270.0 million. IMG provides us increased capacity and capabilities in our precision machining business, and expands our served customer base with new component and service offerings.

The following table presents the preliminary purchase price allocation as of November 19, 2021. As of December 31, 2021, total acquisition consideration remains preliminary, as we are still finalizing the working capital adjustment component of final purchase price under the merger agreement.

|   | <b>Preliminary<br/>Allocation<br/>November 19,<br/>2021</b> |
|---|---|
| Cash acquired                             | \$ 1,234  |
| Accounts receivable                       | 8,559   |
| Inventories                               | 12,128  |
| Prepaid expenses and other current assets | 579   |
| Property and equipment                    | 33,067  |
| Operating lease right-of-use assets       | 14,509  |
| Intangible assets                         | 65,000  |
| Goodwill                                  | 161,015   |
| Accounts payable                          | (3,853)   |
| Accrued expenses                          | (5,620)   |
| Other current liabilities                 | (2,109)   |
| Lease liabilities                         | (14,509)  |
| Total acquisition consideration           | <u>\$ 270,000</u>   |

We preliminarily allocated \$62.4 million to IMG’s customer relationships and \$2.6 million to IMG’s order backlog with weighted average amortization periods of 10 years and 6 months, respectively. Preliminary goodwill recognized from the acquisition was primarily attributed to an assembled workforce and expected synergies. We incurred transaction costs of approximately \$4.4 million in connection with the acquisition during 2021. The fair value adjustment to inventory as part of our preliminary purchase price allocation resulted in a \$1.4 million charge to cost of sales during 2021.

Our consolidated statement of operations for 2021 includes approximately 6 weeks operating activity of IMG, including sales of \$7.3 million.

The following unaudited pro forma consolidated results of operations assume the acquisition was completed on December 26, 2020, the beginning of the earliest period presented. Pro forma adjustments are primarily comprised of preliminary estimates of amortization expense related to acquired intangible assets, incremental interest expense from increased borrowings to fund the acquisition and the elimination of IMG's historical interest expense, elimination of IMG's non-recurring management expenses, elimination of a gain on forgiveness of debt, acquired inventory fair value charges, the related income tax effects, and other insignificant management adjustments. The pro forma results of operations are presented for informational purposes only and are not indicative of the results of operations that would have been achieved or of results that may occur in the future.

|                       | <b>Year Ended</b>            |                              |
|-----------------------|------------------------------|------------------------------|
|                       | <b>December 31,<br/>2021</b> | <b>December 25,<br/>2020</b> |
| Net sales             | \$ 1,156,619                 | \$ 962,642                   |
| Net income            | \$ 74,531                    | \$ 26,048                    |
| Net income per share: |                              |                              |
| Basic                 | \$ 2.64                      | \$ 1.12                      |
| Diluted               | \$ 2.57                      | \$ 1.11                      |

#### *Nogales, Mexico Precision Machining Acquisition*

On December 1, 2020, we acquired certain operating assets and assumed the operations of a precision machining operation in Nogales, Mexico, which was considered a business combination under ASC 805 – *Business Combinations*, for an aggregate purchase of \$5.0 million. The acquisition adds to our precision machined component manufacturing capacity. In connection with the acquisition, we recorded \$2.0 million in tangible operating assets, a \$1.2 million customer relationship intangible asset, which will be amortized of a period of 6 years, and \$1.9 million in goodwill.

#### **Note 3 – Inventories**

Inventories consist of the following:

|                                | <b>December 31,<br/>2021</b> | <b>December 25,<br/>2020</b> |
|--------------------------------|------------------------------|------------------------------|
| Raw materials                  | \$ 159,366                   | \$ 88,015                    |
| Work in process                | 62,537                       | 38,184                       |
| Finished goods                 | 28,281                       | 21,299                       |
| Excess and obsolete adjustment | (14,051)                     | (12,742)                     |
| Total inventories              | <u>\$ 236,133</u>            | <u>\$ 134,756</u>            |

The following table presents changes to our excess and obsolete adjustment:

|                              | <b>Excess and<br/>obsolete<br/>adjustment</b> |
|------------------------------|---|
| Balance at December 28, 2018 | \$ (7,692)                                    |
| Charge to cost of sales      | (1,086)                                       |
| Disposition of inventory     | 961   |
| Balance at December 27, 2019 | (7,817)                                       |
| Charge to cost of sales      | (4,649)                                       |
| Disposition of inventory     | (276)   |
| Balance at December 25, 2020 | (12,742)                                      |
| Charge to cost of sales      | (1,942)                                       |
| Disposition of inventory     | 633   |
| Balance at December 31, 2021 | <u>\$ (14,051)</u>                            |

#### Note 4 – Property and Equipment

Property and equipment consist of the following:

|  | December 31,<br>2021 | December 25,<br>2020 |
|--|----------------------|----------------------|
| Machinery                                  | \$ 80,953            | \$ 37,196            |
| Leasehold improvements                     | 36,706               | 29,616               |
| Computer software, hardware, and equipment | 8,031                | 6,501                |
| Office furniture, fixtures and equipment   | 1,168                | 1,166                |
| Vehicles                                   | 284                  | 75                   |
| Construction-in-process                    | 8,565                | 5,483                |
|  | <u>135,707</u>       | <u>80,037</u>        |
| Less accumulated depreciation              | (50,503)             | (38,226)             |
| Total property and equipment, net          | <u>\$ 85,204</u>     | <u>\$ 41,811</u>     |

Depreciation expense for 2021, 2020, and 2019 was \$11.1 million, \$10.9 million, and \$8.9 million, respectively.

#### Cloud Computing Implementation Costs

Pursuant to ASU 2018-15, we capitalize implementation costs associated with hosting arrangement that are service contracts. These costs are recorded to prepaid expenses or other noncurrent assets. To-date, these costs are those incurred to implement a new company-wide ERP system.

The following table summarizes capitalized cloud computing implementation costs:

|  |                 |
|--|-----------------|
| Capitalized cloud computing implementation costs as of December 27, 2019 | \$ —            |
| Costs capitalized during the period                                      | 4,366           |
| Capitalized costs amortized during the period                            | <u>—</u>        |
| Capitalized cloud computing implementation costs as of December 25, 2020 | 4,366           |
| Costs capitalized during the period                                      | 3,992           |
| Capitalized costs amortized during the period                            | (304)           |
| Capitalized cloud computing implementation costs as of December 31, 2021 | <u>\$ 8,054</u> |

#### Note 5 – Intangible Assets and Goodwill

Definite-lived intangible assets consist of the following:

|                         | December 31, 2021 |                          |                                |                  |                              |
|-------------------------|-------------------|--------------------------|--------------------------------|------------------|------------------------------|
|                         | Gross value       | Accumulated amortization | Accumulated impairment charges | Carrying amount  | Weighted average useful life |
| Customer relationships  | 146,569           | (65,953)                 | —                              | 80,616           | 8.7 years                    |
| Developed technology    | 11,047            | (3,483)                  | —                              | 7,564            | 10.0 years                   |
| Order backlog           | 2,600             | (853)                    | —                              | 1,747            | 6 months                     |
| Total intangible assets | <u>\$ 160,216</u> | <u>\$ (70,289)</u>       | <u>\$ —</u>                    | <u>\$ 89,927</u> |                              |
|                         | December 25, 2020 |                          |                                |                  |                              |
|                         | Gross value       | Accumulated amortization | Accumulated impairment charges | Carrying amount  | Weighted average useful life |
| Trademarks              | \$ 9,690          | \$ (8,717)               | \$ —                           | \$ 973           | 10.0 years                   |
| Customer relationships  | 84,169            | (53,946)                 | —                              | 30,223           | 7.8 years                    |
| Developed technology    | 11,047            | (2,398)                  | —                              | 8,649            | 10.0 years                   |
| Total intangible assets | <u>\$ 104,906</u> | <u>\$ (65,061)</u>       | <u>\$ —</u>                    | <u>\$ 39,845</u> |                              |

Future projected annual amortization expense consists of the following:

|            | <b>Future<br/>amortization<br/>expense</b> |
|------------|--|
| 2022       | \$ 17,763                                  |
| 2023       | 14,803                                     |
| 2024       | 8,435                                      |
| 2025       | 8,311                                      |
| 2026       | 7,730                                      |
| Thereafter | 32,885                                     |
|            | <u>\$ 89,927</u>                           |

The following tables present the changes to goodwill:

|                              | <b>Goodwill</b>   |
|------------------------------|-------------------|
| Balance at December 28, 2018 | \$ 173,010        |
| Acquisitions                 | —                 |
| Balance at December 27, 2019 | 173,010           |
| Acquisitions                 | 1,877             |
| Balance at December 25, 2020 | 174,887           |
| Acquisitions                 | 161,015           |
| Balance at December 31, 2021 | <u>\$ 335,902</u> |

#### **Note 6 – Leases**

We lease facilities under various non-cancellable operating leases expiring through 2031. In addition to base rental payments, we are generally responsible for our proportionate share of operating expenses, including facility maintenance, insurance, and property taxes. As these amounts are variable, they are not included in lease liabilities. As of December 31, 2021, we had one operating leases executed for which the rental period had not yet commenced.

The components of lease expense are as follows:

|                      | <b>Year Ended</b>            |                              |                              |
|----------------------|------------------------------|------------------------------|------------------------------|
|                      | <b>December 31,<br/>2021</b> | <b>December 25,<br/>2020</b> | <b>December 27,<br/>2019</b> |
| Operating lease cost | \$ 5,763                     | \$ 5,397                     | \$ 5,420                     |

Supplemental cash flow information related to leases is as follows:

|   | <b>Year Ended</b>            |                              |                              |
|---|------------------------------|------------------------------|------------------------------|
|   | <b>December 31,<br/>2021</b> | <b>December 25,<br/>2020</b> | <b>December 27,<br/>2019</b> |
| Cash paid for amounts included in the measurement of lease liabilities: |                              |                              |                              |
| Operating cash flows from operating leases                              | \$ 5,477                     | \$ 5,574                     | \$ 5,220                     |

Supplemental balance sheet information related to leases is as follows:

|   | <b>December 31,<br/>2021</b> | <b>December 25,<br/>2020</b> |
|---|------------------------------|------------------------------|
| Weighted-average remaining lease term of operating leases | 5.8 years                    | 2.3 years                    |
| Weighted-average discount rate of operating leases        | 2.4%                         | 4.5%                         |

Future minimum lease payments under non-cancellable leases as of December 31, 2021 are as follows

|                                     |    |         |
|-------------------------------------|----|---------|
| 2022                                | \$ | 7,633   |
| 2023                                |    | 5,401   |
| 2024                                |    | 4,550   |
| 2025                                |    | 4,230   |
| 2026                                |    | 3,737   |
| Thereafter                          |    | 6,292   |
| Total future minimum lease payments |    | 31,843  |
| Less imputed interest               |    | (1,856) |
| Total lease liabilities             | \$ | 29,987  |

## Note 7 – Income Taxes

On March 27, 2020 the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”) was signed into law. The CARES Act allows net operating losses from the 2018, 2019 and 2020 tax years to be carried back up to five years. As a result, during 2020 we were able to carry back our 2019 net operating loss to tax years 2017 and 2018, resulting in a \$1.0 million refund claim. The CARES Act also provided for an increased interest deduction for tax years 2019 and 2020, as well as the deferral of the employer portion of social security taxes.

Income before tax was as follows:

|                   | Year Ended        |                   |                   |
|-------------------|-------------------|-------------------|-------------------|
|                   | December 31, 2021 | December 25, 2020 | December 27, 2019 |
| United States     | \$ 13,435         | \$ (2,558)        | \$ (20,993)       |
| Foreign           | 60,321            | 34,849            | 25,268            |
| Income before tax | \$ 73,756         | \$ 32,291         | \$ 4,275          |

Significant components of income tax expense (benefit) consist of the following:

|                              | Year Ended        |                   |                   |
|------------------------------|-------------------|-------------------|-------------------|
|                              | December 31, 2021 | December 25, 2020 | December 27, 2019 |
| Current:                     |                   |                   |                   |
| Federal                      | \$ 430            | \$ (1,103)        | \$ (812)          |
| State                        | 1,524             | 341               | 649               |
| Foreign                      | 2,766             | 1,461             | 868               |
| Total current tax expense    | 4,720             | 699               | 705               |
| Deferred:                    |                   |                   |                   |
| Federal                      | (889)             | (1,321)           | (5,315)           |
| State                        | (771)             | (196)             | (1,218)           |
| Foreign                      | (203)             | (170)             | (626)             |
| Total deferred tax benefit   | (1,863)           | (1,687)           | (7,159)           |
| Income tax expense (benefit) | \$ 2,857          | \$ (988)          | \$ (6,454)        |



The reconciliation of income tax computed at the U.S. federal statutory tax rates to income tax expense (benefit) consist of the following:

|                                | Year Ended           |                      |                      |
|--------------------------------|----------------------|----------------------|----------------------|
|                                | December 31,<br>2021 | December 25,<br>2020 | December 27,<br>2019 |
| Effective rate reconciliation: |                      |                      |                      |
| U.S. federal tax expense       | \$ 15,489            | \$ 6,781             | \$ 898               |
| State income taxes, net        | 577                  | 105                  | (523)                |
| Permanent items                | 680                  | 298                  | (75)                 |
| Foreign rate differential      | (1,897)              | (1,325)              | (1,051)              |
| Tax holiday                    | (9,653)              | (5,911)              | (4,582)              |
| Credits                        | (1,647)              | (1,411)              | (918)                |
| Tax contingencies              | 482                  | 80                   | (830)                |
| Share-based compensation       | (2,640)              | (1,002)              | (285)                |
| Withholding tax                | 1,044                | 819                  | 554                  |
| Other, net                     | 385                  | 330                  | 201                  |
| Valuation allowance            | 37                   | 248                  | 157                  |
| Income tax expense (benefit)   | <u>\$ 2,857</u>      | <u>\$ (988)</u>      | <u>\$ (6,454)</u>    |

Deferred income tax assets and liabilities consist of the following:

|                                     | December 31,<br>2021 | December 25,<br>2020 |
|-------------------------------------|----------------------|----------------------|
| Deferred tax assets:                |                      |                      |
| Inventory                           | \$ 4,643             | \$ 3,836             |
| Share-based compensation            | 2,551                | 2,266                |
| Accrued payroll                     | 2,140                | 2,370                |
| Net operating loss carryforwards    | 816                  | 873                  |
| Tax credits                         | 5,103                | 7,943                |
| Intercompany interest               | 1,907                | 1,689                |
| Operating lease liabilities         | 7,450                | 2,616                |
| Other assets                        | 755                  | 414                  |
| Deferred tax assets                 | <u>25,365</u>        | <u>22,007</u>        |
| Valuation allowance                 | (556)                | (518)                |
| Total deferred tax assets           | <u>24,809</u>        | <u>21,489</u>        |
| Deferred tax liabilities:           |                      |                      |
| Intangible assets                   | (3,265)              | (7,344)              |
| Property, plant and equipment       | (5,928)              | (5,273)              |
| Operating lease right-of-use assets | (7,409)              | (2,568)              |
| Other liabilities                   | (129)                | (89)                 |
| Total deferred tax liabilities      | <u>(16,731)</u>      | <u>(15,274)</u>      |
| Net deferred tax asset              | <u>\$ 8,078</u>      | <u>\$ 6,215</u>      |

At December 31, 2021, we had federal, state, and foreign net operating loss carryforwards of zero, \$4.8 million, and \$2.1 million respectively. The state and foreign net operating loss carryforwards, if not utilized, will begin to expire in 2032, and 2029, respectively. At December 31, 2021, we had federal and state research and development credits of \$2.9 million and zero, respectively. The federal research and development credits, if not utilized, will begin to expire in 2034. Additionally, we had foreign tax credits of \$0.6 million, which if not utilized, will begin to expire in 2027.

We have determined the amount of our valuation allowance based on our estimates of taxable income by jurisdiction in which we operate over the periods in which the related deferred tax assets will be recoverable. As of December 31, 2021, we believe it is more-likely-than-not that we will realize our U.S. deferred tax assets, with the exception of certain state and foreign net operating loss carryforwards we believe are not likely to be realized within the carryforward period.

We were granted a tax holiday for our Singapore operations that is effective through 2026. The net impact of the tax holiday in Singapore as compared to the Singapore statutory rate was a benefit of \$9.7 million, \$5.9 million, and \$4.6 million during 2021, 2020, and 2019, respectively. Our income tax fluctuates based on the geographic mix of earnings and is calculated quarterly based on actual results pursuant to ASC Topic 740-270.

As of December 31, 2021, we have recognized \$3.0 million of unrecognized tax benefits in other non-current liabilities in our consolidated balance sheet. If recognized, \$1.5 million of this amount would impact our effective tax rate. We expect a decrease of \$0.1 million to the total amount of unrecognized tax benefits within the next twelve months.

Our ongoing practice is to recognize potential accrued interest and penalties related to unrecognized tax benefits within our statements of operations in income tax expense (benefit). Interest and penalties associated with uncertain tax positions recognized during 2021 and 2020 were insignificant. At December 31, 2021, other non-current liabilities on our balance sheet included approximately zero and \$0.5 million of interest and penalties, respectively, associated with uncertain tax positions, which are excluded from the unrecognized tax benefits table below.

The following table summarizes the activity related to our unrecognized tax benefits:

|  | <b>Unrecognized<br/>tax benefits</b> |
|--|--------------------------------------|
| Balance at December 28, 2018   | \$ 2,256                             |
| Increase related to current year tax positions                                       | 380                                  |
| Increase related to prior year tax positions   | 8                                    |
| Decrease in tax positions related to lapse of statute of limitations and settlements | (784)                                |
| Balance at December 27, 2019   | 1,860                                |
| Increase related to current year tax positions                                       | 378                                  |
| Increase related to prior year tax positions   | 484                                  |
| Decrease in tax positions related to lapse of statute of limitations                 | (232)                                |
| Balance at December 25, 2020   | 2,490                                |
| Increase related to current year tax positions                                       | 597                                  |
| Decrease in tax positions related to lapse of statute of limitations                 | (92)                                 |
| Balance at December 31, 2021   | <u>\$ 2,995</u>                      |

We assert indefinite reinvestment of our U.S. and Netherlands unremitted earnings. With regard to these unremitted earnings, we have not, nor do we anticipate the need to repatriate funds from the U.S. to the Netherlands or from the Netherlands to the Cayman entity to satisfy liquidity needs. Determination of the amount of unrecognized withholding tax liability related to the indefinitely reinvested earnings is not practicable.

Our three major filing jurisdictions are the United States, Singapore and Malaysia. We are no longer subject to U.S. Federal examination for tax years ending before 2017, to state examinations before 2017, or to foreign examinations before 2016. However, to the extent allowed by law, the tax authorities may have the right to examine prior periods where net operating losses or tax credits were generated and carried forward, and make adjustments up to the amount of the net operating losses or credit carryforward. At December 31, 2021, we were not under examination by a tax authority.

## **Note 8 – Employee Benefit Programs**

### *401(k) Plan*

We sponsor a 401(k) plan available to employees of our U.S.-based subsidiaries. Participants may make salary deferral contributions not to exceed 50% of a participant's annual compensation or the maximum amount otherwise allowed by law. Eligible employees receive a discretionary matching contribution equal to 50% of a participant's deferral, up to an annual maximum of 4% of a participant's annual compensation. For 2021, 2020, and 2019, matching contributions were \$2.2 million, \$1.9 million, and \$1.5 million, respectively.

## Note 9 – Long-Term Debt

Long-term debt consists of the following:

|   | December 31,<br>2021 | December 25,<br>2020 |
|---|----------------------|----------------------|
| Term loan                                       | \$ 150,000           | \$ 153,125           |
| Revolving credit facility                       | 145,000              | 49,162               |
| Total principal amount of long-term debt        | 295,000              | 202,287              |
| Less unamortized debt issuance costs            | (2,247)              | (2,015)              |
| Total long-term debt, net                       | 292,753              | 200,272              |
| Less current portion                            | (7,500)              | (8,750)              |
| Total long-term debt, less current portion, net | <u>\$ 285,253</u>    | <u>\$ 191,522</u>    |

Maturities of long-term debt consist of the following:

|       | Future<br>maturities of<br>long-term debt |
|-------|---|
| 2022  | \$ 7,500                                  |
| 2023  | 7,500                                     |
| 2024  | 7,500                                     |
| 2025  | 7,500                                     |
| 2026  | 265,000                                   |
| Total | <u>\$ 295,000</u>                         |

The weighted average interest rate across our credit facilities was 2.74%, 3.75%, and 4.78% during 2021, 2020, and 2019, respectively.

On October 29, 2021, we entered into an amended and restated credit agreement, which includes a group of financial institutions as direct lenders underlying the agreement. The credit agreement includes a \$150.0 million term loan facility and a \$250.0 million revolving credit facility (“credit facilities”). We incurred debt issuance costs of approximately \$1.9 million in connection with the amendment and restatement. We account for debt issuance costs as a reduction to the carrying value of our long-term debt, and we amortize the costs to interest expense over the term of the credit agreement. Under the debt modification literature codified in ASC 470, a portion of the amendment and restatement was treated as an extinguishment. Accordingly, \$0.7 million of existing capitalized debt issuance costs were written off as a loss on extinguishment of debt, which is included in other expense (income), net on our statements of operations. Term loan payments of \$1.9 million are due on a quarterly basis. The credit agreement matures on October 29, 2026.

Our credit agreement is secured by our tangible and intangible assets and includes customary representations, warranties, and covenants. We are required to maintain a minimum fixed charge coverage ratio of 1.25 : 1 and a maximum leverage ratio 3.50 : 1 to 4.00:1.

Interest is charged at either the Base Rate or the Bloomberg Short-Term Bank Yield (“BSBY”) Rate (as such terms are defined in the credit agreement) at our option, plus an applicable margin. The Base Rate is equal to the higher of i) the Prime Rate, ii) the Federal Funds Rate plus 0.5%, or iii) the BSBY Rate plus 1.00%. The applicable margin on Base Rate and BSBY Rate loans is 0.375-1.375% and 1.375-2.375% per annum, respectively, depending on our leverage ratio. We are also charged a commitment fee of 0.175%-0.350% on the unused portion of our revolving credit facility. Base Rate interest payments and commitment fees are due quarterly. BSBY rate interest payments are due on the last day of the applicable interest period, or quarterly for applicable interest periods longer than 3 months. At December 31, 2021, our credit facilities bore interest under the BSBY rate option of 1.81%.

## Note 10 – Shareholders’ Equity

### *Public Offering of Shares*

On December 14, 2020, we completed an underwritten public offering of 4.6 million ordinary shares with net proceeds of \$139.4 million, after deducting the underwriting discount of \$1.35 per share and incremental offering expenses of \$0.5 million.

### Share Repurchase Program

In February 2018, our Board of Directors authorized a share repurchase program up to \$50.0 million under which we may repurchase our ordinary shares in the open market or through privately negotiated transactions, depending on market conditions and other factors. Ordinary shares repurchased are recorded as treasury shares using the cost method on a first-in, first-out basis. In August 2018, our Board of Directors authorized a \$50.0 million increase to the share repurchase program.

The following tables details our share repurchases for the periods indicated:

|                                       | Total Number<br>of Shares<br>Repurchased | Total Cost of<br>Repurchase | Average Price<br>Paid per<br>Share | Amount<br>Available<br>Under<br>Repurchase<br>Program |
|---------------------------------------|--|-----------------------------|------------------------------------|---|
| Amount available at December 28, 2018 |  |                             |                                    | \$ 10,021   |
| Quarter ended March 29, 2019          | 97,910                                   | 1,599                       | \$ 16.33                           | \$ 8,421  |
| Quarter ended June 28, 2019           | —  | —                           | \$ —                               | \$ 8,421  |
| Quarter ended September 27, 2019      | —  | —                           | \$ —                               | \$ 8,421  |
| Quarter ended December 27, 2019       | —  | —                           | \$ —                               | \$ 8,421  |
| Year ended December 27, 2019          | <u>97,910</u>                            | <u>\$ 1,599</u>             | \$ 16.33                           | \$ 8,421  |

### Note 11 – Share-Based Compensation

#### 2016 Plan

In December 2016, we adopted the 2016 Omnibus Incentive Plan (“the 2016 Plan”). The 2016 Plan provides for grants of share-based awards to employees, directors, and consultants. Under the 2016 Plan, 1,888,000 ordinary shares were reserved for issuance. The number of shares reserved for issuance under the 2016 Plan increases annually beginning in fiscal year 2018 by the lesser of (i) 2% of the ordinary shares outstanding on the last day of the immediately preceding fiscal year or (ii) such amount determined by our Board of Directors. Awards may be in the form of stock options (“options”), tandem and non-tandem stock appreciation rights, restricted share awards or restricted share units (“RSUs”), performance awards, and other share-based awards. Forfeited or expired awards are returned to the incentive plan pool for future grants.

Options granted under the 2016 Plan generally have a term of 7 years. Vesting of options and RSUs generally occurs 25% on the first anniversary of the date of grant and quarterly thereafter over the remaining 3 years. Upon vesting of RSUs, employees may elect to have shares withheld to cover statutory minimum withholding taxes. Shares withheld are not reflected as an issuance of ordinary shares within our consolidated statements of shareholders’ equity, as the shares were never issued, and the associated tax payments are reflected as financing activities within our consolidated statements of cash flows.

#### 2012 Plan

In March 2012, we adopted the Ichor Holdings Ltd. 2012 Equity Incentive Plan (the “2012 Plan”). Under the 2012 Plan, we could grant either restricted shares, RSUs, or options to employees, directors, and consultants. Options granted under the 2012 Plan generally had a term of 7 years. Vesting of options and RSUs generally occurred 25% on the first anniversary of the date of grant and quarterly thereafter over the remaining 3 years. There have been no issuances of equity-based awards under the 2012 Plan since the adoption of the 2016 Plan.

Share-based compensation expense across all plans for options, RSUs, and employee share purchase rights was \$11.5 million, \$9.9 million, and \$8.5 million during 2021, 2010, and 2019, respectively.

On November 12, 2019, in connection with the transition of our former Chief Executive Officer to Executive Chairman, the Compensation Committee of the Board of Directors modified all outstanding equity awards such that the next 18 months of vesting events would be pulled forward and become immediately vested on January 6, 2020. Consequently, 98,825 options and 60,721 RSUs vested on January 6, 2020. This was accounted for as a probable-to-probable modification under ASC Topic 718, resulting in approximately \$1.4 million in share-based compensation expense pulled forward into 2019.

## Stock Options

The table below sets forth the weighted average assumptions used to measure the fair value of options granted:

|                                | Year Ended           |                      |                      |
|--------------------------------|----------------------|----------------------|----------------------|
|                                | December 31,<br>2021 | December 25,<br>2020 | December 27,<br>2019 |
| Weighted average expected term | --                   | 5 years              | 5 years              |
| Risk-free interest rate        | --                   | 0.5%                 | 2.1%                 |
| Dividend yield                 | --                   | 0.0%                 | 0.0%                 |
| Volatility                     | --                   | 61.5%                | 55.3%                |

The following table summarizes option activity:

|                                | Number of Stock Options |                          | Weighted<br>average<br>exercise price<br>per share | Weighted<br>average<br>remaining<br>contractual term | Aggregate<br>intrinsic value |
|--------------------------------|-------------------------|--------------------------|--|--|------------------------------|
|                                | Service<br>condition    | Performance<br>condition |  |  |                              |
| Outstanding, December 25, 2020 | 1,325,826               | 65,908                   | \$ 22.22   |  |                              |
| Granted                        | —                       | —                        | \$ —   |  |                              |
| Exercised                      | (344,650)               | (65,908)                 | \$ 20.19   |  |                              |
| Forfeited or expired           | (59,707)                | —                        | \$ 21.15   |  |                              |
| Outstanding, December 31, 2021 | 921,469                 | —                        | \$ 23.20   | 3.8 years  | \$ 21,035                    |
| Exercisable, December 31, 2021 | 608,373                 | —                        | \$ 22.96   | 3.4 years  | \$ 14,056                    |

Fair value information for options granted and the intrinsic value of options exercised are as follows:

|   | Year Ended           |                      |                      |
|---|----------------------|----------------------|----------------------|
|   | December 31,<br>2021 | December 25,<br>2020 | December 27,<br>2019 |
| Weighted average grant-date fair value of options granted | --                   | \$ 12.10             | \$ 11.33             |
| Total intrinsic value of options exercised                | \$ 11,859            | \$ 7,292             | \$ 3,619             |

At December 31, 2021, total unrecognized share-based compensation expense relating to options was \$3.2 million, with a weighted average remaining service period of 1.8 years.

## Restricted Share Units

The following table summarizes RSU activity:

|                             | Number of Restricted Share Units |                          |                     | Weighted average<br>grant-date fair<br>value per share |
|-----------------------------|----------------------------------|--------------------------|---------------------|--|
|                             | Service<br>condition             | Performance<br>condition | Market<br>condition |  |
| Unvested, December 25, 2020 | 564,626                          | —                        | —                   | \$ 24.09   |
| Granted                     | 286,365                          | 9,716                    | 14,572              | \$ 49.59   |
| Vested                      | (242,626)                        | —                        | —                   | \$ 24.20   |
| Forfeited                   | (49,055)                         | —                        | —                   | \$ 30.76   |
| Unvested, December 31, 2021 | 559,310                          | 9,716                    | 14,572              | \$ 37.05   |

Fair value information for RSUs granted and vested is as follows:

|  | Year Ended           |                      |                      |
|--|----------------------|----------------------|----------------------|
|  | December 31,<br>2021 | December 25,<br>2020 | December 27,<br>2019 |
| Weighted average grant-date fair value per share of RSUs granted | \$ 49.59             | \$ 24.50             | \$ 23.25             |
| Total grant-date fair value of shares vested                     | \$ 5,871             | \$ 4,731             | \$ 2,217             |

At December 31, 2021, total unrecognized share-based compensation expense relating to RSUs was \$17.6 million, with a weighted average remaining service period of 2.5 years.

#### 2017 ESPP

In May 2017, we adopted the 2017 Employee Stock Purchase Plan (the “2017 ESPP”). The 2017 ESPP grants employees the ability to designate a portion of their base-pay to purchase ordinary shares at a price equal to 85% of the fair market value of our ordinary shares on the first or last day of each 6 month purchase period. Purchase periods begin on January 1 or July 1 and end on June 30 or December 31, or the next business day if such date is not a business day. Shares are purchased on the last day of the purchase period. As of December 31, 2021, 2.3 million ordinary shares remained eligible for issuance under the 2017 ESPP.

The table below sets forth the weighted average assumptions used to measure the fair value of 2017 ESPP rights:

|                                | Year Ended           |                      |                      |
|--------------------------------|----------------------|----------------------|----------------------|
|                                | December 31,<br>2021 | December 25,<br>2020 | December 27,<br>2019 |
| Weighted average expected term | 0.5 years            | 0.5 years            | 0.5 years            |
| Risk-free interest rate        | 0.1%                 | 0.7%                 | 2.3%                 |
| Dividend yield                 | 0.0%                 | 0.0%                 | 0.0%                 |
| Volatility                     | 63.7%                | 60.1%                | 56.0%                |

We recognize share-based compensation expense associated with the 2017 ESPP over the duration of the purchase period. We recognized \$0.6 million, \$0.4 million, and \$0.3 million of share-based compensation expense associated with the 2017 ESPP during 2021, 2020, and 2019, respectively. At December 25, 2020, there was no unrecognized share-based compensation expense.

#### Note 12 – Segment Information

Our Chief Operating Decision Maker, the Chief Executive Officer, reviews our results of operations on a consolidated level and executive staff is structured by function rather than by product category. Therefore, we operate in one operating segment. Key resources, decisions, and assessment of performance are also analyzed on a company-wide level.

Foreign operations are conducted primarily through our wholly owned subsidiaries in Singapore and Malaysia. Our principal markets include North America, Asia and, to a lesser degree, Europe. Sales by geographic area represent sales to unaffiliated customers.

All information on sales by geographic area is based upon the location to which the products were shipped. The following table sets forth sales by geographic area:

|                          | Year Ended           |                      |                      |
|--------------------------|----------------------|----------------------|----------------------|
|                          | December 31,<br>2021 | December 25,<br>2020 | December 27,<br>2019 |
| United States of America | \$ 544,109           | \$ 490,965           | \$ 329,037           |
| Singapore                | 383,278              | 303,444              | 198,657              |
| Europe                   | 78,745               | 70,915               | 56,090               |
| Other                    | 90,785               | 48,912               | 37,053               |
| Total net sales          | <u>\$ 1,096,917</u>  | <u>\$ 914,236</u>    | <u>\$ 620,837</u>    |

The following table sets forth our two major customers, which comprised 85%, 87%, and 85% of net sales in 2021, 2020, and 2019, respectively:

|                   | Year Ended           |                      |                      |
|-------------------|----------------------|----------------------|----------------------|
|                   | December 31,<br>2021 | December 25,<br>2020 | December 27,<br>2019 |
| Lam Research      | \$ 579,009           | \$ 475,933           | \$ 319,144           |
| Applied Materials | \$ 352,077           | \$ 316,082           | \$ 207,391           |

Foreign long-lived assets, exclusive of deferred tax assets, were \$38.4 million and \$31.5 million at December 31, 2021 and December 25, 2020, respectively.

**Note 13 – Earnings per Share**

The following table sets forth the computation of our basic and diluted net income (loss) per share and a reconciliation of the numerator and denominator used in the calculation:

|  | Year Ended           |                      |                      |
|--|----------------------|----------------------|----------------------|
|  | December 31,<br>2021 | December 25,<br>2020 | December 27,<br>2019 |
| <b>Numerator:</b>  |                      |                      |                      |
| Net income   | \$ 70,899            | \$ 33,279            | \$ 10,729            |
| <b>Denominator:</b>  |                      |                      |                      |
| Basic weighted average ordinary shares outstanding   | 28,259,607           | 23,172,961           | 22,418,802           |
| Dilutive effect of options   | 480,790              | 221,565              | 259,337              |
| Dilutive effect of RSUs  | 237,357              | 61,761               | 85,603               |
| Dilutive effect of ESPP  | 1,598                | 3,818                | 3,161                |
| Diluted weighted average ordinary shares outstanding   | 28,979,352           | 23,460,105           | 22,766,903           |
| Securities excluded from the calculation of diluted weighted average ordinary shares outstanding (1) | 273,000              | 1,430,000            | 1,588,000            |
| <b>Earnings per share:</b>   |                      |                      |                      |
| Net income:  |                      |                      |                      |
| Basic  | \$ 2.51              | \$ 1.44              | \$ 0.48              |
| Diluted  | \$ 2.45              | \$ 1.42              | \$ 0.47              |

- (1) Represents potentially dilutive options and RSUs that were excluded from the calculation of net income per share, because including them would have been antidilutive under the treasury stock method.

## EXHIBIT INDEX

The following exhibits are filed with this Form 10-K or are incorporated herein by reference:

| Exhibit Number | Description of Exhibit  |
|----------------|---|
| 2.1            | <a href="#">Agreement and Plan of Merger, dated November 11, 2021, by and among Ichor Systems, Inc., Incline Merger Sub, LLC, IMG Companies, LLC, and Brian J. Miller (solely in his capacity as the Equityholders' Representative thereunder) (Incorporated by reference to Exhibit 10.1 to Ichor Holdings, Ltd.'s Current Report on Form 8-K filed with the Securities and Exchange Commission on November 16, 2021).</a> |
| 3.1            | <a href="#">Amended and Restated Memorandum and Articles of Association of Ichor Holdings, Ltd., effective as of December 9, 2016 (Incorporated by reference to Exhibit 3.1 to Ichor Holdings, Ltd.'s Current Report on Form 8-K filed with the Securities and Exchange Commission on December 14, 2016).</a>   |
| 4.1*           | <a href="#">Description of Securities of Ichor Holdings, Ltd.</a>   |
| 10.1*          | <a href="#">Amended and Restated Credit Agreement, dated as of October 29, 2021, by and among Icicle Acquisition Holding B.V., Ichor Holdings, LLC, and Ichor Systems, Inc. as borrowers, Bank of America, N.A., as administrative agent, and the financial institutions party thereto, as lenders.</a>   |
| 10.2+          | <a href="#">Ichor Holdings, Ltd. 2016 Omnibus Incentive Plan (Incorporated by reference to Exhibit 10.11 to Ichor Holdings, Ltd.'s Amendment No. 2 to Registration Statement on Form S-1, filed with the Securities and Exchange Commission on November 29, 2016).</a>  |
| 10.3+          | <a href="#">Form of Incentive Stock Option Agreement (Incorporated by reference to Exhibit 10.12 to Ichor Holdings, Ltd.'s Amendment No. 2 to Registration Statement on Form S-1, filed with the Securities and Exchange Commission on November 29, 2016).</a>  |
| 10.4+          | <a href="#">Form of Restricted Stock Agreement (Incorporated by reference to Exhibit 10.13 to Ichor Holdings, Ltd.'s Amendment No. 2 to Registration Statement on Form S-1, filed with the Securities and Exchange Commission on November 29, 2016).</a>  |
| 10.5+          | <a href="#">Form of Nonqualified Stock Option Agreement (Incorporated by reference to Exhibit 10.14 to Ichor Holdings, Ltd.'s Amendment No. 2 Registration Statement on Form S-1, filed with the Securities and Exchange Commission on November 29, 2016).</a>  |
| 10.6+          | <a href="#">Offer Letter, dated as of January 8, 2013, by and between Ichor Systems, Inc. and Philip Barros (Incorporated by reference to Exhibit 10.16 to Ichor Holdings, Ltd.'s Registration Statement on Form S-1, filed with the Securities and Exchange Commission on November 14, 2016).</a>  |
| 10.7+          | <a href="#">Offer Letter, dated as of September 30, 2015, by and between Ichor Systems, Inc. and Philip Barros (Incorporated by reference to Exhibit 10.17 to Ichor Holdings, Ltd.'s Registration Statement on Form S-1, filed with the Securities and Exchange Commission on November 14, 2016).</a>   |
| 10.8+          | <a href="#">Select Severance Plan, dated as of March 6, 2019, by and among Ichor Holdings, Ltd. and certain officers and directors party thereto (Incorporated by reference to Exhibit 10.9 to Ichor Holdings, Ltd.'s Annual Report on Form 10-K filed with the Securities and Exchange Commission on March 8, 2019).</a>   |
| 10.9+          | <a href="#">Offer Letter, dated August 23, 2019, between Ichor Systems, Inc. and Larry Sparks (Incorporated by reference to Exhibit 10.1 to Ichor Holdings, Ltd.'s Current Report on Form 8-K filed with the Securities and Exchange Commission on September 9, 2019).</a>  |
| 10.10+         | <a href="#">Offer Letter, dated November 20, 2019, between Ichor Systems, Inc. and Jeffrey Andreson (Incorporated by reference to Exhibit 10.12 to Ichor Holdings, Ltd.'s Annual Report on Form 10 K filed with the Securities and Exchange Commission on March 6, 2020).</a>   |
| 10.11*         | <a href="#">Letter Agreement, dated December 23, 2021 between Ichor Systems, Inc. and Thomas Rohrs.</a>   |
| 21.1*          | <a href="#">List of subsidiaries</a>  |
| 23.1*          | <a href="#">Consent of KPMG LLP</a>   |
| 31.1*          | <a href="#">Certifications of Chief Executive Officer of the Company under Rule 13a-14(a) of the Securities Exchange Act of 1934, as amended, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.</a>   |
| 31.2*          | <a href="#">Certifications of Chief Financial Officer of the Company under Rule 13a-14(a) of the Securities Exchange Act of 1934, as amended, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.</a>   |
| 32.1*          | <a href="#">Certifications of Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002. This certification accompanies this report and shall not, except to the extent required by the Sarbanes-Oxley Act of 2002, be deemed filed for purposes of §18 of the Securities Exchange Act of 1934, as amended.</a>                                      |
| 32.2*          | <a href="#">Certifications of Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002. This certification accompanies this report and shall not, except to the extent required by the Sarbanes-Oxley Act of 2002, be deemed filed for purposes of §18 of the Securities Exchange Act of 1934, as amended.</a>                                      |
| 101.INS        | Inline XBRL Instance Document – the instance document does not appear in the Interactive Data File because XBRL tags are embedded within the Inline XBRL document.  |
| 101.SCH        | Inline XBRL Taxonomy Extension Schema Document  |
| 101.CAL        | Inline XBRL Taxonomy Extension Calculation Linkbase Document  |
| 101.DEF        | Inline XBRL Taxonomy Extension Definition Linkbase Document   |
| 101.LAB        | Inline XBRL Taxonomy Extension Label Linkbase Document  |
| 101.PRE        | Inline XBRL Taxonomy Extension Presentation Linkbase Document   |
| 104            | Cover Page Interactive Data File (embedded within the Inline XBRL document)   |

\* Filed herewith

+ A management contract or compensatory arrangement required to be filed as an exhibit pursuant to Item 601 of Regulation S-K





## Description of Securities of Ichor Holdings, Ltd.

*The following summary of certain provisions of the securities of Ichor Holdings, Ltd. (“Ichor,” “we,” “our” and “us”) does not purport to be complete and is subject to the Amended and Restated Memorandum and Articles of Association of Ichor filed as Exhibit 3.1 to our Annual Report on Form 10-K (the “articles of association”) and the provisions of applicable law, including certain laws of the Cayman Islands.*

### General

As of February 28, 2022, we had authorized share capital of 200,000,000 ordinary shares, each with a par value of \$0.0001, and 20,000,000 preferred shares, each with a par value of \$0.0001.

### Ordinary Shares

Holders of ordinary shares are entitled to cast one vote for each share on all matters submitted to a vote of shareholders, including the election of directors. The holders of ordinary shares are entitled to receive ratably such dividends, if any, as may be declared by our directors out of funds legally available therefor. We do not expect for the foreseeable future to pay dividends on our ordinary shares. Instead, we anticipate that all of our earnings, if any, in the foreseeable future will be used for working capital and other general corporate purposes. Any future determination to pay dividends will be at the discretion of our board of directors and will depend upon, among other factors, our results of operations, financial condition, capital requirements and contractual restrictions. Such holders do not have any preemptive or other rights to subscribe for additional shares. All holders of ordinary shares are entitled to share ratably in any assets for distribution to shareholders upon our liquidation, dissolution or winding up.

There are no conversion, redemption or sinking fund provisions applicable to the ordinary shares.

### Preferred Shares

Our board of directors is authorized, without any action by our shareholders, to designate and issue preferred shares in one or more series and to designate the powers, preferences and rights of each series, which may be greater than the rights of our ordinary shares. It is not possible to state the actual effect of the issuance of any shares of preferred shares upon the rights of holders of our ordinary shares until the board of directors determines the specific rights of the holders of such preferred shares. However, the effects might include, among other things:

- impairing dividend rights of our ordinary shares;
- diluting the voting power of our ordinary shares;
- impairing the liquidation rights of our ordinary shares; and
- delaying or preventing a change of control of us without further action by our shareholders.

No preferred shares are issued and outstanding, and we have no present plan to issue any of our preferred shares.

### Limitations on the Right to Own or Vote Shares

As a Cayman Islands exempted company, we may not hold our own shares as a shareholder, save for shares that are redeemed or repurchased by us or surrendered by a shareholder and held as treasury shares. We may not exercise any voting or other rights in respect of treasury shares nor may any dividend be declared or paid or other distribution be made in respect of treasury shares. However, bonus shares may be issued in respect of treasury shares although they will, in turn, be treated as treasury shares.

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**Limitations on Transfer of Shares**

Our articles of association give our directors, at their discretion, the right to decline to register any transfers of shares including shares that are not fully paid-up shares.

**Disclosure of Shareholder Ownership**

There are no provisions in our amended and restated memorandum of association or articles of association governing the ownership threshold above which shareholder ownership must be disclosed by any shareholder.

**Changes in Share Capital**

We may, from time to time, by ordinary resolution passed by a majority of the votes cast by shareholders present at a shareholder meeting entitled to vote on such resolution, or passed by a unanimous written consent of our shareholders, increase our authorized share capital by such sum, to be allocated among shares of such par value, as the resolution shall prescribe. The new shares shall be subject to the same provisions with reference to the payment of calls, liens, transfers, transmissions, forfeitures and otherwise as the shares in the original share capital. We may by ordinary resolution passed at a shareholder meeting by a majority of the votes cast by shareholders present at such meeting and entitled to vote on such resolution, or passed by a unanimous written consent of our shareholders:

- consolidate our share capital into shares of larger par value than our existing shares;
- sub-divide our share capital into shares of smaller par value;
- divide our shares into multiple classes; and
- cancel any shares which, at the date of the passing of the resolution, have not been issued and diminish the amount of the shares so cancelled.

We may by special resolution passed by at least two-thirds of the votes cast by shareholders present at a shareholder meeting and entitled to vote on such resolution, or passed by a unanimous written consent of our shareholders, reduce our share capital to the extent not representing shares in issue or following court application and consent, reduce our share capital in relation to shares in issue or any capital redemption reserve fund maintained in accordance with the Cayman Islands Companies Law (2021 Revision) (the “Cayman Islands Companies Law”).

**Amendments**

Our articles of association provide that our articles of association may only be amended at a shareholder meeting upon approval by two-thirds of the votes cast by our shareholders.

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## Material Differences in Corporate Law

The Cayman Islands Companies Law is modeled after the corporate legislation of the United Kingdom but does not follow recent United Kingdom statutory enactments, and differs from laws applicable to United States corporations and their shareholders. Set forth below is a summary of the significant differences between the provisions of the Companies Law applicable to us and the laws applicable to companies incorporated in the State of Delaware and their shareholders.

|  | <b>Delaware</b>   | <b>Cayman Islands</b>  |
|--|---|--|
| <i>Title of Organizational Documents</i> | Certificate of Incorporation<br>Bylaws  | Memorandum of Association<br>Articles of Association   |
| <i>Duties of Directors</i>               | <p>Under Delaware law, the business and affairs of a corporation are managed by or under the direction of its board of directors. In exercising their powers, directors are charged with a fiduciary duty of care to protect the interests of the corporation and a fiduciary duty of loyalty to act in the best interests of its shareholders. The duty of care requires that directors act in an informed and deliberative manner and inform themselves, prior to making a business decision, of all material information reasonably available to them. The duty of care also requires that directors exercise care in overseeing and investigating the conduct of the corporation's employees. The duty of loyalty may be summarized as the duty to act in good faith, not out of self-interest, and in a manner which the director reasonably believes to be in the best interests of the shareholders.</p> | <p>As a matter of Cayman Islands law, directors of Cayman Islands companies owe fiduciary duties to the their respective companies to, amongst other things, act in good faith in their dealings with or on behalf of the company and exercise their powers and fulfill the duties of their office honestly. This duty has four essential elements:</p> <ul style="list-style-type: none"><li>• a duty to act in good faith in what the directors bona fide consider to be the best interests of the company (and in this regard, it should be noted that the duty is owed to the company and not to associate companies, subsidiaries or holding companies);</li><li>• a duty not to personally profit from opportunities that arise from the office of director;</li><li>• a duty to avoid conflicts of interest; and</li><li>• a duty to exercise powers for the purpose for which such powers were conferred.</li></ul> <p>A director of a Cayman Islands exempted company also owes the company a duty to act with skill, care and diligence. A director need not exhibit in the performance of his or her duties a greater degree of skill than may reasonably be expected from a person of his or her knowledge and experience.</p> |

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**Delaware****Cayman Islands**

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| <i>Limitations on Personal Liability of Directors</i>             | <p>Subject to the limitations described below, a certificate of incorporation may provide for the elimination or limitation of the personal liability of a director to the corporation or its shareholders for monetary damages for a breach of fiduciary duty as a director.</p> <p>Such provision cannot limit liability for breach of fraud, dishonesty or willful default, loyalty, bad faith, intentional misconduct, unlawful payment of dividends or unlawful share purchase or redemption. In addition, the certificate of incorporation cannot limit liability for any act or omission occurring prior to the date when such provision becomes effective.</p> | <p>The Cayman Islands Companies Law has no equivalent provision to Delaware law regarding the limitation of director's liability. However, as a matter of public policy, Cayman Islands law will not allow the limitation of a director's liability to the extent that the liability is a consequence of the director committing a crime or of the director's own actual fraud, dishonesty or willful default.</p>                                    |
| <i>Indemnification of Directors, Officers, Agents, and Others</i> | <p>A corporation has the power to indemnify any director, officer, employee, or agent of corporation who was, is, or is threatened to be made a party who acted in good faith and in a manner he believed to be in the best interests of the corporation, and if with respect to a criminal proceeding, had no reasonable cause to believe his conduct would be unlawful, against amounts actually and reasonably incurred.</p>  | <p>Cayman Islands law does not limit the extent to which a company's articles of association may provide for indemnification of directors and officers, except to the extent any such provision may be held by the Cayman Islands courts to be contrary to public policy, such as to provide indemnification against the consequences of committing a crime, or against the indemnified person's own actual fraud, dishonesty or willful default.</p> |

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|                             | <b>Delaware</b>   | <b>Cayman Islands</b>  |
|-----------------------------|---|--|
| <i>Interested Directors</i> | Under Delaware law, subject to provisions in the certificate of incorporation, a transaction in which a director who has an interest in such transaction would not be voidable if (i) the material facts as to such interested director's relationship or interests are disclosed or are known to the board of directors and the board in good faith authorizes the transaction by the affirmative vote of a majority of the disinterested directors, even though the disinterested directors are less than a quorum, (ii) such material facts are disclosed or are known to the shareholders entitled to vote on such transaction and the transaction is specifically approved in good faith by vote of the shareholders, or (iii) the transaction is fair as to the corporation as of the time it is authorized, approved or ratified. Under Delaware law, a director could be held liable for any transaction in which such director derived an improper personal benefit. | Our articles of association contain provisions that permit a director to vote on a transaction in which he or she is interested provided he or she discloses such interest to the board of directors prior to the vote.  |
| <i>Voting Requirements</i>  | <p>The certificate of incorporation may include a provision requiring supermajority approval by the directors or shareholders for any corporate action.</p> <p>In addition, under Delaware law, certain business combinations involving interested shareholders require approval by a supermajority of the non-interested shareholders.</p>   | <p>For the protection of shareholders, certain matters must be approved by special resolution of the shareholders, including alteration of the memorandum or articles of association, appointment of inspectors to examine company affairs, reduction of share capital (subject, in relevant circumstances, to court approval), change of name, authorization of a plan of merger or transfer by way of continuation to another jurisdiction or consolidation or voluntary winding up the company.</p> <p>The Cayman Islands Companies Law requires that a special resolution be passed by a super majority of two-thirds or such higher percentage as set forth in the articles of association, of shareholders being entitled to vote and do vote in person or by proxy at a general meeting or by way of unanimous written consent.</p> |

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**Delaware****Cayman Islands**

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| <i>Voting for Directors</i>  | Under Delaware law, unless otherwise specified in the certificate of incorporation or bylaws of the corporation, directors shall be elected by a plurality of the votes of the shares present in person or represented by proxy at the meeting and entitled to vote on the election of directors.   | The Cayman Islands Companies Law defines “special resolutions” only. A company’s articles of association can therefore tailor the definition of “ordinary resolution” as a whole, or with respect to specific provisions. Our articles of association provide that with respect to the election of directors, an ordinary resolution shall be passed by a majority of the votes cast by such members as being entitled to vote in person or by proxy or by way of unanimous written consent.   |
| <i>Cumulative Voting</i>   | No cumulative voting for the election of directors unless so provided in the certificate of incorporation.  | No cumulative voting for the election of directors unless so provided in the articles of association.  |
| <i>Directors’ Powers Regarding Bylaws</i>                                | The certificate of incorporation may grant the directors the power to adopt, amend or repeal bylaws.  | The memorandum and articles of association may only be amended by a special resolution of the shareholders.  |
| <i>Nomination and Removal of Directors and Filing Vacancies on Board</i> | Shareholders may generally nominate directors if they comply with advance notice provisions and other procedural requirements in company bylaws. Holders of a majority of the shares may remove a director with or without cause, except in certain cases involving a classified board or if the company uses cumulative voting. Unless otherwise provided for in the certificate of incorporation, directorship vacancies are filled by a majority of the directors elected or then in office. | Nomination and removal of directors and filling of board vacancies are governed by the terms of the articles of association. Our articles of association provide that only shareholders that hold more than 15% of our outstanding ordinary shares (unless the Exchange Act and proxy rules provide otherwise) and comply with our advance notice provisions may nominate directors. Our articles of association also provide that shareholders may only remove directors for cause and with a special resolution of two-thirds of our outstanding ordinary shares. Under our articles of association, vacancies on the board are generally filled by the vote of a majority of the directors elected or then in office. |
| <i>Mergers and Similar Arrangements</i>                                  | Under Delaware law, with certain exceptions, a merger, consolidation, exchange or sale of all or substantially all the assets of a corporation must be approved by the board of directors and   | The Cayman Islands Companies Law provides for mergers and consolidations where two or more companies are being formed into a single entity. The legislation makes a distinction between a “consolidation” and a “merger”. In a consolidation, a new company is incorporated from the combination of each participating company, and the separate consolidating parties, as a consequence, cease to exist and are each stricken by the Registrar of Companies. In a merger, one company remains as the surviving company, having in effect absorbed the other merging parties that are then stricken and cease to exist. Two or more Cayman-registered companies may merge or consolidate. Cayman-                        |

a majority of the outstanding shares entitled to vote thereon. Under Delaware law, a shareholder of a corporation participating in certain major corporate transactions may, under certain circumstances, be entitled to appraisal rights pursuant to which such shareholder may receive cash in the amount of the fair value of the shares held by such shareholder (as determined by a court) in lieu of the consideration such shareholder would otherwise receive in the transaction.

Delaware law also provides that a parent corporation, by resolution of its board of directors, may merge with any subsidiary, of which it owns at least 90% of each class of capital stock without a vote by shareholders of such subsidiary. Upon any such merger, dissenting shareholders of the subsidiary would have appraisal rights.

registered companies may also merge or consolidate with foreign companies provided that the laws of the foreign jurisdiction permit such merger or consolidation.

Under Cayman Islands Companies Law, a plan of merger or consolidation shall be authorized by each constituent company by way of (i) a special resolution of the members of each such constituent company; and (ii) such other authorization, if any, as may be specified in such constituent company's articles of association.

Shareholder approval is not required where a parent company registered in the Cayman Islands seeks to merge with one or more of its subsidiaries registered in the Cayman Islands and a copy of the plan of merger is given to every member of each subsidiary company to be merged unless that member agrees otherwise.

Where the merger or consolidation involves a foreign company, the procedure is similar, save that with respect to the foreign company, the director of the Cayman Islands exempted company is required to make a declaration to the effect that, having made due enquiry, he is of the opinion that the requirements set out below have been met: (i) that the merger or consolidation is permitted or not prohibited by the constitutional documents of the foreign company and by the laws of the jurisdiction in which the foreign company is incorporated, and that those laws and any requirements of those constitutional documents have been or will be complied with; (ii) that no petition or other similar proceeding has been filed and remains outstanding or order made or resolution adopted to wind up or liquidate the foreign company in any jurisdictions; (iii) that no receiver, trustee, administrator or other similar person has been appointed in any jurisdiction and is acting in respect of the foreign company, its affairs or its property or any part thereof; (iv) that no scheme, order, compromise or other similar arrangement has been entered into or made in any jurisdiction whereby the rights of creditors of the foreign company are and continue to be suspended or restricted.

Where the surviving company is the Cayman Islands exempted company, the director of the Cayman Islands exempted company is further required to make a declaration to the effect that, having made due enquiry, he is of the opinion that the requirements set out below have been met: (i) that the foreign company is able to pay its debts as they fall due and that the merger or consolidated is bona fide and not intended to defraud unsecured creditors of the foreign company; (ii) that in respect of the transfer of any security interest granted by the foreign company to the surviving or consolidated company (a) consent or approval to the transfer has been obtained, released or waived; (b) the transfer is permitted by and has been approved in accordance with the constitutional documents of the foreign company; and (c) the laws of the jurisdiction of the foreign company with respect to the transfer have been or will be complied with; (iii) that the foreign company will, upon the merger or consolidation becoming effective, cease to be incorporated, registered or exist under the laws of the relevant foreign jurisdiction; and (iv) that there is no other reason why it would be against the public interest to permit the merger or consolidation.

Secured creditors must consent to the merger although application can be made to the Grand Court of the Cayman Islands to proceed if such secured creditor does not grant its consent to the merger. Where a foreign company wishes to merge with a Cayman company, consent or approval to the transfer of any security interest granted by the foreign company to the resulting Cayman entity in the transaction is required, unless otherwise released or waived by the secured party. If the merger plan is approved, it is then filed with the Cayman Islands General Registry along with a declaration by a director of each company. The Registrar of Companies will then issue a certificate of merger which shall be prima facie evidence of compliance with all requirements of the Companies Law in respect of the merger or consolidation.

The surviving entity remains active while the other company or companies are automatically dissolved. Where the above procedures are adopted, the Companies Law provides for a right of dissenting shareholders to be paid a payment of the fair value of his shares upon their dissenting to the merger or consolidation if they follow a prescribed procedure. In essence, that procedure is as follows (a) the shareholder must give his written objection to the merger or consolidation to the constituent company before the vote on the merger or consolidation, including a statement that the shareholder proposes to demand payment for his shares if the merger or consolidation is authorized by the vote; (b) within 20 days following the date on which the merger or consolidation is approved by the shareholders, the



constituent company must give written notice to each shareholder who made a written objection; (c) a shareholder must within 20 days following receipt of such notice from the constituent company, give the constituent company a written notice of his intention to dissent including, among other details, a demand for payment of the fair value of his shares; (d) within seven days following the date of the expiration of the period set out in paragraph (b) above or seven days following the date on which the plan of merger or consolidation is filed, whichever is later, the constituent company, the surviving company or the consolidated company must make a written offer to each dissenting shareholder to purchase his shares at a price that the company determines is the fair value and if the company and the shareholder agree the price within 30 days following the date on which the offer was made, the company must pay the shareholder such amount; (e) if the company and the shareholder fail to agree a price within such 30 day period, within 20 days following the date on which such 30 day period expires, the company (and any dissenting shareholder) must file a petition with the Cayman Islands Grand Court to determine the fair value and such petition must be accompanied by a list of the names and addresses of the dissenting shareholders with whom agreements as to the fair value of their shares have not been reached by the company. At the hearing of that petition, the court has the power to determine the fair value of the shares together with a fair rate of interest, if any, to be paid by the company upon the amount determined to be the fair value.

Any dissenting shareholder whose name appears on the list filed by the company may participate fully in all proceedings until the determination of fair value is reached. These rights of a dissenting shareholder are not be available in certain circumstances, for example, to dissenters holding shares of any class in respect of which an open market exists on a recognized stock exchange or recognized interdealer quotation system at the relevant date or where the consideration for such shares to be contributed are shares of any company listed on a national securities exchange or shares of the surviving or consolidated company.

Cayman companies may also be restructured or amalgamated under supervision of the Grand Court of the Cayman Islands by way of a “scheme of arrangement”. This option is not used with any frequency because a business transaction can be achieved through other means, such as a share capital exchange, merger (as described above), asset acquisition or control, through contractual arrangements, of an operating business. In the event that a business transaction is sought pursuant to a scheme of arrangement it would require the approval of a majority, in number, of each class of shareholders and creditors with whom the arrangement is to be made and who must in addition represent three-fourths in value of each such class of shareholders or creditors, as the case may be, that are present and voting either in person or by proxy at a meeting, or meeting summoned for that purpose.

The convening of the meetings and subsequently the terms of the arrangement must be sanctioned by the Grand Court of the Cayman Islands. While a dissenting shareholder would have the right to express to the Court the view that the transaction ought not be approved, the Court can be expected to approve the arrangement if it satisfies itself that:

- the company is not proposing to act illegally or beyond the scope of its authority and the statutory provisions as to majority vote have been complied with;
- the shareholders and creditors (as applicable) have been fairly represented at the meeting in question; and
- the arrangement is such as a businessman would reasonably approve; and the arrangement is not one that would more properly be sanctioned under some other provision of the Cayman Islands Companies Law or that would amount to a “fraud on the minority” (a legal concept, different than “fraud” in the sense of dishonesty).

When a takeover offer is made and accepted by holders of 90% of the shares to whom the offer is made within four months, the offeror may, within a two-month period, require the holders of the remaining shares to transfer such shares on the terms of the offer. An objection may be made to the Grand Court of the Cayman Islands but is unlikely to succeed unless there is evidence of fraud, bad faith or collusion.

If the arrangement and reconstruction are thus approved, any dissenting shareholders would have no rights comparable to appraisal rights, which would

otherwise ordinarily be available to dissenting shareholders of United States corporations, providing rights to receive payment in cash for the judicially determined value of the shares.

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| <u>Delaware</u>   | <u>Cayman Islands</u>  |
|---|--|
| Class actions and derivative actions generally are available to shareholders under Delaware law for, among other things, breach of fiduciary duty, corporate waste and actions not taken in accordance with applicable law. In such actions, the court generally has discretion to permit the winning party to recover attorneys' fees incurred in connection with such action. | The rights of shareholders under Cayman Islands law are not as extensive as those under Delaware law. Class actions are generally not available to shareholders under Cayman Islands laws and Maples and Calder, our Cayman Islands counsel, is not aware of a significant number of such reported actions having been brought in Cayman Islands courts. Derivative actions have been brought in the Cayman Islands courts and the Cayman Islands courts have confirmed the availability for such actions. In principle, we will normally be the proper plaintiff in any claim based on a breach of duty owed to us and a derivative action may not be brought by a minority shareholder. However, the Cayman Islands courts would ordinarily be expected to follow English case law precedent, which would permit a shareholder to commence an action in the company's name to remedy a wrong done to it where the act complained of is alleged to be beyond the company's corporate power or is illegal or would result in the violation of its memorandum of association or articles of association or where the individual rights of the plaintiff shareholder have been infringed or are about to be infringed. Furthermore, consideration would be given by the court to acts that are alleged to constitute a "fraud on the minority" or where an act requires the approval of a greater percentage of shareholders than actually approved it. The winning party in such an action generally would be able to recover a portion of attorney's fees incurred in connection with such action. |

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**Delaware****Cayman Islands**

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| <i>Inspection of Corporate Records</i>                  | Under Delaware law, shareholders of a Delaware corporation have the right during normal business hours to inspect for any proper purpose, and to obtain copies of list(s) of shareholders and other books and records of the corporation and its subsidiaries, if any, to the extent the books and records of such subsidiaries are available to the corporation. | Shareholders of a Cayman Islands exempted company have no general right under Cayman Islands law to inspect or obtain copies of a list of shareholders or other corporate records of the company. However, these rights may be provided in the company's articles of association. Under our articles of association, shareholders will not have any rights to inspect or obtain copies of shareholder lists or other corporate records, provided that a list of shareholders will be made available at our principal executive office or other specified location for ten business days prior to each general meeting of shareholders. |
| <i>Shareholder Proposals</i>                            | Unless provided in the corporation's certificate of incorporation or bylaws, Delaware law does not include a provision restricting the manner in which shareholders may bring business before a meeting.  | The Cayman Islands Companies Law does not provide shareholders any right to bring business before a meeting or requisition a general meeting. However, these rights may be provided in the company's articles of association. Our articles of association provide that only shareholders that comply with our advance notice provisions may submit proposals to be brought before a meeting.   |
| <i>Approval of Corporate Matters by Written Consent</i> | Delaware law permits shareholders to take action by written consent signed by the holders of outstanding shares having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting of shareholders.   | The Cayman Islands Companies Law allows a special resolution to be passed in writing if signed by all the shareholders and authorized by the articles of association. Our articles of association authorize such written consents, but we believe that the unanimity requirement has made this option impractical since the consummation of our initial public offering.   |

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**Delaware****Cayman Islands**

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| <i>Calling of Special Shareholders Meeting</i> | Delaware law permits the board of directors or any person who is authorized under a corporation's certificate of incorporation or bylaws to call a special meeting of shareholders. | The Cayman Islands Companies Law does not have provisions governing the proceedings of shareholders meetings which are usually provided in the articles of association.<br><br>Our articles of association allow only a majority of our directors or the chairman of our board of directors to call extraordinary general meetings. |
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**Transfer Agent and Registrar**

The transfer agent and registrar for our ordinary shares is Broadridge Corporate Issuer Solutions, Inc. Its address is 1717 Arch Street, Suite 1300, Philadelphia, PA 19103.

**Listing**

Our ordinary shares are listed on the NASDAQ Global Select Market under the symbol "ICHR."

SECOND AMENDED AND RESTATED CREDIT AGREEMENT

Dated as of October 29, 2021

Among

ICICLE ACQUISITION HOLDING B.V.  
as Holdings,

ICHOR HOLDINGS, LLC  
and  
ICHOR SYSTEMS, INC.  
as the Borrowers,

The Other Loan Parties Party Hereto,

BANK OF AMERICA, N.A.,  
as Administrative Agent, Swing Line Lender and  
L/C Issuer,

and

The Other Lenders Party Hereto

Arranged By:

BOFA SECURITIES, INC.  
TRUIST SECURITIES, INC.  
and  
JPMORGAN CHASE BANK, N.A.,  
as Joint Lead Arrangers and Joint Bookrunners

TRUIST BANK  
and  
JPMORGAN CHASE BANK, N.A.,  
as Syndication Agents

REGIONS BANK  
and  
U.S. BANK, NATIONAL ASSOCIATION,  
as Documentation Agents

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## **SECOND AMENDED AND RESTATED CREDIT AGREEMENT**

This SECOND AMENDED AND RESTATED CREDIT AGREEMENT is entered into as of October 29, 2021, among Iceicle Acquisition Holding B.V., a Dutch private company with limited liability ("Holdings"), Ichor Systems, Inc., a Delaware corporation ("Ichor Systems"), Ichor Holdings, LLC, a Delaware limited liability company ("Ichor Holdings"), and together with Ichor Systems, the "Borrowers", the other Loan Parties from time to time party hereto, each lender from time to time party hereto (collectively, the "Lenders" and individually, a "Lender"), and Bank of America, N.A., as Administrative Agent, Swing Line Lender and L/C Issuer.

### **PRELIMINARY STATEMENTS:**

The Borrowers, the other loan parties party thereto, the Administrative Agent and certain financial institutions are party to that certain Amended and Restated Credit Agreement, dated as of February 15, 2018 (as amended and modified through the date hereof, the "Existing Credit Agreement").

The Borrowers have requested, and Administrative Agent and the lenders party to the Existing Credit Agreement have agreed to amend and restate the Existing Credit Agreement on the terms and conditions set forth herein. In furtherance thereof, the Borrowers have requested that the Lenders provide a Term A loan facility and a revolving credit facility, and the Lenders have indicated their willingness to lend and the L/C Issuer has indicated its willingness to issue letters of credit, in each case, on the terms and subject to the conditions set forth herein.

Each Loan Party which is or which hereafter becomes a party hereto as a Borrower or a Guarantor is or will be affiliated, is or will be engaged in related businesses, and will derive substantial direct and indirect benefit from extensions of credit to the Borrowers guaranteed by such Loan Parties under this Agreement.

In consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree to amend and restate the Existing Credit Agreement in its entirety as follows:

### **ARTICLE I DEFINITIONS AND ACCOUNTING TERMS**

**1.01** *Defined Terms.* As used in this Agreement, the following terms shall have the meanings set forth below:

"Accrued DP Interest" means the interest accruing and payable on the portion of the DP Amounts that have not been paid.

"Act" has the meaning specified in Section 11.18.

"Additional Credit Extension Amendment" means an amendment to this Agreement (which may be in the form of an amendment and restatement), including an Increase Joinder, in form reasonably satisfactory to the Administrative Agent providing for Incremental Term Loans,

Incremental Revolving Credit Commitments, Extended Term Loans or Extended Revolving Credit Commitments in accordance with the terms of this Agreement.

“Administrative Agent” means Bank of America (or any of its designated branch offices or affiliates) in its capacity as administrative agent under any of the Loan Documents, or any successor administrative agent.

“Administrative Agent’s Office” means the Administrative Agent’s address and, as appropriate, account as set forth on Schedule 11.02, or such other address or account as the Administrative Agent may from time to time notify to the Borrowers and the Lenders.

“Administrative Questionnaire” means an Administrative Questionnaire in substantially the form of Exhibit F or any other form approved by the Administrative Agent.

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

“Affiliate” means, with respect to any Person, another Person that directly, or indirectly through one (1) or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

“Agent Fee Letter” means the letter agreement, dated September 28, 2021, among the Borrowers, Holdings, the Administrative Agent and BofA Securities.

“Aggregate Commitments” means the Commitments of all the Lenders.

“Agreement” means this Credit Agreement.

“Applicable Percentage” means (a) in respect of the Term A Facility, with respect to any Term A Lender at any time, the percentage (carried out to the ninth (9th) decimal place) of the Term A Facility represented by (i) on or prior to the Restatement Date, such Term A Lender’s Term A Commitment at such time, subject to adjustment as provided in Section 2.17, and (ii) thereafter, the principal amount of such Term A Lender’s Term A Loans at such time and (b) in respect of the Revolving Credit Facility, with respect to any Revolving Credit Lender at any time, the percentage (carried out to the ninth (9th) decimal place) of the Revolving Credit Facility represented by such Revolving Credit Lender’s Revolving Credit Commitment at such time, subject to adjustment as provided in Section 2.17. If the commitment of each Revolving Credit Lender to make Revolving Credit Loans and the obligation of the L/C Issuer to make L/C Credit Extensions have been terminated pursuant to Section 8.02, or if the Revolving Credit Commitments have expired, then the Applicable Percentage of each Revolving Credit Lender in respect of the Revolving Credit Facility shall be determined based on the Applicable Percentage of such Revolving Credit Lender in respect of the Revolving Credit Facility most recently in effect, giving effect to any subsequent assignments. The initial Applicable Percentage of each Lender in respect of each Facility is set forth opposite the name of such Lender on Schedule 2.01 or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable.

“Applicable Rate” means, for any day, the rate per annum set forth below opposite the applicable Level then in effect (based on the Consolidated Leverage Ratio), it being understood

that the Applicable Rate for (a) Revolving Loans and Term Loans that are Base Rate Loans shall be the percentage set forth under the column “Base Rate for Revolving Loans and Term Loans”, (b) Revolving Loans and Term Loans that are BSBY Rate Loans shall be the percentage set forth under the column “BSBY Rate Loans and Letter of Credit Fee”, (c) the Letter of Credit Fee shall be the percentage set forth under the column “BSBY Rate Loans & Letter of Credit Fee”, and (d) the commitment fee shall be the percentage set forth under the column “Commitment Fee”:

| <b>Applicable Rate</b> |  |   |   |                       |
|------------------------|--|---|---|-----------------------|
| <b>Level</b>           | <b>Consolidated Leverage Ratio</b>       | <b>BSBY Rate Loans &amp; Letter of Credit Fee</b> | <b>Base Rate for Revolving Loans and Term Loans</b> | <b>Commitment Fee</b> |
| 1                      | ≥ 3.25:1.00                              | 2.375%  | 1.375%  | 0.350%                |
| 2                      | < 3.25:1.00<br>but ≥<br>2.50:1.00        | 2.125%  | 1.125%  | 0.325%                |
| 3                      | < 2.50:1.00<br>but ≥<br>1.75:1.00        | 1.875%  | 0.875%  | 0.275%                |
| 4                      | < 1.75:1.00<br>but ≥<br><u>0.75:1.00</u> | 1.625%  | 0.625%  | 0.225%                |
| 5                      | < 0.75:1.00                              | 1.375%  | 0.375%  | 0.175%                |

Any increase or decrease in the Applicable Rate resulting from a change in the Consolidated Leverage Ratio shall become effective as of the first Business Day immediately following the date a Compliance Certificate is delivered pursuant to Section 6.02(b); provided, however, that if a Compliance Certificate is not delivered when due in accordance with such Section, then, upon the request of the Required Lenders, Pricing Level 1 shall apply, in each case as of the first Business Day after the date on which such Compliance Certificate was required to have been delivered and in each case shall remain in effect until the first Business Day following the date on which such Compliance Certificate is delivered. In addition, at all times while the Default Rate is in effect, the highest rate set forth in each column of the Applicable Rate shall apply.

Notwithstanding anything to the contrary contained in this definition, (a) the determination of the Applicable Rate for any period shall be subject to the provisions of Section 2.10 and (b) the initial Applicable Rate shall be at least Pricing Level 4 until the first Business Day immediately following the date a Compliance Certificate is delivered pursuant to Section 6.02(b) for the fiscal quarter ending March 31, 2022 to the Administrative Agent. Any adjustment in the Applicable Rate shall be applicable to all Credit Extensions then existing or subsequently made or issued.

“Applicable Revolving Credit Percentage” means with respect to any Revolving Credit Lender at any time, such Revolving Credit Lender’s Applicable Percentage in respect of the Revolving Credit Facility at such time.

“Appropriate Lender” means, at any time, (a) with respect to any of the Term A Facility or the Revolving Credit Facility, a Lender that has a Commitment with respect to such Facility or holds a Term A Loan or a Revolving Credit Loan, respectively, at such time, (b) with respect to the Letter of Credit Sublimit, (i) the L/C Issuer and (ii) if any Letters of Credit have been issued pursuant to Section 2.03(a), the Revolving Credit Lenders and (c) with respect to the Swing Line Sublimit, (i) the Swing Line Lender and (ii) if any Swing Line Loans are outstanding pursuant to Section 2.04(a), the Revolving Credit Lenders.

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

“Arrangers” means BofA Securities, Truist Securities, Inc. and JPMorgan Chase Bank, N.A., each in its capacity as joint lead arranger and joint bookrunner, together with its respective successors and assigns.

“Assignment and Assumption” means an assignment and assumption entered into by a Lender and an Eligible Assignee (with the consent of any party whose consent is required by Section 11.06(b)), and accepted by the Administrative Agent (such acceptance not to be unreasonably withheld, conditioned or delayed), in substantially the form of Exhibit E or any other form (including electronic documentation generated by use of an electronic platform) approved by the Administrative Agent.

“Attributable Indebtedness” means, on any date, (a) in respect of any Capitalized Lease of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP, (b) in respect of any Synthetic Lease Obligation, the capitalized amount of the remaining lease or similar payments under the relevant lease or other applicable agreement or instrument that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP if such lease or other agreement or instrument were accounted for as a Capitalized Lease and (c) all Synthetic Debt of such Person.

“Audited Financial Statements” means the audited consolidated balance sheet of Holdings and its Subsidiaries for the fiscal year ended December 31, 2020, and the related consolidated statements of income or operations, shareholders’ equity and cash flows for such fiscal year of Holdings and its Subsidiaries, including the notes thereto.

“Auto-Extension Letter of Credit” has the meaning specified in Section 2.03(b)(ii).

“Availability Period” means in respect of the Revolving Credit Facility, the period from and including the Restatement Date to the earliest of (i) the Maturity Date for the Revolving Credit Facility, (ii) the date of termination of the Revolving Credit Commitments pursuant to Section 2.06, and (iii) the date of termination of the commitment of each Revolving Credit Lender to make Revolving Credit Loans and of the obligation of the L/C Issuer to make L/C Credit Extensions pursuant to Section 8.02.

“Bail-In Action” means 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” means (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).

“Bank of America” means Bank of America, N.A. and its successors.

“Base Rate” means for any day a fluctuating rate per annum equal to the highest of (a) the Federal Funds Rate plus one-half (1/2) of 1% (b) the rate of interest in effect for such day as publicly announced from time to time by Bank of America as its “prime rate”, and (c) the BSBY Screen Rate (adjusted daily) plus 1.00%; and if the Base Rate shall be less than zero (0), such rate shall be deemed zero (0) for purposes of this Agreement. The “prime rate” is a rate set by Bank of America based upon various factors including Bank of America’s costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in such rate announced by Bank of America shall take effect at the opening of business on the day specified in the public announcement of such change.

“Base Rate Loan” means a Revolving Credit Loan or a Term A Loan that bears interest based on the Base Rate.

“Beneficial Ownership Certification” means a certification regarding beneficial ownership required by the Beneficial Ownership Regulation, which certification shall be substantially similar in form and substance to the form of Certification Regarding Beneficial Owners of Legal Entity Customers published jointly, in May 2018, by the Loan Syndications and Trading Association and Securities Industry and Financial Markets Association.

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

“Benefit Plan” means 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 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”.

“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.

“BofA Securities” means BofA Securities, Inc.

“Bona Fide Lending Affiliate” means any debt fund affiliate of such entities mentioned in clause (a) or (b) of the definition of Disqualified Institution that is primarily engaged in, or advises funds or other investment vehicles that are engaged in, making, purchasing, holding or otherwise investing in commercial loans, notes, bonds and similar extensions of credit or securities in the



ordinary course of its business and whose managers are not involved with the equity investment decisions of such competitor or affiliate.

“Borrowers” has the meaning specified in the introductory paragraph hereto.

“Borrower Materials” has the meaning specified in Section 6.02.

“Borrower Representative” has the meaning specified in Section 2.19.

“Borrowing” means a Revolving Credit Borrowing, a Swing Line Borrowing or a Term A Borrowing, as the context may require.

“BSBY Rate” means:

(a) for any Interest Period with respect to a BSBY Rate Loan, the rate per annum equal to the BSBY Screen Rate two Business Days prior to the commencement of such Interest Period with a term equivalent to such Interest Period; provided that if the rate is not published on such determination date then BSBY Rate means the BSBY Screen Rate on the first Business Day immediately prior thereto; and

(b) for any interest calculation with respect to a Base Rate Loan on any date, the rate per annum equal to the BSBY Screen Rate with a term of one month commencing that day;

provided that if the BSBY Rate determined in accordance with the foregoing provisions of this definition would otherwise be less than zero, the BSBY Rate shall be deemed zero for purposes of this Agreement.

“BSBY Rate Loan” means a Loan that bears interest based on the BSBY Rate (other than any Base Rate Loan that bears interest pursuant to clause (c) in the definition of “Base Rate”).

“BSBY Replacement Date” has the meaning specified in Section 3.03(b).

“BSBY Screen Rate” means the Bloomberg Short-Term Bank Yield Index rate administered by Bloomberg and published on the applicable Reuters screen page (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time).

“Business Day” means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the state where the Administrative Agent’s Office is located, or if such day relates to any BSBY Rate Loan, in New York City.

“Capital Expenditures” means, with respect to any Person for any period, any expenditure in respect of the purchase or other acquisition of any fixed or capital asset (excluding normal replacements and maintenance which are properly charged to current operations). For purposes of this definition, the purchase price of equipment that is purchased within one hundred eighty (180) days after the trade-in of existing equipment or with insurance proceeds, indemnity payments,

condemnation awards (for payment in lieu thereof) or damage recovery proceeds shall be included in Capital Expenditures only to the extent of the gross amount by which such purchase price exceeds the credit granted by the seller of such equipment for the equipment being traded in at such time or the amount of such insurance proceeds, indemnity payments, condemnation awards (or payment in lieu thereof) or damage recovery proceeds, as the case may be. Notwithstanding the foregoing, "Capital Expenditures" shall not include any expenditure (i) made by Holdings or any Subsidiary of the consideration for a Permitted Acquisition, (ii) made by Holdings or any Subsidiary to effect leasehold improvements to any property leased by such Person as lessee, to the extent that such expenses have been reimbursed in cash by the landlord which is not a Loan Party or Subsidiary thereof, (iii) actually paid for by a third party (excluding any Loan Party) and for which no Loan Party or Subsidiary thereof has provided or is required to provide or incur, directly or indirectly, any consideration or monetary obligation to such third party or any other Person (whether before, during or after such period), and (iv) made with the cash proceeds from the sale or issuance of any common Equity Interests of Holdings (excluding any proceeds of a Specified Equity Contribution).

"Capitalized Leases" means all leases that have been or should be, in accordance with GAAP, recorded as capitalized leases.

"Cash Collateral Account" means a blocked, non-interest bearing deposit account of one (1) or more of the Loan Parties at Bank of America (or another commercial bank selected in compliance with Section 6.20) in the name of the Administrative Agent and under the sole dominion and control of the Administrative Agent, and otherwise established in a manner reasonably satisfactory to the Administrative Agent.

"Cash Collateralize" means to deposit in a Cash Collateral Account, pledge and deposit with or deliver to the Administrative Agent, for the benefit of one (1) or more of the L/C Issuer or Swing Line Lender (as applicable) and the Lenders, as collateral for L/C Obligations, Obligations in respect of Swing Line Loans, or obligations of Lenders to fund participations in respect of either thereof (as the context may require), cash or deposit account balances or, if the Administrative Agent, the L/C Issuer or Swing Line Lender shall agree in their sole discretion, other credit support, in each case pursuant to documentation in form and substance satisfactory to (a) the Administrative Agent and (b) the L/C Issuer or the Swing Line Lender (as applicable). "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" means any of the following types of Investments, to the extent owned by Holdings or any of its Subsidiaries free and clear of all Liens (other than Permitted Liens):

(a) readily marketable obligations issued or directly and fully guaranteed or insured by the United States of America or any agency or instrumentality thereof having maturities of not more than one (1) year from the date of acquisition thereof; provided that the full faith and credit of the United States of America is pledged in support thereof;

(b) time deposits with, or insured certificates of deposit or bankers' acceptances of, any commercial bank that (i) (A) is a Lender or (B) is organized under the laws of the United States of America, any state thereof or the District of Columbia or is the principal banking subsidiary of a

bank holding company organized under the laws of the United States of America, any state thereof or the District of Columbia, and is a member of the Federal Reserve System, (ii) issues (or the parent of which issues) commercial paper rated as described in clause (c) of this definition and (iii) has combined capital and surplus of at least \$250,000,000, in each case with maturities of not more than one hundred eighty (180) days from the date of acquisition thereof;

(c) commercial paper issued by any Person organized under the laws of any state of the United States of America and rated at least “Prime-1” (or the then equivalent grade) by Moody’s or at least “A-1” (or the then equivalent grade) by S&P, in each case with maturities of not more than one hundred eighty (180) days from the date of acquisition thereof;

(d) Investments, classified in accordance with GAAP as current assets of Holdings or any of its Subsidiaries, in money market investment programs registered under the Investment Company Act of 1940, which are administered by financial institutions that have the highest rating obtainable from either Moody’s or S&P, and the portfolios of which are limited solely to Investments of the character, quality and maturity described in clauses (a), (b) and (c) of this definition;

(e) repurchase obligations of any Lender or of any commercial bank satisfying the requirements of clause (b) of this definition, having a term of not more than thirty (30) days, with respect to securities issued or fully guaranteed or insured by the United States government;

(f) securities with maturities of one year or less from the date of acquisition issued or fully guaranteed by any state, commonwealth or territory of the United States, by any political subdivision or taxing authority of any such state, commonwealth or territory or by any foreign government, the securities of which state, commonwealth, territory, political subdivision, taxing authority or foreign government (as the case may be) are rated at least A by S&P or A by Moody’s;

(g) securities with maturities of six months or less from the date of acquisition backed by standby letters of credit issued by any Lender or any commercial bank satisfying the requirements of clause (b) of this definition;

(h) money market mutual or similar funds that invest exclusively in assets satisfying the requirements of clauses (a) through (g) of this definition; and

(i) solely in the case of a Subsidiary of Holdings organized outside the laws of the United States of America or any state thereof, instruments equivalent to those referred to in clauses (a) through (h) above denominated in any foreign currency that is the local foreign currency of such Foreign Subsidiary comparable in tenor and in credit quality to those referred to above and customarily used by corporations for cash management purposes in any jurisdiction outside the United States to the extent reasonably required in connection with any business conducted by such Subsidiary organized in such jurisdiction.

“Cash Management Agreement” means any agreement to provide cash management services, including treasury, depository, overdraft, credit or debit card, electronic funds transfer and other cash management arrangements.

“Cash Management Bank” means any Person that is a Lender or an Affiliate of a Lender, in its capacity as a party to such Cash Management Agreement.

“Casualty/Condemnation Receipt” means any cash received by or paid to or for the account of any Person comprised of proceeds of insurance (other than proceeds of business interruption insurance to the extent such proceeds constitute compensation for lost earnings) or condemnation awards (and payments in lieu thereof).

“CERCLA” means the Comprehensive Environmental Response, Compensation and Liability Act of 1980.

“CERCLIS” means the Comprehensive Environmental Response, Compensation and Liability Information System maintained by the U.S. Environmental Protection Agency.

“CFC” means a Subsidiary of Holdings that is a controlled foreign corporation (as that term is defined in Section 957 of the Code).

“CFC Holdco” means any Subsidiary of Holdings, substantially all of the assets of which consist (directly or indirectly) of Equity Interests and/or Indebtedness of one (1) or more CFCs. For the avoidance of doubt, any Subsidiary that is a CFC shall not be deemed to be a CFC Holdco.

“Change in Law” means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation guidance notes 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 regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change in Law”, regardless of the date enacted, adopted or issued.

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

(a) any Person or “group” (within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act) shall have acquired beneficial ownership (as construed in accordance with Rules 13d-3 and 13d-5 under the Exchange Act), either directly or indirectly, of 35% or more of the voting power for the election of directors of Holdings;

(b) a majority of the members of the board of managers (or similar governing body) of Holdings cease to be occupied by Persons who either (x) were members of the board of managers of Holdings on the Restatement Date or (y) were nominated for election by the board of managers of Holdings, or whose election or nomination for election was previously approved by a majority of such managers; or

(c) Holdings shall cease to, directly or indirectly, own and control 100% of the outstanding Equity Interests of each of its Subsidiaries that is a Loan Party (except as otherwise permitted by Section 7.05, ownership by directors and other similar qualifying shares).

“Code” means the Internal Revenue Code of 1986.

“Collateral” means all of the “Collateral” or “Trust Property” or other similar term referred to in the Collateral Documents and all of the other property that is or is intended under the terms of the Collateral Documents to be subject to Liens in favor of the Administrative Agent for the benefit of the Secured Parties.

“Collateral Delivery Period” means, (a) in the case of a Material Subsidiary or Loan Party, as applicable, organized in, and with its primary place of business in, the United States, fifteen (15) days and (b) in the case of a Material Subsidiary or Loan Party, as applicable, organized in, or with its primary place of business in, a jurisdiction other than the United States, sixty (60) days.

“Collateral Documents” means, collectively, the Security and Pledge Agreement, the Intellectual Property Security Agreements, the Dutch Collateral Documents, the Singapore Collateral Documents, each of the mortgages, collateral assignments, Security Agreement Supplements, security agreements, pledge agreements or other similar agreements delivered to the Administrative Agent pursuant to Section 6.12, and each of the other agreements, instruments or documents that creates or purports to create a Lien in favor of the Administrative Agent for the benefit of the Secured Parties.

“Commitment” means a Revolving Credit Commitment, an Extended Revolving Credit Commitments, a Term A Commitment and/or an Incremental Term Commitment.

“Committed Loan Notice” means a notice of (a) a Term Borrowing, (b) a Revolving Credit Borrowing, (c) a conversion of Loans from one Type to the other, or (d) a continuation of BSBY Rate Loans, pursuant to Section 2.02(a), shall be substantially in the form of Exhibit A 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 Representative.

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

“Competitor” means (a) any Person that is an operating company directly engaged in substantially similar business operations as the Borrowers and (b) any of such Person’s Subsidiaries; provided that, notwithstanding the foregoing, in no event shall “Competitor” include any Person that is a financial institution, a debt fund or an investment vehicle that is engaged in the business of making, purchasing, holding or otherwise investing in loans, notes, bonds and similar extensions of credit or securities in the ordinary course of business to unaffiliated third parties.

“Competitor Controller” means any (a) direct or indirect parent company of a Competitor and (b) Person that is a controlled Affiliate of such Competitor; provided that, notwithstanding the foregoing, in no event shall “Competitor Controller” include any Person that is a financial

institution, a debt fund or an investment vehicle that is engaged in the business of making, purchasing, holding or otherwise investing in loans, notes, bonds and similar extensions of credit or securities in the ordinary course of business to unaffiliated third parties.

“Compliance Certificate” means a certificate substantially in the form of Exhibit D.

“Conforming Changes” means, with respect to the use, administration of or any conventions associated with BSBY or any proposed Successor Rate, as applicable, any conforming changes to the definition of Base Rate, BSBY, Interest Period, timing and frequency of determining rates and making payments of interest and other technical, administrative or operational matters (including, for the avoidance of doubt, the definition of Business Day, timing of borrowing requests or prepayment, conversion or continuation notices and length of lookback periods) as may be appropriate, in the discretion of the Administrative Agent, to reflect the adoption and implementation of such applicable rate, and to permit the administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent determines that adoption of any portion of such market practice is not administratively feasible or that no market practice for the administration of such rate exists, in such other manner of administration as the Administrative Agent determines is reasonably necessary in connection with the administration of this Agreement and any other Loan Document.

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

“Consolidated Current Assets” means, at any date, all amounts that would, in conformity with GAAP, be set forth opposite the caption “total current assets” (or any like caption) on a consolidated balance sheet of Holdings and its Subsidiaries at such date, other than (a) cash and Cash Equivalents, (b) amounts related to current or deferred taxes and (c) amounts under any Swap Contracts.

“Consolidated Current Liabilities” means, at any date, all amounts that would, in conformity with GAAP, be set forth opposite the caption “total current liabilities” (or any like caption) on a consolidated balance sheet of Holdings and its Subsidiaries at such date, but excluding (a) the current portion of any Indebtedness of Holdings and its Subsidiaries, (b) without duplication of clause (a) above, all Indebtedness consisting of Loans or Commitments to the extent otherwise included therein, (c) accruals of interest expense (excluding interest expense that is past due and unpaid), (d) accruals for current or deferred taxes and (e) accruals related to Swap Contracts.

“Consolidated EBITDA” means, at any date of determination, an amount equal to Consolidated Net Income of Holdings and its Subsidiaries on a consolidated basis for the most recently completed Measurement Period plus

(a) the following, without duplication, to the extent deducted in calculating such Consolidated Net Income (other than in the case of clauses (vii) or (viii)):

- (i) Consolidated Interest Charges,

- (ii) the provision for Federal, state, local and foreign income taxes, taxes on profit or capital and payroll taxes payable,
- (iii) depreciation and amortization expense,
- (iv) all non-cash charges, expenses, items and losses, including, without limitation (A) non-cash items for any management equity plan, supplemental executive retirement plan or stock option plan or other type of compensatory plan for the benefit of officers, directors or employees, (B) non-cash restructuring charges or non-cash reserves in connection with any Permitted Acquisition or other Investment consummated after the Restatement Date, (C) all non-cash losses (minus any non-cash gains) from Dispositions (but for clarity excluding write offs or write downs of Inventory), (D) any non-cash purchase or recapitalization accounting adjustments, (E) non-cash losses (minus any non-cash gains) with respect to Swap Contracts, (F) non-cash charges attributable to any post-employment benefits offered to former employees, (G) non-cash asset impairments (but for clarity excluding impairments of Inventory) and (H) the non-cash effects of purchase accounting or similar adjustments required or permitted by GAAP in connection with any Permitted Acquisitions or permitted Investments; provided, that the adjustments described in this clause (iv) shall exclude any non-cash loss or expense (a) that is an accrual of a reserve for a cash expenditure or payment to be made, or anticipated to be made, in a future period, (b) relating to a write-down, write off or reserve with respect to accounts, or (c) relating to a write-down, write off or reserve with respect to inventory,
- (v) compensation expenses resulting from (A) the repurchase of Equity Interests of any parent company of Holdings from employees, directors or consultants of Holdings or any of its Subsidiaries, in each case, to the extent permitted by this Agreement, (B) any non-cash expense related to any management equity plan or stock option plan or any other management or employee benefit plan or agreement or any stock subscription or shareholder agreement, and (C) payments to employees, directors or officers of Holdings and its Subsidiaries paid in connection with Restricted Payments that are otherwise permitted hereunder,
- (vi) (A) any fees, expenses or charges (other than depreciation or amortization expense) related to any offering of Equity Interests, Investment, acquisition, Disposition, Restricted Payment, recapitalization or the incurrence, amendment or other modification or repayment of Indebtedness, in each case, permitted under this Agreement; provided that the amount added pursuant to this clause (A) shall not exceed \$10,000,000 during the term of this Agreement for any offering of Equity Interests, Investment, acquisition, Disposition, Restricted Payment, recapitalization or the incurrence, amendment or other modification or repayment of Indebtedness that, in each case, is unsuccessful and (B) cash fees and expenses incurred in connection with the Transaction not to exceed \$2,500,000 in the aggregate,
- (vii) proceeds of business interruption insurance to the extent such proceeds are received by Holdings or any Subsidiary during such period or reasonably expected to be reimbursed no later than one (1) year after the end of such period pursuant to a written

contract or insurance policy with an unaffiliated third party, which contract or insurance obligation has not been disclaimed,

(viii) expenses actually reimbursed or reasonably expected to be reimbursed no later than one (1) year after the end of such period pursuant to a written contract or insurance policy with an unaffiliated third party, which contract or insurance obligation has not been disclaimed,

(ix) losses, charges and expenses attributable to asset Dispositions or the sale or other disposition of any Equity Interest of any Person other than in the ordinary course of business but permitted by this Agreement,

(x) any non-recurring charges, costs and expenses, including those incurred in connection with restructuring projects, litigation (including settlements) the closure and/or consolidation of facilities, and termination, severance and reduction in work force expenses, in an aggregate amount not to exceed, when taken together with clause (xi) below, 25% of Consolidated EBITDA in such period, calculated before the add back for such item,

(xi) Pro Forma Cost Savings for such period,

(xii) unrealized losses with respect to obligations under Swap Contracts designed to provide protections against fluctuations in interest rates or embedded derivatives that require similar accounting treatment,

(xiii) losses due solely to fluctuations in currency values and the related tax effects determined in accordance with GAAP for such period and any exchange, translation or performance losses relating to any foreign currency hedging transactions for such period,

(xiv) the amount of any earn-out obligations permitted by this agreement which become due and payable and are paid or accrue during such period in accordance with this Agreement,

(xv) write downs, write offs or reserves with respect to inventory of any Subsidiary of Holdings in an amount not to exceed, in the aggregate, 10% of TTM Consolidated EBITDA in such period, calculated before the add back for such item,

and minus

(b) the following, without duplication, to the extent included in calculating such Consolidated Net Income:

(i) Federal, state, local and foreign income tax credits,

(ii) all non-cash items increasing Consolidated Net Income (in each case of or by Holdings and its Subsidiaries for such Measurement Period),



(iii) unrealized gains with respect to obligations under Swap Contracts designed to provide protections against fluctuations in interest rates or embedded derivatives that require similar accounting treatment, and

(iv) gains due solely to fluctuations in currency values and the related tax effects determined in accordance with GAAP for such period and any exchange, translation or performance gains relating to any foreign currency hedging transactions for such period.

For purposes of calculating Consolidated EBITDA as of any date of measurement occurring after an EBITDA Transaction, for use in the calculation of the Consolidated Leverage Ratio and the Consolidated Fixed Charge Coverage Ratio, Consolidated EBITDA shall be calculated on a *pro forma* basis.

“Consolidated Fixed Charge Coverage Ratio” means, at any date of determination, the ratio of (a) (i) Consolidated EBITDA, less (ii) the aggregate amount of all Unfinanced Cash Capital Expenditures less (iii) the aggregate amount of Federal, state, local and foreign income taxes actually paid in cash less (iv) Restricted Payments consisting of the payment in cash of (A) any earn-out obligations or (B) payments permitted under Section 7.06(g), to (b) the sum of (i) Consolidated Interest Charges to the extent actually paid in cash and (ii) the aggregate principal amount of all regularly scheduled principal payments or redemptions or similar acquisitions for value of outstanding debt for borrowed money (calculated without giving effect to the application of any prepayments), but excluding any such payments to the extent refinanced through the incurrence of additional Indebtedness otherwise expressly permitted under Section 7.02, in each case, of or by Holdings and its Subsidiaries for the most recently completed Measurement Period; provided, that solely with respect to the Consolidated Fixed Charge Coverage Ratio, during the first year following the Restatement Date, the amounts set forth in clauses (b)(i) and (ii) shall be calculated by dividing such amount from the Restatement Date to the date of determination by the number of days in such period and multiplying by 365.

“Consolidated Funded Indebtedness” means, as of any date of determination, for Holdings and its Subsidiaries on a consolidated basis, the sum of the following to the extent constituting Indebtedness: (a) the outstanding principal amount of all obligations, whether current or long-term, for borrowed money (including Obligations hereunder) and all obligations evidenced by bonds, debentures, notes, loan agreements or other similar instruments, (b) all purchase money Indebtedness, (c) all direct obligations that are due and payable arising under letters of credit (including standby and commercial), bankers’ acceptances, bank guaranties, surety bonds and similar instruments, (d) all obligations in respect of the deferred purchase price of property or services (subject to the limitations set forth in the definition of Indebtedness), (e) all Attributable Indebtedness, (f) without duplication, all Guarantees with respect to outstanding Indebtedness of the types specified in clauses (a) through (e) above of Persons other than Holdings or any Subsidiary, and (g) all Indebtedness of the types referred to in clauses (a) through (f) above of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which Holdings or a Subsidiary is a general partner or joint venturer, unless such Indebtedness is expressly made non-recourse to Holdings or such Subsidiary.

“Consolidated Interest Charges” means, for any Measurement Period, the sum of (a) all interest, premium payments, debt discount, fees, charges and related expenses in connection with

borrowed money (including capitalized interest) or in connection with the deferred purchase price of assets, in each case to the extent treated as interest in accordance with GAAP, (b) all interest paid or payable with respect to discontinued operations and (c) the portion of rent expense under Capitalized Leases that is treated as interest in accordance with GAAP, in each case, of or by Holdings and its Subsidiaries on a consolidated basis for the most recently completed Measurement Period.

“Consolidated Leverage Ratio” means, as of any date of determination, the ratio of (a) the result of (x) Consolidated Funded Indebtedness as of such date less (y) the amount of unrestricted cash and Cash Equivalents of the Loan Parties not in excess of fifty percent (50%) of TTM Consolidated EBITDA, subject to a perfected Lien in favor of the Administrative Agent pursuant to a deposit account control agreement (or pursuant to a deposit account control agreement to be entered into within sixty (60) days after the Restatement Date) or other Collateral Document (to the extent that such perfected Lien is otherwise required under this Agreement or another Loan Document), to (b) TTM Consolidated EBITDA.

“Consolidated Net Income” means, at any date of determination, the net income (or loss) of Holdings and its Subsidiaries on a consolidated basis for the most recently completed Measurement Period; provided that Consolidated Net Income shall exclude (a) extraordinary or unusual gains and extraordinary or unusual losses for such Measurement Period, (b) the net income of any Subsidiary during such Measurement Period to the extent that the declaration or payment of dividends or similar distributions by such Subsidiary of such income is not permitted by operation of the terms of its Organization Documents or any agreement, instrument or Law applicable to such Subsidiary during such Measurement Period, except that Holdings’ equity in any net loss of any such Subsidiary for such Measurement Period shall be included in determining Consolidated Net Income, and (c) any income (or loss) for such Measurement Period of any Person if such Person is not a Subsidiary, except that Holdings’ equity in the net income of any such Person for such Measurement Period shall be included in Consolidated Net Income up to the aggregate amount of cash actually distributed by such Person during such Measurement Period to Holdings or a Subsidiary as a dividend or other distribution (and in the case of a dividend or other distribution to a Subsidiary, such Subsidiary is not precluded from further distributing such amount to Holdings as described in clause (b) of this proviso).

“Consolidated Working Capital” means, at any date, the excess of Consolidated Current Assets on such date over Consolidated Current Liabilities on such date; provided that increases or decreases in Consolidated Working Capital shall be calculated without regard to any changes in Current Assets or Current Liabilities as a result of (a) the effects of purchase accounting or (b) any fluctuation in currency exchange rates.

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

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

“Corresponding Obligations” means all Obligations, other than any Parallel Debt.

“Covered Entity” means (a) a “covered entity,” as defined and interpreted in accordance with 12 C.F.R. §252.82(b); (b) a “covered bank,” as defined in and interpreted in accordance with 12 C.F.R. §47.3(b); or (c) a “covered FSI,” as defined in and interpreted in accordance with 12 C.F.R. §382.2(b).

“Covered Party” has the meaning specified in Section 11.25.

“Credit Extension” means each of the following: (a) a Borrowing and (b) an L/C Credit Extension.

“CRR” means the Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012.

“Cumulative Amount” means, as of any date of determination, the identifiable cash proceeds received by Holdings from the sale of Holdings’ Equity Interests or from cash equity contributions in and to the Loan Parties (other than from the proceeds of a Specified Equity Contribution), determined on a cumulative basis during the term of this Agreement less the amount of such proceeds that have been used herein.

“Daily Simple SOFR” with respect to any applicable determination date means the secured overnight financing rate (“SOFR”) published on such date 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 (or any successor source).

“Debtor Relief Laws” means the Bankruptcy Code of the United States, the Insolvency, Restructuring and Dissolution Act 2018 (Act No. 40 of 2018), the Bankruptcy Act, Chapter 20 of Singapore, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, judicial management, administration or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect.

“Deductible Amount” has the meaning specified in Section 9.12(d).

“Default” means any event or condition that constitutes an Event of Default or that, with the giving of any notice, the passage of time, or both, would be an Event of Default.

“Default Rate” means (a) when used with respect to Obligations other than Letter of Credit Fees, an interest rate equal to (i) the Base Rate plus (ii) the Applicable Rate, if any, applicable to Base Rate Loans under the Term A Facility plus (iii) 2% per annum; provided, however, that with respect to a BSBY Rate Loan, the Default Rate shall be an interest rate equal to the interest rate (including any Applicable Rate) otherwise applicable to such Loan plus 2% per annum and (b) when used with respect to Letter of Credit Fees, a rate equal to the Applicable Rate plus 2% per annum.

“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” means, subject to Section 2.17(b), any Lender that (a) has failed to (i) fund all or any portion of its Loans within two (2) Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies the Administrative Agent and the Borrowers in writing that such failure is the result of such Lender’s determination that one (1) or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Administrative Agent, the L/C Issuer, the Swing Line Lender or any other Lender any other amount required to be paid by it hereunder (including in respect of its participation in Letters of Credit or Swing Line Loans) within two (2) Business Days of the date when due, (b) has notified the Borrowers, the Administrative Agent, the L/C Issuer or the Swing Line 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 determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three (3) Business Days after written request by the Administrative Agent or the Borrowers, to confirm in writing to the Administrative Agent and the Borrowers that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and the Borrowers), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, (ii) had appointed for it a receiver and/or manager, 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 (1) or more of clauses (a) through (d) above, and of the effective date of such status, shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 2.17(b)) as of the date established therefor by the Administrative Agent in a written notice of such determination, which shall be delivered by the Administrative Agent to the Borrowers, the L/C Issuer, the Swing Line Lender and each other Lender promptly following such determination.

“Designated Jurisdiction” means any country or territory to the extent that such country or territory itself is the subject of any Sanction.

“Designated Lender” has the meaning specified in Section 2.20.

“Disposition” or “Dispose” means the sale, transfer, license, lease or other disposition (including any sale and leaseback transaction) of any property by any Person (or the granting of any option or other right to do any of the foregoing), including by Division and any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith but excluding any involuntary disposition.

“Disqualified Capital Stock” means any Equity Interests which, by their terms (or by the terms of any security or other Equity Interests into which it is convertible or for which it is exchangeable), or upon the happening of any event or condition (a) matures or is mandatorily redeemable (other than solely for Qualified Capital Stock or solely at the direction of the issuer), pursuant to a sinking fund obligation or otherwise (except as a result of a change of control or asset sale so long as any rights of the holders thereof upon the occurrence of a change of control or asset sale event shall be subject to the prior repayment in full of the Loans and all other Obligations that are accrued and payable and the termination of the Commitments), (b) is redeemable at the option of the holder thereof (other than solely for Qualified Capital Stock and cash in lieu of fractional shares), in whole or in part, (c) requires the payment of any cash dividends, or (d) is or becomes convertible into or exchangeable for Indebtedness or any other Equity Interests that would constitute Disqualified Capital Stock, in each case, prior to the date that is ninety-one (91) days after the then applicable Latest Maturity Date; provided that if such Equity Interests are issued pursuant to a plan for the benefit of employees of Holdings (or any direct or indirect parent thereof), Holdings or any of its Subsidiaries or by any such plan to such employees, such Equity Interests shall not constitute Disqualified Capital Stock solely because it may be required to be repurchased by Holdings (or any direct or indirect parent thereof), any Borrower or any of their respective Subsidiaries in order to satisfy applicable statutory or regulatory obligations or as a result of such employee’s termination, death or disability.

“Disqualified Institution” means (a) those Persons that are bona fide competitors of any Loan Party or their respective Subsidiaries (or Affiliates of any such competitors (other than Bona Fide Lending Affiliates) that are (x) reasonably identifiable as Affiliates solely on the basis of similarity of name (provided that the Administrative Agent shall have no obligation to carry out due diligence in order to identify such Affiliates) or (y) identified by the Borrowers in writing from time to time), (b) those banks, financial institutions and other Persons separately identified by Borrowers to the Administrative Agent in writing prior to October 14, 2021 (such list, the “Excluded Persons List”) (and, in each case, such specified entities’ Affiliates (other than Bona Fide Lending Affiliates) that are reasonably identifiable as Affiliates solely on the basis of similarity of name (provided that the Administrative Agent shall have no obligation to carry out due diligence in order to identify such Affiliates)) or (c) any Person(s) that are engaged as principals primarily in private equity, mezzanine financing or venture capital (or Affiliates of such Person(s) that are (x) reasonably identifiable as Affiliates solely on the basis of similarity of name (provided that the Administrative Agent shall have no obligation to carry out due diligence in order to identify such Affiliates) or (y) identified by the Borrowers in writing from time to time).

“Division” means the division of assets, liabilities and/or obligations of a Person among two or more Persons (whether pursuant to a "plan of division" or similar arrangement), which may or may not include the original dividing Person and pursuant to which the original dividing Person may or may not survive.

“Dollar” and “\$” mean lawful money of the United States.

“DP Amounts” mean any and all deferred payments, holdbacks or similar deferred consideration in connection with a Permitted Acquisition, which are payable based on the achievement of specified financial results over time, and which are structured such that, they are not required to be paid if (and for so long as) the Loan Party cannot satisfy any condition contained in Section 7.06(h); to the extent the total amount of such deferred payments, holdbacks and other similar deferred consideration for a particular Permitted Acquisition, together with any earn-out obligations in connection with such Permitted Acquisition, does not exceed 40% of the aggregate consideration paid or to be paid in connection with such Permitted Acquisition.

“Dutch Collateral Documents” means a deed of disclosed pledge over bank account receivables, dated the Restatement Date, between Holdings as pledgor and the Administrative Agent as pledgee, and any other pledge governed by the laws of the Netherlands.

“Dutch Collateral Party” has the meaning specified in Section 9.12(a).

“EBITDA Transaction” means a Permitted Acquisition, restructuring, Disposition, other similar transaction or initiative with respect to cost savings, restructurings or cost synergies.

“EEA Financial Institution” means (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” means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

“EEA Resolution Authority” means any public administrative authority or any Person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

“Electronic Copy” has the meaning specified in Section 11.17.

“Electronic Record” has the meaning specified in Section 11.17.

“Electronic Signature” has the meaning specified in Section 11.17.

“Eligible Assignee” means any Person that meets the requirements to be an assignee under Section 11.06(b)(iii) and (iv) (subject to such consents, if any, as may be required under Section 11.06(b)(iii)).

“Environment” means ambient air, indoor air, surface water, groundwater, drinking water, soil, surface and subsurface strata, and natural resources such as wetland, flora and fauna.

“Environmental Laws” means any and all Federal, state, local, and foreign statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, agreements or governmental restrictions relating to pollution or the protection of the Environment or human health (to the extent related to exposure to Hazardous Materials), including those relating to the manufacture, generation, handling, transport, storage, treatment, Release or threat of Release of Hazardous Materials.

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

“Environmental Permit” means any permit, approval, identification number, license or other authorization required under any Environmental Law.

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

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

“ERISA Affiliate” means any trade or business (whether or not incorporated) under common control with any of the Borrowers within the meaning of Section 414(b) or (c) of the Code (and Sections 414(m) and (o) of the Code for purposes of provisions relating to Section 412 of the Code).

“ERISA Event” means (a) a Reportable Event with respect to a Pension Plan; (b) the withdrawal of any of Holdings or any Subsidiary or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which such entity 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; (c) a complete or partial withdrawal by any of Holdings or any Subsidiary or any ERISA Affiliate from a Multiemployer Plan; (d) the filing of a notice of intent to terminate a Pension Plan or the treatment of a Pension Plan amendment as a termination under Section 4041 or 4041A of ERISA; (e) the institution by the PBGC of proceedings to terminate a Pension Plan; (f) any event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer,

any Pension Plan; (g) the determination that any Pension Plan is considered an at-risk plan or a plan in endangered or critical status within the meaning of Sections 430, 431 and 432 of the Code or Sections 303, 304 and 305 of ERISA; (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 of Holdings or any Subsidiary or any ERISA Affiliate; or (i) a failure by any Borrower or any ERISA Affiliate to meet all applicable requirements under the Pension Funding Rules in respect of a Pension Plan, whether or not waived, or the failure by any of Holdings or any Subsidiary or any ERISA Affiliate to make any required contribution to a Multiemployer Plan.

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

“Event of Default” has the meaning specified in Section 8.01.

“Excluded Accounts” means payroll accounts, employee benefit accounts, withholding tax and other fiduciary accounts, escrow accounts in respect of arrangements with non-affiliated third parties, worker’s compensation, customs accounts, trust and tax withholding which are funded by the Loan Parties in the ordinary course of business or as required by any requirement of law, cash collateral accounts subject to Liens permitted under the Loan Documents and other accounts with a balance not to exceed \$500,000 at any one (1) time.

“Excluded Assets” means (i) any owned real property other than Material Real Property and all real property constituting leaseholds, (ii) (a) any motor vehicles and other assets subject to certificates of title and (b) any letter of credit rights (other than letter of credit rights a security interest in which can be perfected by the filing of a UCC financing statement) or commercial tort claims, in each case, with a value of less than \$1,000,000 (in each case excluding a security interest which can be perfected by the filing of a UCC financing statement), (iii) any assets in which the grant of a pledge or security interest is prohibited by law, rule or regulation, but only to the extent, and so long as, such prohibition by law, rule or regulation is not terminated or rendered unenforceable by law or otherwise deemed ineffective, (iv) Equity Interests (a) in any entity that is not a wholly owned Subsidiary if the granting of a security interest in such Equity Interests would be prohibited by the organizational documents of such entity without third party consent which consent has not been obtained, or (b) in any joint venture, (v) any governmental licenses or state or local franchises, charter and authorization, to the extent security interests in such licenses, franchises, charters or authorizations are prohibited or restricted thereby, but only to the extent, and so long as, such prohibition is not terminated or rendered unenforceable by law or otherwise deemed ineffective, (vi) assets in circumstances where the Administrative Agent and Holdings reasonably agree that the cost of obtaining or perfecting a security interest in such assets is excessive in relation to the benefit to the Lenders of the security to be afforded thereby, (vii) licenses, instruments, leases and agreements to the extent and so long as such a pledge thereof would violate the terms thereof or violate any law, rule or regulation, but only to the extent, and for so long as, such prohibition is not terminated or rendered unenforceable or otherwise deemed ineffective by contract or law, (viii) any property or assets subject to a Lien with respect to any purchase money Indebtedness or Capitalized Leases permitted under the Loan Documents if the contract, agreement or document to which such Lien is granted (or in the contract, agreement or document providing for such Capitalized Leases) prohibits or requires the consent of any Person as a condition to the creation of any other Lien on such property or asset, but only to the extent,



and so long as, such prohibition is not terminated, (ix) any “intent-to-use” application for registration of a Trademark (as defined in the Security and Pledge Agreement) filed pursuant to Section 1(b) of the Lanham Act, 15 U.S.C. § 1051, prior to the filing of a “Statement of Use” pursuant to Section 1(d) of the Lanham Act or an “Amendment to Allege Use” pursuant to Section 1(c) of the Lanham Act with respect thereto, solely to the extent, if any, that, and solely during the period, if any, in which, the grant of a security interest therein would impair the validity or enforceability of any registration that issues from such intent-to-use application under applicable federal law, (x) any Excluded Accounts, (xi) any voting Equity Interests issued by a Subsidiary that is a CFC or a CFC Holdco in excess of 65% of such outstanding Equity Interests, and (xii) any assets of a CFC or CFC Holdco; provided that (I) notwithstanding the above, Excluded Assets shall not include any Equity Interests of a Loan Party (other than Holdings) and (II) shall not apply to proceeds of such Excluded Assets (except to the extent such proceeds otherwise constitute Excluded Assets).

“Excluded Persons List” has the meaning specified in the definition of “Disqualified Institution”.

“Excluded Swap Obligation” means, with respect to any Guarantor, any Swap Obligation if, and to the extent that, all or a portion of the Guaranty of such Guarantor of, or the grant by such Guarantor of a security interest to secure, such Swap Obligation (or any Guaranty thereof) is or becomes illegal or unlawful under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor’s failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act (determined after giving effect to Section 10.11 and any other “keepwell, support or other agreement” for the benefit of such Guarantor and any and all guarantees of such Guarantor’s Swap Obligations by other Loan Parties) at the time the Guaranty of such Guarantor, or a grant by such Guarantor of a security interest, would otherwise become effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one (1) swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such Guaranty or security interest is or becomes excluded in accordance with the first sentence of this definition.

“Excluded Taxes” means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its 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 Borrowers under Section 11.13) or (ii) such Lender changes its Lending Office, except in each case to the extent that, pursuant to Section 3.01, amounts with respect to such Taxes were payable either to such Lender’s assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its Lending Office, (c) Taxes attributable to such Recipient’s failure to comply with Section 3.01(e) and (d) any Taxes imposed under FATCA.

“Existing Credit Agreement” has the meaning specified in the Preliminary Statements.

“Extended Revolving Credit Commitments” has the meaning specified in Section 2.14(a).

“Extended Term Loans” has the meaning specified in Section 2.14(a).

“Extending Term Lender” has the meaning specified in Section 2.14(a).

“Extension” has the meaning specified in Section 2.14(a).

“Extension Offer” has the meaning specified in Section 2.14(a).

“Facility” means the Term A Facility or the Revolving Credit Facility, as the context may require.

“Facility Office” means the office through which such Lender will perform its obligations under this Agreement.

“Facility Termination Date” means the date of termination of the Aggregate Commitments and payment in full of all Obligations (other than (A) contingent indemnification obligations and (B) obligations and liabilities under Secured Cash Management Agreements and Secured Hedge Agreements as to which arrangements satisfactory to the applicable Cash Management Bank of Hedge Bank shall have been made) and the expiration or termination of all Letters of Credit (other than Letters of Credit as to which other arrangements satisfactory to the Administrative Agent and the L/C Issuer shall have been made).

“FASB ASC” means the Accounting Standards Codification of the Financial Accounting Standards Board.

“FATCA” means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantially comparable and not materially more onerous to comply with) and any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) and any intergovernmental agreements with respect thereto.

“Federal Funds Rate” means, 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, 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 Bank of America on such day on such transactions as determined by the Administrative Agent.

“Financial Covenant Holiday Period” has the meaning specified in Section 7.11(a).

“Flood Hazard Property” means any Mortgaged Property that is in an area designated by the Federal Emergency Management Agency as having special flood or mudslide hazards.

“Foreign Government Scheme or Arrangement” has the meaning specified in Section 5.12(e).

“Foreign Lender” means, with respect to any Borrower, (a) if such 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 Obligation Provider” has the meaning specified in the definition of Foreign Subsidiary Secured Obligations.

“Foreign Obligation Loan Documents” means all legal documentation entered into between the applicable Foreign Subsidiary and the Foreign Obligation Provider in connection with the Foreign Subsidiary Secured Obligations.

“Foreign Subsidiary” means any Subsidiary that is not organized under the laws of a jurisdiction other than the United States, a State thereof or the District of Columbia.

“Foreign Subsidiary Secured Obligations” means all unpaid principal of, accrued and unpaid interest and fees and reimbursement obligations, and all expenses, reimbursements, indemnities and other obligations under or with respect to, any loans, letters of credit, acceptances, guarantees, overdraft facilities, other credit extensions or accommodations or similar obligations owing by any Foreign Subsidiary to Bank of America or any office, branch or Affiliate of Bank of America (each a “Foreign Obligation Provider”).

“FRB” means the Board of Governors of the Federal Reserve System of the United States.

“Fronting Exposure” means, at any time there is a Defaulting Lender, (a) with respect to the L/C Issuer, such Defaulting Lender’s Applicable Percentage of the outstanding L/C Obligations 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, and (b) with respect to the Swing Line Lender, such Defaulting Lender’s Applicable Percentage of Swing Line Loans other than Swing Line Loans as to which such Defaulting Lender’s participation obligation has been reallocated to other Lenders in accordance with the terms hereof.

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

“GAAP” means generally accepted accounting principles in the United States set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or such other principles as may be approved by a significant segment of the

accounting profession in the United States, that are applicable to the circumstances as of the date of determination, consistently applied.

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

“Guarantee” means, as to any Person, any (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation payable or performable by another Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness or other obligation of the payment or performance of such Indebtedness or other obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness or other obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part), or (b) any Lien on any assets of such Person securing any Indebtedness or other obligation of any other Person, whether or not such Indebtedness or other obligation is assumed by such Person (or any right, contingent or otherwise, of any holder of such Indebtedness to obtain any such Lien). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. The term “Guarantee” as a verb has a corresponding meaning.

“Guarantors” means, collectively, (a) Holdings, (b) the Subsidiaries of Holdings listed on Schedule 1.01 as of the Restatement Date and each other Subsidiary of Holdings that shall be required to execute and deliver a guaranty or guaranty supplement pursuant to Section 6.12 and (c) with respect to (i) Obligations owing by any Loan Party or any Subsidiary of a Loan Party (other than a Borrower) under any Hedge Agreement or any Cash Management Agreement and (ii) the payment and performance by each Specified Loan Party of its obligations under its Guaranty with respect to all Swap Obligations, the Borrowers.

“Guaranty” means, collectively, the Guaranty made by the Guarantors under Article X in favor of the Secured Parties, together with each other guaranty and guaranty supplement delivered pursuant to Section 6.12.

“Hazardous Materials” means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas, toxic mold, infectious or medical wastes and all other

substances, wastes, chemicals, pollutants, contaminants or compounds of any nature in any form regulated pursuant to any Environmental Law as hazardous or toxic or as a pollutant or containment (or by words of similar meaning and regulatory effect), including petroleum or petroleum distillates, natural gas, natural gas liquids.

“Hedge Bank” means any Person that, at the time it enters into a Swap Contract required or permitted under Article VI or VII, is a Lender or an Affiliate of a Lender, in its capacity as a party to such Swap Contract.

“Holdings” has the meaning specified in the introductory paragraph.

“IFRS” means international accounting standards within the meaning of IAS Regulation 1606/2002 to the extent applicable to the relevant financial statements delivered under or referred to herein.

“Increase Effective Date” has the meaning specified in Section 2.15(d).

“Increase Joinder” has the meaning specified in Section 2.15(c).

“Incremental Commitments” means Incremental Revolving Credit Commitments and/or the Incremental Term Commitments.

“Incremental Debt” has the meaning specified in Section 1.08(b).

“Incremental Revolving Credit Commitment” has the meaning specified in Section 2.15(a).

“Incremental Term Commitments” has the meaning specified in Section 2.15(a).

“Incremental Term Loans” has the meaning specified in Section 2.01(c).

“Indebtedness” means, as to any Person at a particular time, without duplication, all of the following, whether or not included as indebtedness or liabilities in accordance with GAAP:

- (a) all obligations of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments;
- (b) the maximum amount of all direct or contingent obligations of such Person arising under letters of credit (including standby and commercial), bankers’ acceptances, bank guaranties, surety bonds and similar instruments;
- (c) net obligations of such Person under any Swap Contract;
- (d) all obligations of such Person to pay the deferred purchase price of property or services;
- (e) indebtedness (excluding prepaid interest thereon) secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse;

(f) all Attributable Indebtedness in respect of Capitalized Leases and Synthetic Lease Obligations of such Person and all Synthetic Debt of such Person;

(g) all obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment in respect of any Equity Interest in such Person or any other Person or any warrant, right or option to acquire such Equity Interest, valued, in the case of a redeemable preferred interest, at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends; and

(h) all Guarantees of such Person in respect of any of the foregoing.

For all purposes hereof, the Indebtedness of any Person shall include the Indebtedness of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or a joint venturer, unless such Indebtedness is expressly made non-recourse to such Person. The amount of any net obligation under any Swap Contract on any date shall be deemed to be the Swap Termination Value thereof as of such date.

Notwithstanding the foregoing or anything else herein to the contrary, “Indebtedness” shall not include (i) trade payables arising in the ordinary course of business, (ii) obligations or liabilities of any Person in respect of any of its Qualified Capital Stock nor the obligations of any Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations would be required to be classified and accounted for as an operating lease under GAAP as existing on the Restatement Date (whether or not such lease exists on the Restatement Date or hereafter arises), (iii) obligations under any Swap Agreements unless such obligations are payment obligations that relate to a Swap Agreement that has terminated, (iv) customary obligations under employment agreements and deferred compensation, (v) deferred tax liabilities, (vi) DP Amounts, earn-outs, purchase price adjustments and indemnity obligations, and any sums for which such Person is obligated pursuant to noncompetition arrangements entered into in connection with any acquisition (including Permitted Acquisitions) until any such obligations described in this clause (vi) shall become due and payable and treated as a liability on such Person’s balance sheet in accordance with GAAP, (vii) royalty payments made in the ordinary course of business in respect of exclusive and non-exclusive licenses, (viii) any accruals for (A) payroll and (B) other non-interest bearing liabilities accrued in the ordinary course of business, (ix) employee commitments, (x) accrued licensing fees owed under licenses (including intellectual property licenses), (xi) deferred rent obligations in respect of real property leases incurred in the ordinary course of business and (xii) for purposes of the definition of “Consolidated Funded Indebtedness” and Section 7.11, Permitted Seller Debt for which, by its own terms, no payments are permitted to be paid on account thereof and the maturity thereof is no earlier than six (6) months following the Latest Maturity Date.

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

“Indemnitee” has the meaning specified in Section 11.04(b).

“Information” has the meaning specified in Section 11.07.

“Insolvency Regulation” means the Council Regulation (EC) No. 1346/2000 29 May 2000, on Insolvency Proceedings.

“Intellectual Property Security Agreement” means a Copyright Security Agreement, Patent Security Agreement or Trademark Security Agreement (as each such term is defined in the Security and Pledge Agreement and to the extent applicable) (together with each other intellectual property security agreement delivered pursuant to Section 6.12, in each case as amended), duly executed by each Loan Party party thereto.

“Interest Payment Date” means, (a) as to any BSBY Rate Loan, the last day of each Interest Period applicable to such Loan and the Maturity Date of the Facility under which such Loan was made; provided, however, that if any Interest Period for a BSBY Rate Loan exceeds three (3) months, the respective dates that fall every three (3) months after the beginning of such Interest Period shall also be Interest Payment Dates; and (b) as to any Base Rate Loan or Swing Line Loan, the last Business Day of each March, June, September and December and the Maturity Date of the Facility under which such Loan was made (with Swing Line Loans being deemed made under the Revolving Credit Facility for purposes of this definition).

“Interest Period” means, as to each BSBY Rate Loan, the period commencing on the date such BSBY Rate Loan is disbursed or converted to or continued as a BSBY Rate Loan and ending on the date one (1), three (3) or six (6) months thereafter (in each case, subject to availability), as selected by the Borrowers in a Committed Loan Notice; provided that:

(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 BSBY Rate Loan, such Business Day falls in another calendar month, in which case such Interest Period shall end on the next preceding Business Day;

(ii) any Interest Period pertaining to a BSBY Rate 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; and

(iii) no Interest Period shall extend beyond the Maturity Date.

“Investment” means, as to any Person, any direct or indirect acquisition or investment by such Person, whether by means of (a) the purchase or other acquisition of Equity Interests of another Person, (b) a loan, advance or capital contribution to, Guarantee or assumption of debt of, or purchase or other acquisition of any other debt or interest in, another Person, or (c) the purchase or other acquisition (in one (1) transaction or a series of transactions) of assets of another Person that constitute a business unit or all or a substantial part of the business of, such Person. For purposes of covenant compliance, the amount of any Investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment.

“IP Rights” has the meaning specified in Section 5.17.

“IP Security Agreements” means (a) the Notice of Grant of Security Interest in Copyrights, (b) the Notice of Grant of Security Interest in Patents and (c) the Notice of Grant of Security Interest in Trademarks, in each case dated as of the Restatement Date and executed by the Borrowers party thereto and the Administrative Agent.

“IRS” means the United States Internal Revenue Service.

“ISP” means, 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” means with respect to any Letter of Credit, the Letter of Credit Application, and any other document, agreement and instrument entered into by the L/C Issuer and the Borrowers (or any Subsidiary) or in favor of the L/C Issuer and relating to such Letter of Credit.

“Latest Maturity Date” means the latest of the Maturity Date for the Revolving Credit Facility, the Maturity Date for the Term A Facility and any maturity date applicable to existing Incremental Term Loans, as of any date of determination.

“Laws” means, collectively, all international, foreign, Federal, state and local statutes, treaties, rules, guidelines, guidance notes, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

“L/C Advance” means, with respect to each Revolving Credit Lender, such Lender’s funding of its participation in any L/C Borrowing in accordance with its Applicable Revolving Credit Percentage.

“L/C Borrowing” means an extension of credit resulting from a drawing under any Letter of Credit which has not been reimbursed on the date when made or refinanced as a Revolving Credit Borrowing.

“L/C Credit Extension” means, with respect to any Letter of Credit, the issuance thereof or extension of the expiry date thereof, or the increase of the amount thereof.

“L/C Issuer” means Bank of America, through itself or through one (1) of its designated Affiliates or branch offices, in its capacity as issuer of Letters of Credit hereunder, or any successor issuer of Letters of Credit hereunder.

“L/C Obligations” means, as at any date of determination, the aggregate amount available to be drawn under all outstanding Letters of Credit plus the aggregate of all Unreimbursed Amounts, including all L/C Borrowings. 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 1.06. 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.

“Lender” has the meaning specified in the introductory paragraph hereto and, as the context requires, includes the Swing Line Lender. The term “Lender” shall include any Designated Lender.

“Lending Office” means, as to the Administrative Agent, the L/C Issuer or any Lender, the office or offices of such Lender described as such in such Lender’s Administrative Questionnaire, or such other office or offices as a Lender may from time to time notify the Borrowers and the Administrative Agent, which office may include any Affiliate of such Lender or any domestic or foreign branch of such Lender or such Affiliate. Unless the context otherwise requires, each reference to a Lender shall include its applicable Lending Office.

“Letter of Credit” means any standby letter of credit issued hereunder, providing for the payment of cash upon the honoring of a presentation thereunder.

“Letter of Credit Application” means an application and agreement for the issuance or amendment of a Letter of Credit in the form from time to time in use by the L/C Issuer.

“Letter of Credit Expiration Date” means the day that is seven (7) days prior to the Maturity Date then in effect for the Revolving Credit Facility (or, if such day is not a Business Day, the next preceding Business Day).

“Letter of Credit Fee” has the meaning specified in Section 2.03(h).

“Letter of Credit Sublimit” means an amount equal to \$20,000,000. The Letter of Credit Sublimit is part of, and not in addition to, the Revolving Credit Facility.

“Lien” means any mortgage, pledge, hypothecation, assignment (by way of security or otherwise), deposit arrangement, encumbrance, easement, right-of-way or other encumbrance on title to real property, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement in the nature of a security interest of any kind or nature whatsoever (including any conditional sale or other title retention agreement, and any financing lease having substantially the same economic effect as any of the foregoing) (but excluding any licenses of intellectual property).

“Liquidity” means, at any time, the sum of (a) the amount of unrestricted cash and Cash Equivalents of the Loan Parties plus (b) the amount by which the Revolving Credit Commitments exceed the maximum amount of Revolving Credit Loans that may be requested by the Borrowers at such time pursuant to this Agreement so long as on a pro forma basis after giving effect to such Revolving Credit Loans, the Loan Parties and their Subsidiaries shall be in *pro forma* compliance with the covenants set forth in Section 7.11 (a) and (b), determined on the basis of the financial information most recently delivered to the Administrative Agent and the Lenders pursuant to Section 6.01(a) or (b).

“Loan” means an extension of credit by a Lender to the Borrowers under Article II in the form of a Term Loan, a Revolving Credit Loan or a Swing Line Loan (including any Incremental Term Loans, any Extended Term Loans, loans made pursuant to any Incremental Revolving Credit Commitment or loans made pursuant to any Extended Revolving Credit Commitment).

“Loan Documents” means, collectively, (a) this Agreement, (b) the Notes, (c) any agreement creating or perfecting rights in cash collateral pursuant to the provisions of Section 2.16 of this Agreement, (d) the Collateral Documents, (e) the Agent Fee Letter, (f) each Issuer Document and (g) the Reaffirmation Agreement. For the avoidance of doubt, Secured Hedge Agreements and Secured Cash Management Agreements are not “Loan Documents”.

“Loan Parties” means, collectively, the Borrowers and each Guarantor.

“Mandatory Cost” means any amount incurred periodically by any Lender during the term of the Facility which constitutes fees, costs or charges imposed on lenders generally in the jurisdiction in which such Lender is domiciled, subject to regulation, or has its Facility Office by any Governmental Authority.

“Master Agreement” has the meaning specified in the definition of Swap Contract.

“Material Adverse Effect” means (a) a material adverse change in, or a material adverse effect upon, the operations, business, properties, liabilities (actual or contingent), or financial condition of Holdings and its Subsidiaries taken as a whole; (b) a material impairment of the rights and remedies of the Administrative Agent or any Lender under any Loan Document, or of the ability of the Loan Parties to perform their obligations under any Loan Document to which they are parties; 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 Real Property” means owned real property of a Loan Party having a fair market value at the time acquired of greater than \$2,000,000.

“Material Subsidiary” means, at any time, each Subsidiary of Holdings (other than a Subsidiary described in Section 6.12(e)) identified to the Administrative Agent in writing by the Borrower Representative as a “Material Subsidiary”; provided that, (a) if at any time the aggregate amount of Consolidated EBITDA or Total Assets of all Subsidiaries that are not Loan Parties exceeds twenty percent (20%) of TTM Consolidated EBITDA or twenty percent (20%) of Total Assets as of the end of any such fiscal quarter, the Loan Parties (or, in the event the Loan Parties have failed to do so within ten (10) days of delivery of such financial statements, the Administrative Agent) shall designate sufficient Subsidiaries as “Material Subsidiaries” to eliminate such excess, and such designated Subsidiaries shall for all purposes of this Agreement constitute Material Subsidiaries; and (b) if a Subsidiary of Holdings would not be required to become a Guarantor hereunder as a result of Section 6.12(e), such Subsidiary shall be excluded from the denominator of the “twenty percent test” above.

“Maturity Date” means (a) with respect to the Revolving Credit Facility, the later of (i) October 29, 2026 and (ii) if maturity is extended pursuant to Section 2.14, such extended maturity date as determined pursuant to such Section and (b) with respect to the Term A Facility, the later of (i) October 29, 2026 and (ii) if maturity is extended pursuant to Section 2.14, such extended

maturity date as determined pursuant to such Section; provided, however, that, in each case, if such date is not a Business Day, the Maturity Date shall be the next preceding Business Day.

“Measurement Period” means, at any date of determination, the most recently completed four (4) fiscal quarters of Holdings for which financial statements have been or are required to have been delivered to the Administrative Agent pursuant to Section 6.01(a) or (b).

“Minimum Collateral Amount” means, at any time, (i) with respect to Cash Collateral consisting of cash or deposit account balances provided to reduce or eliminate Fronting Exposure during the existence of a Defaulting Lender, an amount equal to 105% of the Fronting Exposure of the L/C Issuer with respect to Letters of Credit issued and outstanding at such time, (ii) with respect to Cash Collateral consisting of cash or deposit account balances provided in accordance with the provisions of Section 2.16(a)(i), (a)(ii) or (a)(iii), an amount equal to 105% of the Outstanding Amount of all L/C Obligations, and (iii) otherwise, an amount determined by the Administrative Agent and the L/C Issuer in their sole discretion.

“Moody’s” means Moody’s Investors Service, Inc. and any successor thereto.

“Mortgage” or “Mortgages” means, individually and collectively, as the context requires, each of the fee or leasehold mortgages, deeds of trust and deeds executed by a Loan Party that purport to grant a Lien to the Administrative Agent (or a trustee for the benefit of the Administrative Agent) for the benefit of the Secured Parties in any Mortgaged Properties, in form and substance satisfactory to the Administrative Agent.

“Mortgaged Property” means any owned property of a Loan Party that is or will become encumbered by a Mortgage in favor of the Administrative Agent in accordance with the terms of this Agreement.

“Multiemployer Plan” means any employee benefit plan of the type described in Section 4001(a)(3) of ERISA, to which any Borrower or ERISA Affiliate makes or is obligated to make contributions, or during the preceding five (5) plan years, has made or been obligated to make contributions.

“Multiple Employer Plan” means a Plan which has two (2) or more contributing sponsors (including any Borrower or ERISA Affiliate) at least two (2) of whom are not under common control, as such a plan is described in Section 4064 of ERISA.

“Net Cash Proceeds” means:

(a) with respect to any Disposition by any Loan Party or any of its Subsidiaries, or any Casualty/Condemnation Receipt received or paid to the account of any Loan Party or any of its Subsidiaries, the excess, if any, of (i) the sum of cash and Cash Equivalents received in connection with such transaction (including any cash or Cash Equivalents received by way of deferred payment pursuant to, or by monetization of, a note receivable or otherwise, but only as and when so received) over (ii) the sum of (A) the principal amount of any Indebtedness that is secured by the applicable asset and that is required to be repaid in connection with such transaction (other than Indebtedness under the Loan Documents), (B) the reasonable and customary out-of-pocket expenses incurred by any Loan Party or such Subsidiary in connection with such transaction, (C)

taxes reasonably estimated to be actually payable within two (2) years of the date of the relevant transaction as a result of any gain recognized in connection therewith; provided that, if the amount of any estimated taxes pursuant to subclause (C) exceeds the amount of taxes actually required to be paid in cash in respect of such Disposition, the aggregate amount of such excess shall constitute Net Cash Proceeds, (D) any funded escrow established pursuant to the documents evidencing any such sale or disposition to secure any indemnification obligations or adjustments to the purchase price associated with any such sale or disposition (provided that to the extent that any amounts are released from such escrow to Holdings or any of its Subsidiaries, such amounts net of any related expenses shall constitute Net Cash Proceeds), and (E) without duplication of the above, the amount of any reasonable reserve established in accordance with GAAP against any adjustment to the sale price or any liabilities (other than any taxes deducted above) (A) related to any of the applicable assets and (B) retained by Holdings or any of its Subsidiaries including, without limitation, pension plan and other post-employment benefit liabilities and liabilities related to environmental matters or against any indemnification obligations (however, the amount of any subsequent reduction of such reserve (other than in connection with a payment in respect of any such liability) shall be deemed to be Net Cash Proceeds of such Disposition or Casualty/Condemnation Receipt occurring on the date of such reduction); and

(b) with respect to the incurrence or issuance of any Indebtedness by any Loan Party or any of its Subsidiaries, the excess of (i) the sum of the cash and Cash Equivalents received in connection with such transaction over (ii) the underwriting discounts and commissions, and other reasonable and customary out-of-pocket fees and expenses, incurred by any Loan Party or such Subsidiary in connection therewith and taxes paid or reasonably estimated to be payable as a result thereof.

“Non-Consenting Lender” means any Lender that does not approve any consent, waiver or amendment that (i) requires the approval of all Lenders or all affected Lenders in accordance with the terms of Section 10.01 and (ii) has been approved by the Required Lenders.

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

“Non-Extension Notice Date” has the meaning specified in Section 2.03(b)(ii).

“Non-Guarantor Disposition” has the meaning specified in Section 2.05(b)(vii).

“Non-Guarantor Subsidiary” means any Subsidiary that is not a Loan Party.

“Non-Guarantor Recovery Event” has the meaning specified in Section 2.05(b)(vii).

“Non-Reinstatement Deadline” has the meaning specified in Section 2.03(b)(ii).

“Note” means a Term Loan Note or a Revolving Credit Note, as the context may require.

“Notice of Loan Prepayment” means a notice of prepayment with respect to a Loan, which shall be substantially in the form of Exhibit J or such other form as may be reasonably 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.

“NPL” means the National Priorities List under CERCLA.

“Obligations” means all advances to, and debts, liabilities, obligations, covenants and duties of, any Loan Party arising under any Loan Document or otherwise with respect to any Loan, Letter of Credit, Secured Cash Management Agreement, Secured Hedge Agreement or Foreign Subsidiary Secured Obligation, in each case whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against any Loan Party or any Affiliate thereof of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding; provided that the Obligations shall exclude any Excluded Swap Obligations.

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

“Organization Documents” means, (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction); (b) with respect to any limited liability company, the certificate of incorporation, memorandum and articles of association, or articles of formation or organization and operating agreement; and (c) with respect to any partnership, exempted limited partnership, joint venture, trust or other form of business entity, the partnership, exempted limited partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation, incorporation or organization with the applicable Governmental Authority in the jurisdiction of its formation, incorporation or organization and, if applicable, any certificate or articles of formation, incorporation or organization of such entity.

“Other Connection Taxes” means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising solely 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 (but not connections arising solely from sales or assignments by a Recipient of an interest in any Loan or Loan Document that result in non-U.S. Taxes imposed in a jurisdiction that is not one of the Loan Party’s jurisdiction of residence, organization or activities)).

“Other Taxes” means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 11.13).

“Outstanding Amount” means (a) with respect to Term Loans, Revolving Credit Loans and Swing Line Loans on any date, the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of Term Loans, Revolving Credit Loans and Swing Line Loans, as the case may be, occurring on such date; and (b) with respect to any L/C Obligations on any date, the amount of such L/C Obligations on such date after giving effect to any L/C Credit Extension occurring on such date and any other changes in the aggregate amount of the L/C Obligations as of such date, including as a result of any reimbursements by the Borrowers of Unreimbursed Amounts.

“Parallel Debt” has the meaning specified in Section 9.12(a).

“Parent” means Ichor Holdings, Ltd., a company organized under the laws of the Cayman Islands.

“Participant” has the meaning specified in Section 11.06(d).

“Participant Register” has the meaning specified in Section 11.06(d).

“PBGC” means the Pension Benefit Guaranty Corporation.

“Pension Act” means the Pension Protection Act of 2006.

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

“Pension Plan” means any employee pension benefit plan (including a Multiple Employer Plan, but excluding any Multiemployer Plan) that is maintained or is contributed to by any Borrower and any ERISA Affiliate and is either covered by Title IV of ERISA or is subject to the minimum funding standards under Section 412 of the Code.

“Perfection Certificate” means a certificate in the form of Exhibit G or any other form approved by the Administrative Agent, as the same shall be supplemented from time to time by a Perfection Certificate Supplement or otherwise.

“Perfection Certificate Supplement” means a supplement to the Perfection Certificate in a form approved by the Administrative Agent.

“Permitted Acquisition” has the meaning specified in Section 7.03(g).

“Permitted Liens” means Liens permitted by Section 7.01.

“Permitted Refinancing” with respect to any Person, any modification, refinancing, refunding, renewal, extension or replacement of any Indebtedness of such Person; provided that:

(a) the principal amount (or accreted value, if applicable) thereof does not exceed the principal amount (or accreted value, if applicable) of the Indebtedness so modified, refinanced, refunded, renewed, extended or replaced except by an amount equal to unpaid accrued interest and premium thereon plus other reasonable amount paid and fees (including original issue discount) and expenses reasonably incurred, in connection with such modification, refinancing, refunding, renewal, extension or replacement and by an amount equal to any existing commitments unutilized thereunder plus additional amount otherwise permitted to be incurred pursuant to Section 7.02;

(b) other than with respect to a Permitted Refinancing in respect of Indebtedness permitted pursuant to Section 7.02(e), such modification, refinancing, refunding, renewal, extension or replacement has a final maturity date equal to or later than the final maturity date of, and has a weighted average life to maturity equal to or greater than the weighted average life to maturity of, the Indebtedness being modified, refinanced, refunded, renewed, extended or replaced (excluding the effect of any prepayments of scheduled amortization); and

(c) to the extent such Indebtedness being modified, refinanced, refunded, renewed, extended or replaced is unsecured or junior in right of lien or subordinated in right of payment to the Obligations, such modification, refinancing, refunding, renewal, extension or replacement is subordinated in right of payment to the Obligations.

“Permitted Seller Debt” means unsecured Indebtedness (other than earn-out obligations) owing to sellers of assets or Equity Interests by a Loan Party or a Subsidiary that is incurred by a Loan Party or Subsidiary in connection with the consummation of one or more Permitted Acquisitions so long as (i) with respect to any such Indebtedness that (x) requires cash interest or principal payments while any Obligations remain outstanding or (y) has a maturity that is earlier than six (6) months following the Latest Maturity Date, the aggregate principal amount for all such unsecured Indebtedness described in this clause (i) does not exceed \$10,000,000 at any one time outstanding and such Indebtedness is otherwise on terms and conditions reasonably acceptable to the Administrative Agent and (ii) any such Indebtedness is subordinated to the Obligations on terms and conditions reasonably acceptable to the Administrative Agent.

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

“Plan” means any employee benefit plan within the meaning of Section 3(3) of ERISA (including a Pension Plan, but excluding any Multiemployer Plan), maintained for employees of any of Holdings or any Subsidiary or any ERISA Affiliate or any such Plan to which any of Holdings or any Subsidiary or any ERISA Affiliate is required to contribute on behalf of any of its employees.

“Platform” has the meaning specified in Section 6.02.

“Pro Forma Cost Savings” means, without duplication of amounts added-back to calculate Consolidated EBITDA, with respect to any period, the reductions in costs or synergies that have been realized or are reasonably anticipated to be realized in good faith with respect to an EBITDA Transaction within twelve (12) months of the date of such EBITDA Transaction and that are reasonably identifiable and factually supportable, as if all such reductions in costs or synergies had

been effected as of the beginning of such period, decreased by any recurring incremental expenses incurred or to be incurred during such four- (4-) quarter period in order to achieve such reduction in costs; provided, that (x) the amount of Pro Forma Cost Savings that may be included on a *pro forma* basis shall not exceed, together with any amounts added back pursuant to clause (x) of the definition of Consolidated EBITDA, 25% of Consolidated EBITDA for the applicable four- (4-) quarter period, calculated before the add back for such items, and (y) the Borrowers shall deliver to the Administrative Agent a certificate certifying as to the determination and calculation of the Pro Forma Cost Savings and including the factual support thereof

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

“Public Lender” has the meaning specified in Section 6.02.

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

“QFC Credit Support” has the meaning specified in Section 11.25.

“Qualified Capital Stock” means Equity Interests that are not Disqualified Capital Stock.

“Qualified ECP Guarantor” means, at any time, each Loan Party with total assets exceeding \$10,000,000 or that qualifies at such time as an “eligible contract participant” under the Commodity Exchange Act and can cause another Person to qualify as an “eligible contract participant” at such time under §1a(18)(A)(v)(II) of the Commodity Exchange Act.

“Reaffirmation Agreement” has the meaning specified in Section 4.01(a)(iii).

“Received Amount” has the meaning specified in Section 9.12(d).

“Recipient” means the Administrative Agent, any Lender, the L/C Issuer or any other recipient of any payment to be made by or on account of any obligation of any Loan Party hereunder.

“Register” has the meaning specified in Section 11.06(c).

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

“Release” means any release, spill, emission, discharge, deposit, disposal, leaking, pumping, pouring, dumping, emptying, injection or leaching into the Environment, or into, from or through any building, structure or facility.

“Relevant Governmental Body” means the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Board of Governors of the Federal Reserve Systems or the Federal Reserve Bank of New York, or any successor thereto.



“Reportable Event” means any of the events set forth in Section 4043(c) of ERISA, other than events for which the thirty (30) day notice period has been waived.

“Request for Credit Extension” means (a) with respect to a Borrowing, conversion or continuation of Term Loans or Revolving Credit Loans, a Committed Loan Notice, (b) with respect to an L/C Credit Extension, a Letter of Credit Application, and (c) with respect to a Swing Line Loan, a Swing Line Loan Notice.

“Required Lenders” means, at any time, Lenders holding more than 50% of the sum of the (a) Total Outstandings (with the aggregate amount of each Revolving Credit Lender’s risk participation and funded participation in L/C Obligations and Swing Line Loans being deemed “held” by such Revolving Credit Lender for purposes of this definition) and (b) aggregate unused Commitments; provided that the amount of any participation in any Swing Line Loan and Unreimbursed Amounts that such Defaulting Lender has failed to fund that have not been reallocated to and funded by another Lender shall be deemed to be held by the Lender that is the Swing Line Lender or L/C Issuer, as the case may be, in making such determination.

“Required Revolving Lenders” means, as of any date of determination, Revolving Credit Lenders holding more than 50% of the sum of the (a) Total Revolving Credit Outstandings (with the aggregate amount of each Revolving Credit Lender’s risk participation and funded participation in L/C Obligations and Swing Line Loans being deemed “held” by such Revolving Credit Lender for purposes of this definition) and (b) aggregate unused Revolving Credit Commitments; provided that the unused Revolving Credit Commitment of, and the portion of the Total Revolving Credit Outstandings held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Revolving Lenders.

“Required Term A Lenders” means, as of any date of determination, Term A Lenders holding more than 50% of the Term A Facility on such date; provided that the portion of the Term A Facility held by any Defaulting Lender shall be excluded for purposes of making a determination of Required Term A Lenders.

“Rescindable Amount” has the meaning specified in Section 2.12(b)(i).

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

“Responsible Officer” means the chief executive officer, director, president, chief financial officer, treasurer, assistant treasurer or controller of a Loan Party, or, in relation to Holdings, a managing director A and a managing director B acting jointly or any other authorized signatory, and, solely for purposes of the delivery of incumbency certificates pursuant to Section 4.01, the secretary or any assistant secretary of a Loan Party and, solely for purposes of notices given pursuant to Article II, any other officer or employee 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. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been duly authorized by all necessary corporate, partnership and/or other action on the part of such Loan

Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

“Restatement Date” means the first date all the conditions precedent in Section 4.01 are satisfied or waived in accordance with Section 11.01.

“Restricted Payment” means any (x) dividend or other distribution (whether in cash, securities or other property) with respect to any capital stock or other Equity Interest of any Person or any of its Subsidiaries, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, defeasance, acquisition, cancellation or termination of any such capital stock or other Equity Interest, or on account of any return of capital to any Person’s stockholders, partners or members (or the equivalent of any thereof), or any option, warrant or other right to acquire any such dividend or other distribution or payment or (y) payment with respect to an earn-out obligation. For the avoidance of doubt, payments made pursuant to Section 7.08(b) do not constitute Restricted Payments hereunder.

“Revolving Credit Borrowing” means a borrowing consisting of simultaneous Revolving Credit Loans of the same Type and, in the case of BSBY Rate Loans, having the same Interest Period made by each of the Revolving Credit Lenders pursuant to Section 2.01(a).

“Revolving Credit Commitment” means, as to each Revolving Credit Lender, its obligation to (a) make Revolving Credit Loans to the Borrowers pursuant to Section 2.01 (including loans made pursuant to any Incremental Revolving Credit Commitment and loans made pursuant to any Extended Revolving Credit Commitment), (b) purchase participations in L/C Obligations, and (c) purchase participations in Swing Line Loans, in an aggregate principal amount at any one (1) time outstanding not to exceed the amount set forth opposite such Lender’s name on Schedule 2.01 under the caption “Revolving Credit Commitment” or opposite such caption in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement.

“Revolving Credit Exposure” means, as to any Lender at any time, the aggregate principal amount at such time of its outstanding Revolving Credit Loans and such Lender’s participation in L/C Obligations and Swing Line Loans at such time.

“Revolving Credit Facility” means, at any time, the aggregate amount of the Revolving Credit Lenders’ Revolving Credit Commitments (including any Extended Revolving Credit Commitments) at such time.

“Revolving Credit Lender” means, at any time, any Lender that has a Revolving Credit Commitment at such time.

“Revolving Credit Loan” has the meaning specified in Section 2.01(a).

“Revolving Credit Note” means a promissory note made by the Borrowers in favor of a Revolving Credit Lender evidencing Revolving Credit Loans or Swing Line Loans, as the case may be, made by such Revolving Credit Lender, substantially in the form of Exhibit C-2.

“Sanction(s)” means any sanction administered or enforced by the United States Government (including without limitation, OFAC), the United Nations Security Council, the European Union, Her Majesty’s Treasury or other relevant sanctions authority.

“S&P” means Standard & Poor’s Financial Services LLC, a subsidiary of The McGraw-Hill Companies, Inc., and any successor thereto.

“Scheduled Unavailability Date” has the meaning specified in Section 3.03(b).

“SEC” means the Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions.

“Secured Cash Management Agreement” means any Cash Management Agreement that is entered into by and between any Loan Party and any Cash Management Bank.

“Secured Hedge Agreement” means any Swap Contract permitted under Article VI or VII that is entered into by and between any Loan Party and any Hedge Bank.

“Secured Parties” means, collectively, the Administrative Agent, the Lenders (including any Designated Lenders), the L/C Issuer, the Hedge Banks, the Cash Management Banks, Foreign Obligation Providers, the Indemnitees and each co-agent or sub-agent appointed by the Administrative Agent from time to time pursuant to Section 9.05, and the other Persons the Obligations owing to which are or are purported to be secured by the Collateral under the terms of the Collateral Documents.

“Security and Pledge Agreement” means the Amended and Restated Security and Pledge Agreement dated as of the Restatement Date, duly executed by each domestic Loan Party, together with each other security agreement and security agreement supplement delivered pursuant to Section 6.12, in each case as amended and/or supplemented from time to time.

“Security Agreement Supplement” has the meaning specified in Section 1.1(c) of the Security and Pledge Agreement.

“Singapore Collateral Documents” means (a) the debenture dated August 11, 2015 as supplemented by the supplemental debenture dated 16 February 2018 and to be supplemented by the second supplemental debenture to be dated on or about the Restatement Date, in each case made between the Singapore Loan Party and the Administrative Agent; (b) the assignment of receivables dated August 11, 2015 as supplemented by the supplemental assignment of receivables dated 16 February 2018 and to be supplemented by the supplemental assignment of receivables to be dated on or about the Restatement Date, in each case made between the Singapore Loan Party and the Administrative Agent; (c) the charge over accounts dated August 11, 2015 as supplemented by the supplemental charge over accounts dated 16 February 2018 and to be supplemented by the supplemental charge over accounts to be dated on or about the Restatement Date, in each case made between the Singapore Loan Party and the Administrative Agent and (d) the charge over shares in the Singapore Loan Party dated on August 11, 2015 as supplemented by the supplemental share charge dated 16 February 2018 and to be supplemented by the supplemental share charge to be dated on or about the Restatement Date, in each case made between Holdings and the Administrative Agent, in each case as amended and/or supplemented from time to time.

“Singapore Loan Party” means Ichor Systems Singapore Pte. Ltd., a company incorporated in Singapore with registration number 200918207E, whose registered address is at 9 Raffles Place #26-01 Republic Plaza Singapore 048619.

“SOFR Adjustment” with respect to Daily Simple SOFR means 0.26161% (26.161 basis points); and with respect to Term SOFR means 0.11448% (11.448 basis points) for an interest period of one-month’s duration, 0.26161% (26.161 basis points;) for an interest period of three-month’s duration, 0.42826% (42.826 basis points) for an interest period of six-months’ duration, and 0.71513% (71.513 basis points) for an interest period of twelve-months’ duration.

“Solvent” and “Solvency” mean, with respect to any Person on any date of determination, that on such date (a) the fair value of the property of such Person is greater than the total amount of liabilities, including contingent liabilities, of such Person, (b) the present fair salable value of the assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured, (c) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person’s ability to pay such debts and liabilities as they mature, (d) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such Person’s property would constitute an unreasonably small capital, and (e) such Person is able to pay its debts and liabilities, contingent obligations and other commitments as they mature in the ordinary course of business. 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.

“Specified Equity Contribution” has the meaning specified in Section 8.04.

“Specified Loan Party” means any Loan Party that is not an “eligible contract participant” under the Commodity Exchange Act (determined prior to giving effect to Section 10.11).

“Spot Rate” has the meaning specified in Section 1.07.

“Subordination Provisions” has the meaning specified in Section 8.01(m).

“Subsidiary” of a Person means a corporation, partnership, joint venture, limited liability company or other business entity of which a majority of the shares of securities or other interests having ordinary voting power for the election of directors or other governing body (other than securities or interests having such power only by reason of the happening of a contingency) are at the time beneficially owned, or the management of which is otherwise controlled, directly, or indirectly through one (1) or more intermediaries, or both, by such Person. Unless otherwise specified, all references herein to a “Subsidiary” or to “Subsidiaries” shall refer to a Subsidiary or Subsidiaries of Holdings.

“Successor Rate” has the meaning specified in Section 3.03(b).

“Supported QFC” has the meaning specified in Section 11.25.

“Swap Contract” means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward

commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a “Master Agreement”), including any such obligations or liabilities under any Master Agreement.

“Swap Obligations” means with respect to any 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.

“Swap Termination Value” means, in respect of any one (1) or more Swap Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Contracts, (a) for any date on or after the date such Swap Contracts have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Swap Contracts, as determined based upon one (1) or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Contracts (which may include a Lender or any Affiliate of a Lender).

“Swing Line Borrowing” means a borrowing of a Swing Line Loan pursuant to Section 2.04.

“Swing Line Lender” means Bank of America, through itself or through one (1) of its designated Affiliates or branch offices, in its capacity as provider of Swing Line Loans, or any successor swing line lender hereunder.

“Swing Line Loan” has the meaning specified in Section 2.04(a).

“Swing Line Loan Notice” means a notice of a Swing Line Borrowing pursuant to Section 2.04(b), which shall be substantially in the form of Exhibit B or such other form as 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 each of the Borrowers.

“Swing Line Sublimit” means an amount equal to the lesser of (a) \$10,000,000 and (b) the Revolving Credit Facility. The Swing Line Sublimit is part of, and not in addition to, the Revolving Credit Facility.

“Synthetic Debt” means, with respect to any Person as of any date of determination thereof, all obligations of such Person in respect of transactions entered into by such Person that are intended to function primarily as a borrowing of funds (including any minority interest transactions

that function primarily as a borrowing) but are not otherwise included in the definition of “Indebtedness” or as a liability on the consolidated balance sheet of such Person and its Subsidiaries in accordance with GAAP.

“Synthetic Lease Obligation” means the monetary obligation of a Person under (a) a so-called synthetic, off-balance sheet or tax retention lease, or (b) an agreement for the use or possession of property (including sale and leaseback transactions), in each case, creating obligations that do not appear on the balance sheet of such Person but which, upon the application of any Debtor Relief Laws to such Person, would be characterized as the indebtedness of such Person (without regard to accounting treatment).

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

“Term A Borrowing” means a borrowing consisting of simultaneous Term A Loans of the same Type and, in the case of BSBY Rate Loans, having the same Interest Period made by each of the Term A Lenders pursuant to Section 2.01(b).

“Term A Commitment” means, as to each Term A Lender, its obligation to make Term A Loans to the Borrowers pursuant to Section 2.01(b) in an aggregate principal amount at any one (1) time outstanding not to exceed the amount set forth opposite such Term A Lender’s name on Schedule 2.01 under the caption “Term A Commitment” or opposite such caption in the Assignment and Assumption pursuant to which such Term A Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement.

“Term A Facility” means, at any time, (a) on or prior to the Restatement Date, the aggregate amount of the Term A Commitments at such time, and (b) thereafter, the aggregate principal amount of the Term A Loans of all Term A Lenders outstanding at such time.

“Term A Lender” means (a) at any time on or prior to the Restatement Date, any Lender that has a Term A Commitment at such time and (b) at any time after the Restatement Date, any Lender that holds Term A Loans at such time.

“Term A Loan” means an advance made by any Term A Lender under the Term A Facility.

“Term Borrowing” means either a Term A Borrowing or a borrowing of Incremental Term Loans.

“Term Lender” means, as of any date of determination, a Term A Lender, an Extending Term Lender or a Lender holding an Incremental Term Commitment or Incremental Term Loans, as the context may require.

“Term Loan” means any Term A Loan, any Incremental Term Loan or any Extended Term Loan, as the context may require.

“Term Loan Note” means a promissory note made by the Borrowers in favor of a Term Lender evidencing Term Loans made by such Lender, substantially in the form of substantially in the form of Exhibit C-1.

“Term SOFR” means for the applicable corresponding Interest Period of BSBY (or if any Interest Period does not correspond to an interest period applicable to SOFR, the closest corresponding interest period of SOFR, and if such interest period of SOFR corresponds equally to two Interest Periods of BSBY, the corresponding interest period of the shorter duration shall be applied), the forward-looking term rate based on SOFR that has been selected or recommended by the Relevant Governmental Body.

“Total Assets” means, as of the date of any determination thereof, total assets of Holdings and its Subsidiaries calculated in accordance with GAAP on a consolidated basis as of such date.

“Total Credit Exposure” means, as to any Lender at any time, the unused Commitments and Revolving Credit Exposure of such Lender at such time.

“Total Outstandings” means the aggregate Outstanding Amount of all Loans and all L/C Obligations.

“Total Revolving Credit Outstandings” means the aggregate Outstanding Amount of all Revolving Credit Loans, Swing Line Loans and L/C Obligations.

“Trade Date” has the meaning specified in Section 11.06(g).

“Transaction” means, collectively, (a) the entering into by the Loan Parties and their applicable Subsidiaries of the Loan Documents to which they are party, (b) the refinancing of certain outstanding Indebtedness of Holdings and its Subsidiaries under the Existing Credit Agreement and the termination of all commitments with respect thereto and (c) the payment of the fees and expenses incurred in connection with the consummation of the foregoing.

“TTM Consolidated EBITDA” means Consolidated EBITDA of Holdings and its Subsidiaries on a consolidated basis for the most recently completed Measurement Period.

“Type” means, with respect to a Loan, its character as a Base Rate Loan or a BSBY Rate Loan.

“UCC” means the Uniform Commercial Code as in effect in the State of New York provided that, if perfection or the effect of perfection or non-perfection or the priority of any security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, “UCC” means the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority.

“UCP” means, 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” means 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” means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

“Unfinanced Cash Capital Expenditures” means, for any period, the amount of Capital Expenditures made by Holdings and its Subsidiaries during such period in cash, but excluding any such Capital Expenditures (i) financed with Indebtedness permitted under Section 7.02 (including any Capitalized Leases, but excluding Capital Expenditures purchased with Revolving Credit Loans) or (ii) that constitute reinvestment of proceeds as contemplated by the proviso in the definition of “Net Cash Proceeds”.

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

“Unreimbursed Amount” has the meaning specified in Section 2.03(c).

“U.S. Loan Party” means any Loan Party that is organized under the laws of one (1) of the states of the United States.

“U.S. Person” means 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 specified in Section 11.25.

“U.S. Tax Compliance Certificate” has the meaning specified in Section 3.01(e)(ii)(B)(3).

“VAT” means value added tax within the meaning of Council Directive 2006/112/ EC of 28 November 2006 on the common system of value added tax or any legislation in a member state of the European Union implementing such Council Directive and any other tax of a similar nature.

“Write-Down and Conversion Powers” means, (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.



“Yield” means, as to any Indebtedness, the yield thereof, whether in the form of interest rate, margin, OID, upfront fees, a BSBY floor or Base Rate floor or otherwise; *provided* that OID and upfront fees (but not any arrangement, structuring, commitment or other fees not shared by the Lenders generally) shall be equated to interest rate assuming a four- (4-) year life to maturity.

**1.02 Other Interpretive Provisions.** With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

(a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document (including the Loan Documents and any Organization Document) shall be construed as referring to such agreement, instrument or other document as from time to time amended, amended and restated, extended, replaced, supplemented or otherwise modified (subject to any restrictions on such amendments, extensions, replacements, supplements or modifications set forth herein or in any other Loan Document), (ii) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (iii) the words “hereto,” “herein,” “hereof” and “hereunder,” and words of similar import when used in any Loan Document, shall be construed to refer to such Loan Document in its entirety and not to any particular provision thereof, (iv) all references in a Loan Document to Articles, Sections, Preliminary Statements, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Preliminary Statements, Exhibits and Schedules to, the Loan Document in which such references appear, (v) any reference to any law shall include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified, extended, restated, replaced or supplemented from time to time, and (vi) 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, securities, accounts and contract rights. Any and all references to “Borrower” regardless of whether preceded by the term a, any, each of, all, and/or, or any other similar term shall be deemed to refer, as the context requires, to each and every (and/or any one (1) or all) parties constituting a Borrower, individually and/or in the aggregate.

(b) In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including,” the words “to” and “until” each mean “to but excluding,” and the word “through” means “to and including.”

(c) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.

**1.03 Accounting Terms.**

(a) Generally. All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other

financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP applied on a consistent basis, as in effect from time to time, applied in a manner consistent with that used in preparing the Audited Financial Statements, except as otherwise specifically prescribed herein. Notwithstanding the foregoing, for purposes of determining compliance with any covenant (including the computation of any financial covenant) contained herein, Indebtedness of Holdings and its Subsidiaries shall be deemed to be carried at 100% of the outstanding principal amount thereof, and the effects of FASB ASC 825 and FASB ASC 470-20 on financial liabilities shall be disregarded.

(b) Changes in GAAP. If at any time any change in GAAP (including the adoption of IFRS) would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either the Borrowers or the Required Lenders shall so request, the Administrative Agent, the Lenders and the Borrowers shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders); provided that, until so amended, (A) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (B) the Borrowers shall provide to the Administrative Agent and the Lenders financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP. Without limiting the foregoing, for all purposes hereunder, leases shall continue to be classified and accounted for on a basis consistent with that reflected in the Audited Financial Statements for all purposes of this Agreement, notwithstanding any change in GAAP relating thereto, unless the parties hereto shall enter into a mutually acceptable amendment addressing such changes, as provided for above.

(c) Consolidation of Variable Interest Entities. All references herein to consolidated financial statements of Holdings and its Subsidiaries or to the determination of any amount for Holdings and its Subsidiaries on a consolidated basis or any similar reference shall, in each case, be deemed to include each variable interest entity that Holdings is required to consolidate pursuant to FASB ASC 810 as if such variable interest entity were a Subsidiary as defined herein.

**1.04** ***Rounding.*** Any financial ratios required to be maintained by the Borrowers pursuant to this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one (1) place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

**1.05** ***Times of Day; Rates.*** Unless otherwise specified, all references herein to times of day shall be references to Pacific time (daylight or standard, as applicable).

The Administrative Agent does not warrant, nor accept responsibility, nor shall the Administrative Agent have any liability with respect to the administration, submission or any other matter related to the BSBY Rate or with respect to any comparable or successor rate thereto.

**1.06** ***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 (1) 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.

**1.07**      ***Currency Equivalents Generally.***

(a) Any amount specified in this Agreement (other than in Articles II, IX and X) or any of the other Loan Documents to be in Dollars shall also include the equivalent of such amount in any currency other than Dollars, such equivalent amount thereof in the applicable currency to be determined by the Administrative Agent at such time on the basis of the Spot Rate (as defined below) for the purchase of such currency with Dollars. For purposes of this Section 1.07, the “Spot Rate” for a currency means the rate determined by the Administrative Agent to be the rate quoted by the Person acting in such capacity as the spot rate for the purchase by such Person of such currency with another currency through its principal foreign exchange trading office at approximately 11:00 a.m. on the date two (2) Business Days prior to the date of such determination; provided that the Administrative Agent may obtain such spot rate from another financial institution designated by the Administrative Agent if the Person acting in such capacity does not have as of the date of determination a spot buying rate for any such currency.

(b) For purposes of determining compliance with Section 7.01, 7.02, 7.03, 7.05, 7.06 and 7.15 in the event that any Liens, Indebtedness, Investments, Disposition, Restricted Payment, or prepayment of Indebtedness in a currency other than Dollars, no Default or Event of Default shall be deemed to have occurred solely as a result of changes in rates of currency exchange occurring after the time Holdings or one (1) of its Subsidiaries is contractually obligated to incur, make or acquire such Indebtedness, Liens, Disposition, Restricted Payment, Investments or prepayment of Indebtedness (so long as, at the time of entering into the contract to incur, make or acquire such Liens, Indebtedness, Investments, Disposition, Restricted Payment, or prepayment of Indebtedness, it was permitted hereunder) and once contractually obligated to be incurred, made or acquired, the amount of such Liens, Indebtedness, Investments, Disposition, Restricted Payment, or prepayment of Indebtedness, shall be always deemed to be at the Dollar amount on such date, regardless of later changes in currency exchange rates.

(c) Notwithstanding anything to the contrary, (a) unless specifically stated otherwise herein, any dollar, number, percentage or other amount available under any carve-out, basket, exclusion or exception to any affirmative, negative or other covenant in this Agreement or the other Loan Documents may be accumulated, added, combined, aggregated or used together by any Loan Party and its Subsidiaries without limitation for any purpose not prohibited hereby, and (b) any action or event permitted by this Agreement or the other Loan Documents need not be permitted solely by reference to one (1) provision permitting such action or event but may be permitted in part by one (1) such provision and in part by one (1) or more other provisions of this Agreement and the other Loan Documents.

**1.08**      ***Accounting for Acquisitions and Dispositions.*** With respect to any acquisition or Disposition, as applicable, consummated after the Restatement Date, the following shall apply:

(a) For each of the four (4) periods of four (4) fiscal quarters ending next following the date of any acquisition, Consolidated EBITDA shall include the results of operations of the Person or assets so acquired on a historical *pro forma* basis to the extent information in sufficient detail concerning such historical results of such Person or assets is reasonably available, without giving effect to any cost savings other than Pro Forma Cost Savings;

(b) For each of the four (4) periods of four (4) fiscal quarters ending next following the date of each acquisition, Consolidated Interest Charges shall include the results of operations of the Person or assets so acquired determined on a historical *pro forma* basis to the extent information in sufficient detail concerning such historical results of such Person or assets is reasonably available; provided, that, Consolidated Interest Charges shall be adjusted on a historical *pro forma* basis to (i) eliminate interest expense accrued during such period on any Indebtedness repaid in connection with such acquisition and (ii) include interest expense on any Indebtedness (including Indebtedness hereunder) incurred, acquired or assumed in connection with such acquisition (“Incremental Debt”) calculated (x) as if all such Incremental Debt had been incurred as of the first day of such four (4) fiscal quarter period and (y) at the following interest rates: (I) for all periods subsequent to the date of the acquisition and for Incremental Debt assumed or acquired in the acquisition and in effect prior to the date of acquisition, at the actual rates of interest applicable thereto, and (II) for all periods prior to the actual incurrence of such Incremental Debt, at the average daily rate applicable to the Incremental Debt during all periods subsequent to the date of the acquisition;

(c) For each of the four (4) periods of four (4) fiscal quarters ending next following the date of any Disposition of a Subsidiary or all or substantially all of the assets of a Subsidiary (other than if such Disposition is to Holdings or another Subsidiary), (i) Consolidated EBITDA shall exclude the results of operations of the Person or assets so disposed of on a historical *pro forma* basis, and which amounts shall include only adjustments reasonably satisfactory to the Administrative Agent; and

(d) For each of the four (4) periods of four (4) fiscal quarters ending next following the date of any Disposition of a Subsidiary or all or substantially all of the assets of a Subsidiary (other than if such Disposition is to Holdings or another Subsidiary), Consolidated Interest Charges shall be adjusted on a historical *pro forma* basis to eliminate interest expense accrued during such period on (i) any Indebtedness repaid or assumed from the Subsidiary in connection with such Disposition or (ii) if such Disposition is of all of the Equity Interests of the Subsidiary, any Indebtedness of such Subsidiary for which neither the Borrowers nor any other Subsidiary is directly or indirectly liable.

**1.09** ***Reallocation of Revolving Credit Loans on the Restatement Date.*** Each Revolving Credit Lender hereby sells and assigns on the Restatement Date to each Revolving Credit Lender, without recourse, representation or warranty (except as set forth below), and each such Revolving Credit Lender hereby purchases and assumes on the Restatement Date from each Revolving Credit Lender a percentage interest in the Revolving Credit Commitments and Revolving Credit Loans outstanding on the Restatement Date upon the effectiveness of this Agreement as may be required to reflect the allocation of Revolving Credit Commitments set forth on Schedule 2.01 of this Agreement as of the Restatement Date. The Revolving Credit Lenders agree to make such inter- Revolving Credit Lender wire transfers as may be required to give effect

to the foregoing assignments and assumptions. With respect to such Revolving Credit Commitments and Revolving Credit Loans so assigned, each Revolving Credit Lender makes no representation or warranty whatsoever, except that it represents and warrants that it is the legal and beneficial owner of the same, free and clear of any adverse claim.

**1.10 Division.** Any reference herein to a merger, transfer, consolidation, amalgamation, assignment, sale, disposition or transfer, or similar term, shall be deemed to apply to a Division of or by a limited liability company or limited partnership, or an allocation of assets to a series of any such entity (or the unwinding of a Division or allocation) as if it were a merger, transfer, consolidation, amalgamation, assignment, sale, disposition or transfer, or similar term, as applicable, to, of or with a separate Person. Any Division of a Person shall constitute a separate Person hereunder.

## ARTICLE II THE COMMITMENTS AND CREDIT EXTENSIONS

**2.01 The Loans.** (a) The Revolving Credit Borrowings. Subject to the terms and conditions set forth herein, each Revolving Credit Lender severally agrees to make loans in Dollars (each such loan, a “Revolving Credit Loan”) to the Borrowers from time to time, on any Business Day during the Availability Period, in an aggregate amount not to exceed at any time outstanding the amount of such Lender’s Revolving Credit Commitment; provided, however, that after giving effect to any Revolving Credit Borrowing, (i) the Total Revolving Credit Outstandings shall not exceed the Revolving Credit Facility, and (ii) the Revolving Credit Exposure shall not exceed such Revolving Credit Lender’s Revolving Credit Commitment. Within the limits of each Revolving Credit Lender’s Revolving Credit Commitment, and subject to the other terms and conditions hereof, the Borrowers may borrow under this Section 2.01(c), prepay under Section 2.05, and reborrow under this Section 2.01(c). Revolving Credit Loans may be Base Rate Loans or BSBY Rate Loans, as further provided herein.

(a) The Term A Borrowing. Subject to the terms and conditions set forth herein, each Term A Lender severally agrees to make a single loan to the Borrowers on the Restatement Date in Dollars in an amount not to exceed such Term A Lender’s Term A Commitment Percentage of the Term A Facility. The Term A Borrowing shall consist of Term A Loans made simultaneously by the Term A Lenders in accordance with their respective Applicable Percentage of the Term A Facility. Amounts borrowed under this Section 2.01(b) and repaid or prepaid may not be reborrowed. Term A Loans may be Base Rate Loans or BSBY Rate Loans, as further provided herein.

(b) Incremental Term Loans. Subject to Section 2.15, as set forth in any Increase Joinder or other Additional Credit Extension Amendment entered into pursuant to Section 2.15, each Lender party thereto with an Incremental Term Commitment severally agrees to make its portion of a term loan (each, an “Incremental Term Loan”) in a single advance to the Borrowers in Dollars in the amount of its respective Incremental Term Commitment as set forth in such Increase Joinder or such other Additional Credit Extension Amendment. Amounts repaid on any Incremental Term Loan may not be reborrowed. Each Incremental Term Loan may be a Base Rate Loan or BSBY Rate Loan, as further provided herein.

**2.02 Borrowings, Conversions and Continuations of Loans.** (a) Each Term A Borrowing, each Revolving Credit Borrowing, each conversion of Term Loans or Revolving Credit Loans from one Type to the other, and each continuation of BSBY Rate Loans shall be made upon the Borrowers' irrevocable notice to the Administrative Agent, 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. Each such Committed Loan Notice must be received by the Administrative Agent not later than 10:00 a.m. (i) three (3) Business Days prior to the requested date of any Borrowing of, conversion to or continuation of BSBY Rate Loans or of any conversion of BSBY Rate Loans to Base Rate Loans, and (ii) on the requested date of any Borrowing of Base Rate Loans. Each Borrowing of, conversion to or continuation of BSBY Rate Loans shall be in a principal amount of \$100,000 or a whole multiple of \$100,000 in excess thereof. Except as provided in Sections 2.03(c) and 2.04(c), each Borrowing of or conversion to Base Rate Loans shall be in a principal amount of \$100,000 or a whole multiple of \$100,000 in excess thereof (other than in connection with the initial advances hereunder on the Restatement Date). Each Committed Loan Notice shall specify (i) whether the Borrowers are requesting a Term A Borrowing, a Revolving Credit Borrowing, a conversion of Term Loans or Revolving Credit Loans from one Type to the other, or a continuation of BSBY Rate Loans, (ii) the requested date of the Borrowing, conversion or continuation, as the case may be (which shall be a Business Day), (iii) the principal amount of Loans to be borrowed, converted or continued, (iv) the Type of Loans to be borrowed or to which existing Term Loans or Revolving Credit Loans are to be converted, and (v) if applicable, the duration of the Interest Period with respect thereto. If the Borrowers fail to specify a Type of Loan in a Committed Loan Notice or if the Borrowers fail to give a timely notice requesting a conversion or continuation, then the applicable Term Loans or Revolving Credit Loans shall be made as, or converted to, Base Rate Loans. Any such automatic conversion to Base Rate Loans shall be effective as of the last day of the Interest Period then in effect with respect to the applicable BSBY Rate Loans. If the Borrowers request a Borrowing of, conversion to, or continuation of BSBY Rate Loans in any such Committed Loan Notice, but fail to specify an Interest Period, it will be deemed to have specified an Interest Period of one (1) month. Notwithstanding anything to the contrary herein, a Swing Line Loan may not be converted to a BSBY Rate Loan.

(a) Following receipt of a Committed Loan Notice, the Administrative Agent shall promptly notify each Lender of the amount of its Applicable Percentage under the applicable Facility of the applicable Term A Loans or Revolving Credit Loans, and if no timely notice of a conversion or continuation is provided by the Borrowers, the Administrative Agent shall notify each Lender of the details of any automatic conversion to Base Rate Loans described in Section 2.02(a). In the case of a Term A Borrowing or a Revolving Credit Borrowing, each Appropriate Lender shall make the amount of its Loan available to the Administrative Agent in immediately available funds at the Administrative Agent's Office not later than 11:00 a.m. on the Business Day specified in the applicable Committed Loan Notice. Upon satisfaction of the applicable conditions set forth in Section 4.02 (and, if such Borrowing is the initial Credit Extension, Section 4.01), the Administrative Agent shall make all funds so received available to the Borrowers in like funds as received by the Administrative Agent either by (i) crediting the account of the Borrowers on the books of Bank of America with the amount of such funds or (ii) wire transfer of such funds, in each case in accordance with instructions provided to (and reasonably acceptable to) the Administrative Agent by the Borrowers; provided, however, that if, on the date a Committed Loan Notice with respect to a Revolving Credit Borrowing is given by the Borrowers, there are L/C

Borrowings outstanding, then the proceeds of such Revolving Credit Borrowing, first, shall be applied to the payment in full of any such L/C Borrowings, and second, shall be made available to the Borrowers as provided above.

(b) Except as otherwise provided herein, a BSBY Rate Loan may be continued or converted only on the last day of an Interest Period for such BSBY Rate Loan. During the existence of an Event of Default, after the election of the Required Lenders, no Loans may be requested as, converted to or continued as BSBY Rate Loans.

(c) The Administrative Agent shall promptly notify the Borrowers and the Lenders of the interest rate applicable to any Interest Period for BSBY Rate Loans upon determination of such interest rate. At any time that Base Rate Loans are outstanding, the Administrative Agent shall notify the Borrowers and the Lenders of any change in Bank of America's prime rate used in determining the Base Rate promptly following the public announcement of such change.

(d) After giving effect to all Term A Borrowings, all conversions of Term A Loans from one Type to the other, and all continuations of Term A Loans as the same Type, there shall not be more than five (5) Interest Periods in effect in respect of the Term A Facility. After giving effect to all Revolving Credit Borrowings, all conversions of Revolving Credit Loans from one Type to the other, and all continuations of Revolving Credit Loans as the same Type, there shall not be more than five (5) Interest Periods in effect in respect of the Revolving Credit Facility.

(e) Anything in this Section 2.02 to the contrary notwithstanding, the Borrowers may select the BSBY for the initial Credit Extension.

(f) Notwithstanding anything to the contrary in this Agreement, any Lender may exchange, continue or rollover all or the portion of its Loans in connection with any refinancing, extension, loan modification or similar transaction permitted by the terms of this Agreement, pursuant to a cashless settlement mechanism approved by the Borrowers, the Administrative Agent and such Lender.

**2.03** **Letters of Credit.** (a) Subject to the terms and conditions set forth herein, (A) the L/C Issuer agrees, in reliance upon the agreements of the Revolving Credit Lenders set forth in this Section 2.03, (1) from time to time on any Business Day during the period from the Restatement Date until the Letter of Credit Expiration Date, to issue Letters of Credit for the account of the Borrowers or their Subsidiaries in Dollars, and to amend or extend Letters of Credit previously issued by it, in accordance with Section 2.03(b), and (2) to honor drawings under the Letters of Credit; and (B) the Revolving Credit Lenders severally agree to participate in Letters of Credit issued for the account of the Borrowers or their Subsidiaries and any drawings thereunder; provided that after giving effect to any L/C Credit Extension with respect to any Letter of Credit, (x) the Total Revolving Credit Outstandings shall not exceed the Revolving Credit Facility, (y) the Revolving Credit Exposure shall not exceed such Lender's Revolving Credit Commitment, and (z) the Outstanding Amount of the L/C Obligations shall not exceed the Letter of Credit Sublimit. Each request by the Borrowers for the issuance or amendment of a Letter of Credit shall be deemed to be a representation by the Borrowers that the L/C Credit Extension so requested complies with the conditions set forth in the proviso to the preceding sentence. Within the foregoing limits, and subject to the terms and conditions hereof, the Borrowers' ability to obtain Letters of Credit shall

be fully revolving, and accordingly the Borrowers may, during the foregoing period, obtain Letters of Credit to replace Letters of Credit that have expired or that have been drawn upon and reimbursed.

(i) The L/C Issuer shall not issue any Letter of Credit if:

(A) subject to Section 2.03(b)(iii), the expiry date of the requested Letter of Credit would occur more than twelve (12) months after the date of issuance or last extension, unless the Required Revolving Lenders have approved such expiry date; or

(B) the expiry date of the requested Letter of Credit would occur after the Letter of Credit Expiration Date, unless (x) all the Revolving Credit Lenders and the L/C Issuer have approved such expiry date or (y) such Letter of Credit is cash collateralized or backstopped on terms and pursuant to arrangements reasonably satisfactory to the L/C Issuer.

(ii) The L/C Issuer shall not be under any obligation to issue any Letter of Credit if:

(A) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain the L/C Issuer from issuing the Letter of Credit, or any Law applicable to the L/C Issuer or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over the L/C Issuer shall prohibit, or request that the L/C Issuer refrain from, the issuance of letters of credit generally or the Letter of Credit in particular or shall impose upon the L/C Issuer with respect to the Letter of Credit any restriction, reserve or capital requirement (for which the L/C Issuer is not otherwise compensated hereunder) not in effect on the Restatement Date, or shall impose upon the L/C Issuer any unreimbursed loss, cost or expense which was not applicable on the Restatement Date and which the L/C Issuer in good faith deems material to it;

(B) the issuance of the Letter of Credit would violate one (1) or more policies of the L/C Issuer applicable to letters of credit generally;

(C) except as otherwise agreed by the Administrative Agent and the L/C Issuer, the Letter of Credit is in an initial stated amount less than \$50,000;

(D) the Letter of Credit is to be denominated in a currency other than Dollars;

(E) any Revolving Credit Lender is at that time a Defaulting Lender, unless the L/C Issuer has entered into arrangements, including the delivery of Cash Collateral, satisfactory to the L/C Issuer (in its sole discretion) with the Borrowers or such Lender to eliminate the L/C Issuer's actual or potential Fronting Exposure (after giving effect to Section 2.17(a)(iv)) with respect to the Defaulting Lender arising from either the Letter of Credit then proposed to be issued or that Letter of



Credit and all other L/C Obligations as to which the L/C Issuer has actual or potential Fronting Exposure, as it may elect in its sole discretion; or

(F) the Letter of Credit contains any provisions for automatic reinstatement of the stated amount after any drawing thereunder.

(iii) The L/C Issuer shall not amend any Letter of Credit if the L/C Issuer would not be permitted at such time to issue the Letter of Credit in its amended form under the terms hereof.

(iv) The L/C Issuer shall be under no obligation to amend any Letter of Credit if (A) the L/C Issuer would have no obligation at such time to issue the Letter of Credit in its amended form under the terms hereof, or (B) the beneficiary of the Letter of Credit does not accept the proposed amendment to the Letter of Credit.

(v) The L/C Issuer shall act on behalf of the Revolving Credit Lenders with respect to any Letters of Credit issued by it and the documents associated therewith, and the L/C Issuer shall have all of the benefits and immunities (A) provided to the Administrative Agent in Article IX with respect to any acts taken or omissions suffered by the L/C Issuer in connection with Letters of Credit issued by it or proposed to be issued by it and Issuer Documents pertaining to such Letters of Credit as fully as if the term "Administrative Agent" as used in Article IX included the L/C Issuer with respect to such acts or omissions, and (B) as additionally provided herein with respect to the L/C Issuer.

(b) Procedures for Issuance and Amendment of Letters of Credit; Auto-Extension Letters of Credit. Each Letter of Credit shall be issued or amended, as the case may be, upon the request of the Borrowers delivered to the L/C Issuer (with a copy to the Administrative Agent) in the form of a Letter of Credit Application, appropriately completed and signed by a Responsible Officer of each of the Borrowers. Such Letter of Credit Application may be sent by facsimile, by United States mail, by overnight courier, by electronic transmission using the system provided by the L/C Issuer, by personal delivery or by any other means acceptable to the L/C Issuer. Such Letter of Credit Application must be received by the L/C Issuer and the Administrative Agent not later than 8:00 a.m. at least two (2) Business Days (or such later date and time as the Administrative Agent and the L/C Issuer may agree in a particular instance in their sole discretion) prior to the proposed issuance date or date of amendment, as the case may be. In the case of a request for an initial issuance of a Letter of Credit, such Letter of Credit Application shall specify in form and detail satisfactory to the L/C Issuer: (A) the proposed issuance date of the requested Letter of Credit (which shall be a Business Day); (B) the amount thereof; (C) the expiry date thereof; (D) the name and address of the beneficiary thereof; (E) the documents to be presented by such beneficiary in case of any drawing thereunder; (F) the full text of any certificate to be presented by such beneficiary in case of any drawing thereunder; (G) the purpose and nature of the requested Letter of Credit; and (H) such other matters as the L/C Issuer may reasonably require. In the case of a request for an amendment of any outstanding Letter of Credit, such Letter of Credit Application shall specify in form and detail reasonably satisfactory to the L/C Issuer (1) the Letter of Credit to be amended; (2) the proposed date of amendment thereof (which shall be a Business Day); (3) the nature of the proposed amendment; and (4) such other matters as the L/C Issuer may require. Additionally, the Borrowers shall furnish to the L/C Issuer and the Administrative Agent

such other documents and information pertaining to such requested Letter of Credit issuance or amendment, including any Issuer Documents, as the L/C Issuer or the Administrative Agent may reasonably require.

(i) Promptly after receipt of any Letter of Credit Application, the L/C Issuer will confirm with the Administrative Agent (by telephone or in writing) that the Administrative Agent has received a copy of such Letter of Credit Application from the Borrowers and, if not, the L/C Issuer will provide the Administrative Agent with a copy thereof. Unless the L/C Issuer has received written notice from any Revolving Credit Lender, the Administrative Agent or any Loan Party, at least one (1) Business Day prior to the requested date of issuance or amendment of the applicable Letter of Credit, that one (1) or more applicable conditions contained in Article IV shall not then be satisfied, then, subject to the terms and conditions hereof, the L/C Issuer shall, on the requested date, issue a Letter of Credit for the account of the Borrowers (or the applicable Subsidiary) or enter into the applicable amendment, as the case may be, in each case in accordance with the L/C Issuer's usual and customary business practices. Immediately upon the issuance of each Letter of Credit, each Revolving Credit Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the L/C Issuer a risk participation in such Letter of Credit in an amount equal to the product of such Revolving Credit Lender's Applicable Revolving Credit Percentage times the amount of such Letter of Credit.

(ii) If the Borrowers so request in any applicable Letter of Credit Application, the L/C Issuer may, in its 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 the L/C Issuer to prevent any such extension at least once in each twelve- (12-) 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- (12-) month period to be agreed upon at the time such Letter of Credit is issued. Unless otherwise directed by the L/C Issuer, the Borrowers shall not be required to make a specific request to the L/C Issuer for any such extension. Once an Auto-Extension Letter of Credit has been issued, the Revolving Credit Lenders shall be deemed to have authorized (but may not require) the L/C Issuer to permit the extension of such Letter of Credit at any time to an expiry date not later than the Letter of Credit Expiration Date; provided, however, that the L/C Issuer shall not permit any such extension if (A) the L/C Issuer has determined 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 clause (ii) or (iii) of Section 2.03(a) or otherwise), or (B) it has received notice (which may be by telephone or in writing) on or before the day that is seven (7) Business Days before the Non-Extension Notice Date (1) from the Administrative Agent that the Required Revolving Lenders have elected not to permit such extension or (2) from the Administrative Agent, any Revolving Credit Lender or the Borrowers that one (1) or more of the applicable conditions specified in Section 4.02 is not then satisfied, and in each such case directing the L/C Issuer not to permit such extension.

(iii) If the Borrowers so request in any applicable Letter of Credit Application, the L/C Issuer may, in its discretion, agree to issue a Letter of Credit that permits the automatic reinstatement of all or a portion of the stated amount thereof after any drawing thereunder (each, an “Auto-Reinstatement Letter of Credit”). Unless otherwise directed by the L/C Issuer, the Borrowers shall not be required to make a specific request to the L/C Issuer to permit such reinstatement. Once an Auto-Reinstatement Letter of Credit has been issued, except as provided in the following sentence, the Revolving Credit Lenders shall be deemed to have authorized (but may not require) the L/C Issuer to reinstate all or a portion of the stated amount thereof in accordance with the provisions of such Letter of Credit. Notwithstanding the foregoing, if such Auto-Reinstatement Letter of Credit permits the L/C Issuer to decline to reinstate all or any portion of the stated amount thereof after a drawing thereunder by giving notice of such non-reinstatement within a specified number of days after such drawing (the “Non-Reinstatement Deadline”), the L/C Issuer shall not permit such reinstatement if it has received a notice (which may be by telephone or in writing) on or before the day that is seven (7) Business Days before the Non-Reinstatement Deadline (A) from the Administrative Agent that the Required Revolving Lenders have elected not to permit such reinstatement or (B) from the Administrative Agent, any Lender or the Borrowers that one (1) or more of the applicable conditions specified in Section 4.02 is not then satisfied (treating such reinstatement as an L/C Credit Extension for purposes of this clause) and, in each case, directing the L/C Issuer not to permit such reinstatement.

(iv) Promptly after its delivery of any Letter of Credit or any amendment to a Letter of Credit to an advising bank with respect thereto or to the beneficiary thereof, the L/C Issuer will also deliver to the Borrowers and the Administrative Agent a true and complete copy of such Letter of Credit or amendment.

(c) Drawings and Reimbursements; Funding of Participations. Upon receipt from the beneficiary of any Letter of Credit of any notice of a drawing under such Letter of Credit, the L/C Issuer shall notify the Borrowers and the Administrative Agent thereof. Not later than 8:00 a.m. on the date of any payment by the L/C Issuer under a Letter of Credit (each such date, an “Honor Date”), the Borrowers shall reimburse the L/C Issuer through the Administrative Agent in an amount equal to the amount of such drawing. If the Borrowers fail to so reimburse the L/C Issuer by such time, the Administrative Agent shall promptly notify each Revolving Credit Lender of the Honor Date, the amount of the unreimbursed drawing (the “Unreimbursed Amount”), and the amount of such Revolving Credit Lender’s Applicable Revolving Credit Percentage thereof. In such event, the Borrowers shall be deemed to have requested a Revolving Credit Borrowing of Base Rate Loans to be disbursed on the Honor Date in an amount equal to the Unreimbursed Amount, without regard to the minimum and multiples specified in Section 2.02 for the principal amount of Base Rate Loans, but subject to the amount of the unutilized portion of the Revolving Credit Commitments and the conditions set forth in Section 4.02 (other than the delivery of a Committed Loan Notice). Any notice given by the L/C Issuer or the Administrative Agent pursuant to this Section 2.03(c)(i) may be given by telephone if immediately confirmed in writing; provided that the lack of such an immediate confirmation shall not affect the conclusiveness or binding effect of such notice.

(i) Each Revolving Credit Lender shall upon any notice pursuant to Section 2.03(c)(i) make funds available (and the Administrative Agent may apply Cash Collateral provided for this purpose) for the account of the L/C Issuer at the Administrative Agent's Office in an amount equal to its Applicable Revolving Credit Percentage of the Unreimbursed Amount not later than 10:00 a.m. on the Business Day specified in such notice by the Administrative Agent, whereupon, subject to the provisions of Section 2.03(c)(iii), each Revolving Credit Lender that so makes funds available shall be deemed to have made a Base Rate Loan to the Borrowers in such amount. The Administrative Agent shall remit the funds so received to the L/C Issuer.

(ii) With respect to any Unreimbursed Amount that is not fully refinanced by a Revolving Credit Borrowing of Base Rate Loans because the conditions set forth in Section 4.02 cannot be satisfied or for any other reason, the Borrowers shall be deemed to have incurred from the L/C Issuer an L/C Borrowing in the amount of the Unreimbursed Amount that is not so refinanced, which L/C Borrowing shall be due and payable on demand (together with interest) and shall bear interest at the Default Rate. In such event, each Revolving Credit Lender's payment to the Administrative Agent for the account of the L/C Issuer pursuant to Section 2.03(c)(ii) shall be deemed payment in respect of its participation in such L/C Borrowing and shall constitute an L/C Advance from such Lender in satisfaction of its participation obligation under this Section 2.03.

(iii) Until each Revolving Credit Lender funds its Revolving Credit Loan or L/C Advance pursuant to this Section 2.03(c) to reimburse the L/C Issuer for any amount drawn under any Letter of Credit, interest in respect of such Lender's Applicable Revolving Credit Percentage of such amount shall be solely for the account of the L/C Issuer.

(iv) Each Revolving Credit Lender's obligation to make Revolving Credit Loans or L/C Advances to reimburse the L/C Issuer for amounts drawn under Letters of Credit, as contemplated by this Section 2.03(c), shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right which such Lender may have against the L/C Issuer, the Borrowers or any other Person for any reason whatsoever; (B) the occurrence or continuance of a Default, or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; provided, however, that each Revolving Credit Lender's obligation to make Revolving Credit Loans pursuant to this Section 2.03(c) is subject to the conditions set forth in Section 4.02 (other than delivery by the Borrowers of a Committed Loan Notice). No such making of an L/C Advance shall relieve or otherwise impair the obligation of the Borrowers to reimburse the L/C Issuer for the amount of any payment made by the L/C Issuer under any Letter of Credit, together with interest as provided herein.

(v) If any Revolving Credit Lender fails to make available to the Administrative Agent for the account of the L/C Issuer any amount required to be paid by such Lender pursuant to the foregoing provisions of this Section 2.03(c) by the time specified in Section 2.03(c)(ii), then, without limiting the other provisions of this Agreement, the L/C Issuer shall be entitled to recover from such Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment

is required to the date on which such payment is immediately available to the L/C Issuer at a rate per annum equal to the greater of the Federal Funds Rate and a rate determined by the L/C Issuer in accordance with banking industry rules on interbank compensation, plus any administrative, processing or similar fees customarily charged by the L/C Issuer in connection with the foregoing. If such Lender pays such amount (with interest and fees as aforesaid), the amount so paid shall constitute such Lender's Revolving Credit Loan included in the relevant Committed Loan Notice or L/C Advance in respect of the relevant L/C Borrowing, as the case may be. A certificate of the L/C Issuer submitted to any Revolving Credit Lender (through the Administrative Agent) with respect to any amounts owing under this Section 2.03(c)(v) shall be conclusive absent manifest error.

(d) Repayment of Participations. At any time after the L/C Issuer has made a payment under any Letter of Credit and has received from any Revolving Credit Lender such Lender's L/C Advance in respect of such payment in accordance with Section 2.03(c), if the Administrative Agent receives for the account of the L/C Issuer any payment in respect of the related Unreimbursed Amount or interest thereon (whether directly from the Borrowers or otherwise, including proceeds of Cash Collateral applied thereto by the Administrative Agent), the Administrative Agent will distribute to such Lender its Applicable Revolving Credit Percentage thereof in the same funds as those received by the Administrative Agent.

(i) If any payment received by the Administrative Agent for the account of the L/C Issuer pursuant to Section 2.03(c)(i) is required to be returned under any of the circumstances described in Section 11.05 (including pursuant to any settlement entered into by the L/C Issuer in its discretion), each Revolving Credit Lender shall pay to the Administrative Agent for the account of the L/C Issuer its Applicable Revolving Credit Percentage thereof on demand of the Administrative Agent, plus interest thereon from the date of such demand to the date such amount is returned by such Lender, at a rate per annum equal to the Federal Funds Rate from time to time in effect. The obligations of the Lenders under this clause shall survive the payment in full of the Obligations and the termination of this Agreement.

(e) Obligations Absolute. The obligation of the Borrowers to reimburse the L/C Issuer for each drawing under each Letter of Credit and to repay each L/C Borrowing shall be absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including the following:

(i) any lack of validity or enforceability of such Letter of Credit, this Agreement, or any other Loan Document;

(ii) the existence of any claim, counterclaim, setoff, defense or other right that the Borrowers or any Subsidiary may have at any time against any beneficiary or any transferee of such Letter of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), the L/C Issuer or any other Person, whether in connection with this Agreement, the transactions contemplated hereby or by such Letter of Credit or any agreement or instrument relating thereto, or any unrelated transaction;

(iii) any draft, demand, certificate or other document presented under such Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; or any loss or delay in the transmission or otherwise of any document required in order to make a drawing under such Letter of Credit;

(iv) waiver by the L/C Issuer of any requirement that exists for the L/C Issuer's protection and not the protection of the Borrowers or any waiver by the L/C Issuer which does not in fact materially prejudice the Borrowers;

(v) honor of a demand for payment presented electronically even if such Letter of Credit requires that demand be in the form of a draft;

(vi) any payment made by the L/C Issuer in respect of an otherwise complying item presented after the date specified as the expiration date of, or the date by which documents must be received under such Letter of Credit if presentation after such date is authorized by the UCC, the ISP or the UCP, as applicable;

(vii) any payment by the L/C Issuer under such Letter of Credit against presentation of a draft or certificate that does not strictly comply with the terms of such Letter of Credit; or any payment made by the L/C Issuer under such Letter of Credit to any Person purporting to be a trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, liquidator, receiver or other representative of or successor to any beneficiary or any transferee of such Letter of Credit, including any arising in connection with any proceeding under any Debtor Relief Law; or

(viii) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including any other circumstance that might otherwise constitute a defense available to, or a discharge of, the Borrowers or any of their Subsidiaries.

The Borrowers shall promptly examine a copy of each Letter of Credit and each amendment thereto that is delivered to it and, in the event of any claim of noncompliance with the Borrower's instructions or other irregularity, the Borrowers will immediately notify the L/C Issuer. The Borrowers shall be conclusively deemed to have waived any such claim against the L/C Issuer and its correspondents unless such notice is given as aforesaid.

(f) Role of L/C Issuer. Each Lender and the Borrowers agree that, in paying any drawing under a Letter of Credit, the L/C Issuer 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 L/C Issuer, the Administrative Agent, any of their respective Related Parties nor any correspondent, participant or assignee of the L/C Issuer 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 Credit Lenders or the Required Revolving Lenders, as applicable; (ii) any action taken or omitted in the absence of gross negligence or willful misconduct; or (iii) the due execution, effectiveness, validity or enforceability of any document or instrument related to any Letter of Credit or Issuer Document.

The Borrowers hereby assume all risks of the acts or omissions of any beneficiary or transferee with respect to their use of any Letter of Credit; provided, however, that this assumption is not intended to, and shall not, preclude the Borrowers' pursuing such rights and remedies as they may have against the beneficiary or transferee at law or under any other agreement. None of the L/C Issuer, the Administrative Agent, any of their respective Related Parties nor any correspondent, participant or assignee of the L/C Issuer shall be liable or responsible for any of the matters described in clauses (i) through (viii) of Section 2.03(e); provided, however, that anything in such clauses to the contrary notwithstanding, the Borrowers may have a claim against the L/C Issuer, and the L/C Issuer may be liable to the Borrowers, to the extent, but only to the extent, of any direct, as opposed to consequential or exemplary, damages suffered by the Borrowers which the Borrowers prove were caused by the L/C Issuer's willful misconduct or gross negligence or the L/C Issuer'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 furtherance and not in limitation of the foregoing, the L/C Issuer 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 the L/C Issuer shall not be responsible for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign 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. The L/C Issuer 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.

(g) Applicability of ISP and UCP. Unless otherwise expressly agreed by the L/C Issuer and the Borrowers 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, the L/C Issuer shall not be responsible to the Borrowers for, and the L/C Issuer's rights and remedies against the Borrowers shall not be impaired by, any action or inaction of the L/C Issuer 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 the L/C Issuer 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.

(h) Letter of Credit Fees. The Borrowers shall pay to the Administrative Agent for the account of each Revolving Credit Lender in accordance with its Applicable Revolving Credit Percentage a Letter of Credit fee (the "Letter of Credit Fee") for each Letter of Credit equal to the Applicable Rate times the daily amount available to be drawn under such Letter of Credit. For purposes of computing the daily amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.06. Letter of Credit Fees shall be (i) due and payable in arrears on the last Business Day of each March, June, September and December, commencing with the first such date to occur after the issuance of such Letter of Credit, on the Letter of Credit Expiration Date and thereafter on demand and (ii) computed on a quarterly basis in arrears. Notwithstanding anything to the contrary contained

herein, upon the request of the Required Revolving Lenders, while any Event of Default exists, all Letter of Credit Fees shall accrue at the Default Rate.

(i) Fronting Fee and Documentary and Processing Charges Payable to L/C Issuer. The Borrowers shall pay directly to the L/C Issuer for its own account a fronting fee with respect to each Letter of Credit, at the rate per annum specified in the Agent Fee Letter, computed on the daily amount available to be drawn under such Letter of Credit on a quarterly basis in arrears. Such fronting fee shall be due and payable on the tenth (10th) Business Day after the end of each March, June, September and December in respect of the most recently-ended quarterly period (or portion thereof, in the case of the first payment), commencing with the first such date to occur after the issuance of such Letter of Credit, on the Letter of Credit Expiration Date and thereafter on demand. For purposes of computing the daily amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.06. In addition, the Borrowers shall pay directly to the L/C Issuer for its own account the customary issuance, presentation, amendment and other processing fees, and other standard costs and charges, of the L/C Issuer relating to letters of credit as from time to time in effect. Such customary fees and standard costs and charges are due and payable on demand and are nonrefundable.

(j) Conflict with Issuer Documents. In the event of any conflict between the terms hereof and the terms of any Issuer Document, the terms hereof shall control.

(k) Letters of Credit Issued for Subsidiaries. Notwithstanding that a Letter of Credit issued or outstanding hereunder is in support of any obligations of, or is for the account of, a Subsidiary, the Borrowers shall be obligated to reimburse the L/C Issuer hereunder for any and all drawings under such Letter of Credit. The Borrowers hereby acknowledge that the issuance of Letters of Credit for the account of Subsidiaries inures to the benefit of the Borrowers, and that the Borrowers' business derives substantial benefits from the businesses of such Subsidiaries.

**2.04** *Swing Line Loans.* (a) The Swing Line. Subject to the terms and conditions set forth herein, the Swing Line Lender, in reliance upon the agreements of the other Lenders set forth in this Section 2.04, may in its sole discretion make loans (each such loan, a "Swing Line Loan") to the Borrowers from time to time on any Business Day during the Availability Period in an aggregate amount not to exceed at any time outstanding the amount of the Swing Line Sublimit, notwithstanding the fact that such Swing Line Loans, when aggregated with the Applicable Revolving Credit Percentage of the Outstanding Amount of Revolving Credit Loans and L/C Obligations of the Lender acting as Swing Line Lender, may exceed the amount of such Lender's Revolving Credit Commitment; provided, however, that after giving effect to any Swing Line Loan, (i) the Total Revolving Credit Outstandings shall not exceed the Revolving Credit Facility at such time, and (ii) the Revolving Credit Exposure of any Revolving Credit Lender shall not exceed such Lender's Revolving Credit Commitment, (y) the Borrowers shall not use the proceeds of any Swing Line Loan to refinance any outstanding Swing Line Loan, and (z) the Swing Line Lender shall not be under any obligation to make any Swing Line Loan if it shall determine (which determination shall be conclusive and binding absent manifest error) that it has, or by such Credit Extension may have, Fronting Exposure. Within the foregoing limits, and subject to the other terms and conditions hereof, the Borrowers may borrow under this Section 2.04, prepay under Section 2.05, and reborrow under this Section 2.04. Each Swing Line Loan shall bear interest only at a rate based on the Base Rate plus the Applicable Rate for the Revolving Credit Facility.



Immediately upon the making of a Swing Line Loan, each Revolving Credit Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the Swing Line Lender a risk participation in such Swing Line Loan in an amount equal to the product of such Revolving Credit Lender's Applicable Revolving Credit Percentage times the amount of such Swing Line Loan.

(a) Borrowing Procedures. Each Swing Line Borrowing shall be made upon the Borrowers' irrevocable notice to the Swing Line Lender and the Administrative Agent, which may be given by (A) telephone or (B) by a Swing Line Loan Notice; provided that any telephonic notice must be confirmed promptly by delivery to the Swing Line Lender and the Administrative Agent of a Swing Line Loan Notice. Each such notice must be received by the Swing Line Lender and the Administrative Agent not later than 10:00 a.m. on the requested borrowing date, and shall specify (i) the amount to be borrowed, which shall be a minimum of \$100,000, and (ii) the requested borrowing date, which shall be a Business Day. Promptly after receipt by the Swing Line Lender of any Swing Line Loan Notice, the Swing Line Lender will confirm with the Administrative Agent (by telephone or in writing) that the Administrative Agent has also received such Swing Line Loan Notice and, if not, the Swing Line Lender will notify the Administrative Agent (by telephone or in writing) of the contents thereof. Unless the Swing Line Lender has received notice (by telephone or in writing) from the Administrative Agent (including at the request of any Revolving Credit Lender) prior to 11:00 a.m. on the date of the proposed Swing Line Borrowing (A) directing the Swing Line Lender not to make such Swing Line Loan as a result of the limitations set forth in the first proviso to the first sentence of Section 2.04(a), or (B) that one (1) or more of the applicable conditions specified in Article IV is not then satisfied, then, subject to the terms and conditions hereof, the Swing Line Lender will, not later than 12:00 p.m. on the borrowing date specified in such Swing Line Loan Notice, make the amount of its Swing Line Loan available to the Borrowers at their offices by crediting the account of the Borrowers on the books of the Swing Line Lender in immediately available funds.

(b) Refinancing of Swing Line Loans.

(i) The Swing Line Lender at any time in its sole and absolute discretion may request, on behalf of the Borrowers (which hereby irrevocably authorizes the Swing Line Lender to so request on its behalf), that each Revolving Credit Lender make a Base Rate Loan in an amount equal to such Lender's Applicable Revolving Credit Percentage of the amount of Swing Line Loans then outstanding. Such request shall be made in writing (which written request shall be deemed to be a Committed Loan Notice for purposes hereof) and in accordance with the requirements of Section 2.02, without regard to the minimum and multiples specified therein for the principal amount of Base Rate Loans, but subject to the unutilized portion of the Revolving Credit Facility and the conditions set forth in Section 4.02. The Swing Line Lender shall furnish the Borrowers with a copy of the applicable Committed Loan Notice promptly after delivering such notice to the Administrative Agent. Each Revolving Credit Lender shall make an amount equal to its Applicable Revolving Credit Percentage of the amount specified in such Committed Loan Notice available to the Administrative Agent in immediately available funds (and the Administrative Agent may apply Cash Collateral available with respect to the applicable Swing Line Loan) for the account of the Swing Line Lender at the Administrative Agent's Office not later than 11:00 a.m. on the day specified in such Committed Loan Notice,

whereupon, subject to Section 2.04(c)(ii), each Revolving Credit Lender that so makes funds available shall be deemed to have made a Base Rate Loan to the Borrowers in such amount. The Administrative Agent shall remit the funds so received to the Swing Line Lender.

(ii) If for any reason any Swing Line Loan cannot be refinanced by such a Revolving Credit Borrowing in accordance with Section 2.04(c)(i), the request for Base Rate Loans submitted by the Swing Line Lender as set forth herein shall be deemed to be a request by the Swing Line Lender that each of the Revolving Credit Lenders fund its risk participation in the relevant Swing Line Loan and each Revolving Credit Lender's payment to the Administrative Agent for the account of the Swing Line Lender pursuant to Section 2.04(c)(i) shall be deemed payment in respect of such participation.

(iii) If any Revolving Credit Lender fails to make available to the Administrative Agent for the account of the Swing Line Lender any amount required to be paid by such Lender pursuant to the foregoing provisions of this Section 2.04(c) by the time specified in Section 2.04(c)(i), the Swing Line Lender shall be entitled to recover from such Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the Swing Line Lender at a rate per annum equal to the greater of the Federal Funds Rate and a rate determined by the Swing Line Lender in accordance with banking industry rules on interbank compensation, plus any administrative, processing or similar fees customarily charged by the Swing Line Lender in connection with the foregoing. If such Lender pays such amount (with interest and fees as aforesaid), the amount so paid shall constitute such Lender's Revolving Credit Loan included in the relevant Committed Loan Notice or funded participation in the relevant Swing Line Loan, as the case may be. A certificate of the Swing Line Lender submitted to any Lender (through the Administrative Agent) with respect to any amounts owing under this clause (iii) shall be conclusive absent manifest error.

(iv) Each Revolving Credit Lender's obligation to make Revolving Credit Loans or to purchase and fund risk participations in Swing Line Loans pursuant to this Section 2.04(c) shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right which such Lender may have against the Swing Line Lender, the Borrowers or any other Person for any reason whatsoever, (B) the occurrence or continuance of a Default, or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; provided, however, that each Revolving Credit Lender's obligation to make Revolving Credit Loans pursuant to this Section 2.04(c) is subject to the conditions set forth in Section 4.02. No such funding of risk participations shall relieve or otherwise impair the obligation of the Borrowers to repay Swing Line Loans, together with interest as provided herein.

(c) Repayment of Participations.

(i) At any time after any Revolving Credit Lender has purchased and funded a risk participation in a Swing Line Loan, if the Swing Line Lender receives any payment on account of such Swing Line Loan, the Swing Line Lender will distribute to such Revolving

Credit Lender its Applicable Revolving Credit Percentage thereof in the same funds as those received by the Swing Line Lender.

(ii) If any payment received by the Swing Line Lender in respect of principal or interest on any Swing Line Loan is required to be returned by the Swing Line Lender under any of the circumstances described in Section 11.05 (including pursuant to any settlement entered into by the Swing Line Lender in its discretion), each Revolving Credit Lender shall pay to the Swing Line Lender its Applicable Revolving Credit Percentage thereof on demand of the Administrative Agent, plus interest thereon from the date of such demand to the date such amount is returned, at a rate per annum equal to the Federal Funds Rate. The Administrative Agent will make such demand upon the request of the Swing Line Lender. The obligations of the Lenders under this clause shall survive the payment in full of the Obligations and the termination of this Agreement.

(d) Interest for Account of Swing Line Lender. The Swing Line Lender shall be responsible for invoicing the Borrowers for interest on the Swing Line Loans. Until each Revolving Credit Lender funds its Base Rate Loan or risk participation pursuant to this Section 2.04 to refinance such Revolving Credit Lender's Applicable Revolving Credit Percentage of any Swing Line Loan, interest in respect of such Applicable Revolving Credit Percentage shall be solely for the account of the Swing Line Lender.

(e) Payments Directly to Swing Line Lender. The Borrowers shall make all payments of principal and interest in respect of the Swing Line Loans directly to the Swing Line Lender.

## **2.05** *Prepayments.*

### (a) Optional.

(i) Subject to the last sentence of this Section 2.05(a)(i), the Borrowers may, upon notice to the Administrative Agent pursuant to delivery to the Administrative Agent of a Notice of Loan Prepayment, at any time or from time to time voluntarily prepay Term Loans and Revolving Credit Loans in whole or in part without premium or penalty; provided that (A) such notice must be in a form acceptable to the Administrative Agent and be received by the Administrative Agent not later than 8:00 a.m. (1) three (3) Business Days prior to any date of prepayment of BSBY Rate Loans and (2) on the date of prepayment of Base Rate Loans; (B) any prepayment of BSBY Rate Loans shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof; and (C) any prepayment of Base Rate Loans shall be in a principal amount of \$100,000 or a whole multiple of \$100,000 in excess thereof or, in each case, if less, the entire principal amount thereof then outstanding. Each such notice shall specify the date and amount of such prepayment and the Type(s) of Loans to be prepaid and, if BSBY Rate Loans are to be prepaid, the Interest Period(s) of such Loans. The Administrative Agent will promptly notify each Lender of its receipt of each such notice, and of the amount of such Lender's ratable portion of such prepayment (based on such Lender's Applicable Percentage in respect of the relevant Facility). If such notice is given by the Borrowers, the Borrowers shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein; provided that notwithstanding anything to the

contrary contained in this Agreement, Holdings may rescind any notice of prepayment under this Section 2.05 if such prepayment is conditioned on the occurrence of an event, which event shall not be consummated or shall otherwise be delayed. Any prepayment of a BSBY Rate Loan shall be accompanied by all accrued interest on the amount prepaid, together with any additional amounts required pursuant to Section 3.05. Each prepayment of the outstanding Term Loans pursuant to this Section 2.05(a) shall be applied to the Term A Facility and to the principal repayment installments thereof as directed by the Borrower (or, in the absence of such direction, in the direct order of maturity), and subject to Section 2.17, each such prepayment shall be paid to the Lenders in accordance with their respective Applicable Percentages in respect of each of the relevant Facilities.

(ii) The Borrowers may, upon notice to the Swing Line Lender pursuant to delivery to the Swing Line Lender of a Notice of Loan Prepayment (with a copy to the Administrative Agent), at any time or from time to time, voluntarily prepay Swing Line Loans in whole or in part without premium or penalty; provided that (A) such notice must be received by the Swing Line Lender and the Administrative Agent not later than 10:00 a.m. on the date of the prepayment, and (B) any such prepayment shall be in a minimum principal amount of \$100,000. Each such notice shall specify the date and amount of such prepayment. If such notice is given by the Borrowers, the Borrowers shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein.

(b) Mandatory.

(i) [Reserved];

(ii) If any Loan Party or any of its Subsidiaries Disposes of any property pursuant to Section 7.05(f) or (p) or pursuant to a transaction not otherwise permitted by Section 7.05 which results in the realization by such Person of Net Cash Proceeds in excess of \$1,000,000 in any fiscal year, the Borrowers shall prepay an aggregate principal amount of Loans equal to 100% of such Net Cash Proceeds within five (5) Business Days receipt thereof by such Person (such prepayments to be applied as set forth in clauses (vi) and (ix) below); provided, however, that, with respect to any Net Cash Proceeds realized under a Disposition described in this Section 2.05(b)(ii), at the election of the Borrowers (as notified by the Borrowers to the Administrative Agent on or prior to the date of such Disposition), and so long as no Default shall have occurred and be continuing, such Loan Party or such Subsidiary may reinvest all or any portion of such Net Cash Proceeds in operating assets so long as within two hundred seventy (270) days after the receipt of such Net Cash Proceeds (or, within such two hundred seventy- (270-) day period, such Loan Party or such Subsidiary enters into a binding commitment to so reinvest such Net Cash Proceeds, and such Net Cash Proceeds are so reinvested within ninety (90) days after the expiration of such two hundred seventy- (270-) day period), such purchase shall have been consummated (as certified by the Borrowers in writing to the Administrative Agent); and provided further, however, that any Net Cash Proceeds not subject to such definitive agreement or so reinvested shall be immediately applied to the prepayment of the Loans as set forth in this Section 2.05(b)(ii).

(iii) [Intentionally Omitted].

(iv) Upon the incurrence or issuance by any Loan Party or any of its Subsidiaries of any Indebtedness (other than Indebtedness expressly permitted to be incurred or issued pursuant to Section 7.02), the Borrowers shall prepay an aggregate principal amount of Loans equal to 100% of all Net Cash Proceeds received therefrom immediately upon receipt thereof by such Loan Party or such Subsidiary (such prepayments to be applied as set forth in clauses (vi) and (ix) below).

(v) Upon any Casualty/Condemnation Receipt received by or paid to or for the account of any Loan Party or any of its Subsidiaries, and not otherwise included in clause (ii), (iii) or (iv) of this Section 2.05(b), the Borrowers shall prepay an aggregate principal amount of Loans equal to 100% of all Net Cash Proceeds in excess of \$1,000,000 in any fiscal year received therefrom within five (5) Business Days after receipt thereof by such Loan Party or such Subsidiary (such prepayments to be applied as set forth in clauses (vi) and (ix) below); provided, however, that with respect to any proceeds of a Casualty/Condemnation Receipt, at the election of the Borrowers (as notified by the Borrowers to the Administrative Agent on or prior to the date of receipt of such Net Cash Proceeds), and so long as no Default shall have occurred and be continuing, the Borrowers shall not be required to prepay Loans hereunder in respect of such Net Cash Proceeds to the extent such Loan Party or such Subsidiary reinvests all or any portion of such Net Cash Proceeds in assets used or useful in the business of such Loan Party or its Subsidiaries within two hundred seventy (270) days after the receipt of such Net Cash Proceeds (or, within such two hundred seventy- (270-) day period, such Loan Party or such Subsidiary enters into a binding commitment to so reinvest such Net Cash Proceeds, and such Net Cash Proceeds are so reinvested within ninety (90) days after the expiration of such two hundred seventy- (270-) day period); and provided, further, however, that any cash proceeds not so applied shall be immediately applied to the prepayment of the Loans as set forth in this Section 2.05(b)(v).

(vi) Each prepayment of Loans pursuant to the foregoing provisions of this Section 2.05(b) shall be applied, first, to the next four (4) principal repayment installments under the Term A Facility in direct order of maturity, second, to the remaining principal repayment installments under the Term A Facility (other than the final scheduled installment due on the Maturity Date) on a pro rata basis and, third, to the Revolving Credit Facility in the manner set forth in clause (ix) of this Section 2.05(b).

(vii) Notwithstanding any other provisions of this Section 2.05(b), (i) to the extent that any of or all the Net Cash Proceeds of any Disposition by a Non-Guarantor Subsidiary (a "Non-Guarantor Disposition") or the Net Cash Proceeds of any Casualty/Condemnation Receipt from a Non-Guarantor Subsidiary (a "Non-Guarantor Recovery Event") is prohibited or delayed by applicable local law from being repatriated to the applicable Borrowers, an amount equal to the portion of such Net Cash Proceeds so affected will not be required to prepay Loans and, instead, such amounts may be retained so long, but only so long, as the applicable local law will not permit repatriation to the applicable Borrowers (the Borrowers hereby agree to cause the applicable Non-Guarantor Subsidiary to use commercially reasonable efforts to take actions required by the applicable

local law to permit such repatriation), and once such repatriation of any of such affected Net Cash Proceeds is permitted under the applicable local law, an amount equal to such Net Cash Proceeds will be promptly (and in any event not later than two (2) Business Days after such repatriation) be offered to be applied (net of additional taxes payable or reserved against as a result thereof) to the prepayment of the Loans pursuant to this Section 2.05(b) to the extent provided herein and (ii) to the extent that the Borrowers have determined in good faith that repatriation of any of or all the Net Cash Proceeds of any Non-Guarantor Disposition or any Non-Guarantor Recovery Event would have a material adverse tax cost consequence (after Holdings, the Borrowers and/or the applicable Non-Guarantor Subsidiary have used commercially reasonable efforts to take actions to reduce such tax consequences and after taking into account available foreign tax credits) with respect to such Net Cash Proceeds an amount equal to the Net Cash Proceeds so affected may be retained by the applicable Non-Guarantor Subsidiary, provided that, in the case of this clause (ii) on or before that date on which any such Net Cash Proceed so retained would otherwise have been required to be applied to prepayments pursuant to Section 2.05, the Borrowers may apply an amount equal to such Net Cash Proceeds to such prepayments as if such Net Cash Proceeds has been received by the Borrowers (net of additional taxes that would be payable had such amounts actually been repatriated).

(viii) If for any reason the Total Revolving Credit Outstandings at any time exceed the Revolving Credit Facility at such time, the Borrowers shall immediately prepay Revolving Credit Loans, Swing Line Loans and L/C Borrowings and/or Cash Collateralize the L/C Obligations (other than the L/C Borrowings) in an aggregate amount equal to such excess.

(ix) Prepayments of the Revolving Credit Facility made pursuant to this Section 2.05(b), first, shall be applied ratably to the L/C Borrowings and the Swing Line Loans, second, shall be applied ratably to the outstanding Revolving Credit Loans (without a corresponding reduction of the Revolving Credit Commitments), and, third, shall be used to Cash Collateralize the remaining L/C Obligations. Upon the drawing of any Letter of Credit that has been Cash Collateralized, the funds held as Cash Collateral shall be applied (without any further action by or notice to or from the Borrowers or any other Loan Party) to reimburse the L/C Issuer or the Revolving Credit Lenders, as applicable.

(x) Upon the receipt by any Loan Party of the proceeds of any Specified Equity Contribution pursuant to Section 8.04, such Loan Party shall promptly prepay the Term Loans with such proceeds which will be applied in accordance with Section 2.05(a)(i).

## **2.06 *Termination or Reduction of Commitments.***

(a) Optional. The Borrowers may, upon notice to the Administrative Agent, terminate the Revolving Credit Facility, the Letter of Credit Sublimit or the Swing Line Sublimit, or from time to time permanently reduce the Revolving Credit Facility, the Letter of Credit Sublimit or the Swing Line Sublimit; provided that (i) any such notice shall be received by the Administrative Agent not later than 8:00 a.m. one (1) Business Day prior to the date of termination or reduction, (ii) any such partial reduction shall be in an aggregate amount of \$1,000,000 or any whole multiple of \$250,000 in excess thereof and (iii) the Borrowers shall not terminate or reduce (A) the

Revolving Credit Facility if, after giving effect thereto and to any concurrent prepayments hereunder, the Total Revolving Credit Outstandings would exceed the Revolving Credit Facility, (B) the Letter of Credit Sublimit if, after giving effect thereto, the Outstanding Amount of L/C Obligations not fully Cash Collateralized hereunder would exceed the Letter of Credit Sublimit, or (C) the Swing Line Sublimit if, after giving effect thereto and to any concurrent prepayments hereunder, the Outstanding Amount of Swing Line Loans would exceed the Letter of Credit Sublimit.

(b) Mandatory. The aggregate Term A Commitments shall be automatically and permanently reduced to zero (0) on the date of the Term A Borrowing.

(c) Application of Commitment Reductions; Payment of Fees. The Administrative Agent will promptly notify the Lenders of any termination or reduction of the Letter of Credit Sublimit, Swing Line Sublimit or the Revolving Credit Commitment under this Section 2.06. Upon any reduction of the Revolving Credit Commitments, the Revolving Credit Commitment of each Revolving Credit Lender shall be reduced by such Lender’s Applicable Revolving Credit Percentage of such reduction amount. All fees in respect of the Revolving Credit Facility accrued until the effective date of any termination of the Revolving Credit Facility shall be paid on the effective date of such termination.

**2.07 Repayment of Loans.**

(a) Term A Loans. The Borrowers shall repay to the Term A Lenders the aggregate principal amount of all Term A Loans outstanding on the following dates in the respective amounts set forth opposite such dates (which amounts shall be reduced as a result of the application of prepayments in accordance with the order of priority set forth in Section 2.05):

| <u>Date</u>        | <u>Amount</u> |
|--------------------|---------------|
| March 31, 2022     | \$1,875,000   |
| June 30, 2022      | \$1,875,000   |
| September 30, 2022 | \$1,875,000   |
| December 31, 2022  | \$1,875,000   |
| March 31, 2023     | \$1,875,000   |
| June 30, 2023      | \$1,875,000   |
| September 30, 2023 | \$1,875,000   |
| December 31, 2023  | \$1,875,000   |
| March 31, 2024     | \$1,875,000   |
| June 30, 2024      | \$1,875,000   |
| September 30, 2024 | \$1,875,000   |
| December 31, 2024  | \$1,875,000   |
| March 31, 2025     | \$1,875,000   |
| June 30, 2025      | \$1,875,000   |
| September 30, 2025 | \$1,875,000   |
| December 31, 2025  | \$1,875,000   |
| March 31, 2026     | \$1,875,000   |
| June 30, 2026      | \$1,875,000   |

| <u>Date</u>        | <u>Amount</u>                           |
|--------------------|---|
| September 30, 2026 | \$1,875,000                             |
| Maturity Date      | Remaining outstanding principal balance |

provided, however, that the final principal repayment installment of the Term A Loans shall be repaid on the Maturity Date for the Term A Facility and in any event shall be in an amount equal to the aggregate principal amount of all Term A Loans outstanding on such date.

(b) Revolving Credit Loans. The Borrowers shall repay to the Revolving Credit Lenders on the Maturity Date for the Revolving Credit Facility the aggregate principal amount of all Revolving Credit Loans outstanding on such date.

(c) Swing Line Loans. The Borrowers shall repay each Swing Line Loan on the earlier to occur of (i) the date ten (10) Business Days after such Loan is made and (ii) the Maturity Date for the Revolving Credit Facility.

**2.08 Interest.** (a) Subject to the provisions of Section 2.08(b), (i) each BSBY Rate Loan under a Facility shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to the BSBY Rate for such Interest Period plus the Applicable Rate for such Facility; (ii) each Base Rate Loan under a Facility shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate plus the Applicable Rate for such Facility; and (iii) each Swing Line Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate plus the Applicable Rate for the Revolving Credit Facility. To the extent that any calculation of interest or any fee required to be paid under this Agreement shall be based on (or result in) a rate that is less than zero (0), such rate shall be deemed zero (0) for purposes of this Agreement.

(a) (i) If any amount of principal of any Loan is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(i) If any amount (other than principal of any Loan) payable by the Borrowers under any Loan Document is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, then upon the request of the Required Lenders such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(ii) Upon the request of the Required Lenders, while any Event of Default exists (other than as set forth in Sections 2.08(b)(i) and (b)(ii) above), the Borrowers shall pay interest on the principal amount of all outstanding Obligations hereunder at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.



(iii) Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon demand.

(b) Interest on each Loan shall be due and payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

**2.09** *Fees.* In addition to certain fees described in Sections 2.03(i) and (j):

(a) Commitment Fee. The Borrowers shall pay to the Administrative Agent for the account of each Revolving Credit Lender in accordance with its Applicable Revolving Credit Percentage, a commitment fee equal to the Applicable Rate times the actual daily amount by which the Revolving Credit Facility exceeds the sum of (i) the Outstanding Amount of Revolving Credit Loans and (ii) the Outstanding Amount of L/C Obligations, subject to adjustment as provided in Section 2.17. For the avoidance of doubt, the Outstanding Amount of Swing Line Loans shall not be counted towards or considered usage of the Aggregate Commitments for purposes of determining the Commitment Fee. The commitment fee shall accrue at all times during the Availability Period, including at any time during which one (1) or more of the conditions in Article IV is not met, and shall be due and payable quarterly in arrears on the last Business Day of each March, June, September and December, commencing with the first such date to occur after the Restatement Date, and on the last day of the Availability Period for the Revolving Credit Facility.

(b) Other Fees.

(i) The Borrowers shall pay to the Administrative Agent, Arrangers, Lenders and Affiliates thereof for their own respective accounts fees in the amounts and at the times specified in the Agent Fee Letter. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever.

**2.10** *Computation of Interest and Fees.* All computations of interest for Base Rate Loans (including Base Rate Loans determined by reference to the BSBY Rate) shall be made on the basis of a year of three hundred sixty-five (365) or three hundred sixty-six (366) days, as the case may be, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a three hundred sixty (360-) day year and actual days elapsed (which results in more fees or interest, as applicable, being paid than if computed on the basis of a three hundred sixty-five- (365-) day year). Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid; provided that any Loan that is repaid on the same day on which it is made shall, subject to Section 2.12(a), bear interest for one (1) day. Each determination by the Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

**2.11** *Evidence of Debt.* (a) The Credit Extensions made by each Lender shall be evidenced by one (1) or more accounts or records maintained by such Lender and by the Administrative Agent in the ordinary course of business. The accounts or records maintained by the Administrative Agent and each Lender shall be conclusive absent manifest error of the amount

of the Credit Extensions made by the Lenders to the Borrowers and the interest, principal and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrowers hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Administrative Agent in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error. Upon the request of any Lender made through the Administrative Agent, the Borrowers shall execute and deliver to such Lender (through the Administrative Agent) a Note, which shall evidence such Lender's Loans in addition to such accounts or records. Each Lender may attach schedules to its Note and endorse thereon the date, Type (if applicable), amount and maturity of its Loans and payments with respect thereto.

(a) In addition to the accounts and records referred to in Section 2.11(a), each Lender and the Administrative Agent shall maintain in accordance with its usual practice accounts or records evidencing the purchases and sales by such Lender of participations in Letters of Credit and Swing Line Loans. In the event of any conflict between the accounts and records maintained by the Administrative Agent and the accounts and records of any Lender in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error.

## **2.12 *Payments Generally; Administrative Agent's Clawback.***

(a) General. All payments to be made by the Borrowers shall be made free and clear of and without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by the Borrowers hereunder shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the Administrative Agent's Office in Dollars and in immediately available funds not later than 11:00 a.m. on the date specified herein. The Administrative Agent will promptly distribute to each Lender its Applicable Percentage in respect of the relevant Facility (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Lender's Lending Office. All payments received by the Administrative Agent after 11:00 a.m. shall be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. If any payment to be made by the Borrowers shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected on computing interest or fees, as the case may be.

(b) Funding by Lenders; Presumption by Administrative Agent. Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing of BSBY Rate Loans (or, in the case of any Borrowing of Base Rate Loans, prior to 9:00 a.m. on the date of such Borrowing) that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with Section 2.02 (or, in the case of a Borrowing of Base Rate Loans, that such Lender has made such share available in accordance with and at the time required by Section 2.02) and may, in reliance upon such assumption, make available to the Borrowers a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and the Borrowers severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount in immediately available funds with

interest thereon, for each day from and including the date such amount is made available to the Borrowers to but excluding the date of payment to the Administrative Agent, at (A) in the case of a payment to be made by such Lender, the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation, plus any administrative, processing or similar fees customarily charged by the Administrative Agent in connection with the foregoing, and (B) in the case of a payment to be made by the Borrowers, the interest rate applicable to Base Rate Loans. If the Borrowers and such Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to the Borrowers the amount of such interest paid by the Borrowers for such period. If such Lender pays its share of the applicable Borrowing to the Administrative Agent, then the amount so paid shall constitute such Lender's Loan included in such Borrowing. Any payment by the Borrowers shall be without prejudice to any claim the Borrowers may have against a Lender that shall have failed to make such payment to the Administrative Agent.

(i) Payments by Borrowers; Presumptions by Administrative Agent. Unless the Administrative Agent shall have received notice from the Borrowers prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders or any L/C Issuer hereunder that the Borrowers will not make such payment, the Administrative Agent may assume that the Borrowers have made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Appropriate Lenders or the L/C Issuers, as the case may be, the amount due. With respect to any payment that the Administrative Agent makes for the account of the Lenders or any L/C Issuer hereunder as to which the Administrative Agent determines (which determination shall be conclusive absent manifest error) that any of the following applies (such payment referred to as the "Rescindable Amount"): (1) the Borrowers have not in fact made such payment; (2) the Administrative Agent has made a payment in excess of the amount so paid by the Borrowers (whether or not then owed); or (3) the Administrative agent has for any reason otherwise erroneously made such payment; then each of the Appropriate Lenders or the L/C Issuer, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the Rescindable Amount so distributed to such Lender or such L/C Issuer, in immediately available funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

A notice of the Administrative Agent to any Lender or the Borrowers with respect to any amount owing under this subsection (b) shall be conclusive, absent manifest error.

(c) Failure to Satisfy Conditions Precedent. 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 Article II, and such funds are not made available to the Borrowers by the Administrative Agent because the conditions to the applicable Credit Extension set forth in Article IV 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) Obligations of Lenders Several. The obligations of the Lenders hereunder to make Term Loans and Revolving Credit Loans, to fund participations in Letters of Credit and Swing Line Loans and to make payments pursuant to Section 11.04(c) are several and not joint. The failure of any Lender to make any Loan, to fund any such participation or to make any payment under Section 11.04(c) on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall 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 11.04(c).

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

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

**2.13 Sharing of Payments by Lenders**. If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of (a) Obligations due and payable to such Lender hereunder and under the other Loan Documents at such time in excess of its ratable share (according to the proportion of (i) the amount of such Obligations due and payable to such Lender at such time to (ii) the aggregate amount of the Obligations due and payable to all Lenders hereunder and under the other Loan Documents at such time) of payments on account of the Obligations due and payable to all Lenders hereunder and under the other Loan Documents at such time obtained by all the Lenders at such time or (b) Obligations owing (but not due and payable) to such Lender hereunder and under the other Loan Documents at such time in excess of its ratable share (according to the proportion of (i) the amount of such Obligations owing (but not due and payable) to such Lender at such time to (ii) the aggregate amount of the Obligations owing (but not due and payable) to all Lenders hereunder and under the other Loan Parties at such time) of payment on account of the Obligations owing (but not due and payable) to all Lenders hereunder and under the other Loan Documents at such time obtained by all of the Lenders at such time then the Lender receiving such greater proportion shall (a) notify the Administrative Agent of such fact, and (b) purchase (for cash at face value) participations in the Loans and subparticipations in L/C Obligations and Swing Line Loans of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of Obligations then due and payable to the Lenders or owing (but not due and payable) to the Lenders, as the case may be, provided that:

(i) if any such participations or subparticipations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations or subparticipations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and

(ii) the provisions of this Section shall not be construed to apply to (A) any payment made by or on behalf of the Borrowers pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender), (y) the application of Cash Collateral provided for in Section 2.16, or (z) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or subparticipations in L/C Obligations or Swing Line Loans to any assignee or participant, other than an assignment to Holdings, the Borrowers, any Subsidiary, or any Affiliate thereof (as to which the provisions of this Section shall apply).

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 such Loan Party rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of such Loan Party in the amount of such participation.

**2.14 Extensions of Term Loans and Revolving Credit Commitments.** (a) Notwithstanding anything to the contrary in this Agreement, pursuant to one (1) or more offers (each, an “Extension Offer”) made from time to time by the Borrowers to all Term Lenders of any class of Term Loans or any class of Revolving Credit Commitments, in each case on a pro rata basis (based on the aggregate outstanding principal amount of the respective Term Loans or Revolving Credit Commitments of the applicable class) and on the same terms to each such Lender, the Borrowers are hereby permitted to consummate from time to time transactions with individual Lenders that accept the terms contained in such Extension Offers to extend the maturity date of each such Lender’s Term Loans and/or Revolving Credit Commitments of the applicable class and otherwise modify the terms of such Term Loans and/or Revolving Credit Commitments pursuant to the terms of the relevant Extension Offer (including, without limitation, by changing the interest rate or fees payable in respect of such Term Loans and/or Revolving Credit Commitments (and related outstandings) and/or modifying the amortization schedule in respect of such Term Loans) (each, an “Extension”) and each group of Term Loans or Revolving Credit Commitments, as applicable, in each case as so extended, as well as the original Term Loans and the original Revolving Credit Commitments (in each case not so extended), being a separate class of Term Loans from the class of Term Loans from which they were converted, and any Extended Revolving Credit Commitments (as defined below) shall constitute a separate class of Revolving Credit Commitments from the class of Revolving Credit Commitments from which they were converted, it being understood that an Extension may be in the form of an increase in the amount of any other then outstanding class of Term Loans or Revolving Credit Commitments otherwise satisfying the criteria set forth below, so long as the following terms are satisfied:

(i) except as to interest rates, fees and final maturity (which shall be determined by the Borrowers and set forth in the relevant Extension Offer), the Revolving Credit Commitment of any Revolving Credit Lender that agrees to an extension with respect to such Revolving Credit Commitment extended pursuant to an Extension (“Extended Revolving Credit Commitments”), and the related outstandings, shall be a Revolving Credit Commitment (or related outstandings, as the case may be) with the same terms as the original class of Revolving Credit Commitments (and related outstandings); provided that at no time shall there be Revolving Credit Commitments hereunder (including

Extended Revolving Credit Commitments and any original Revolving Credit Commitments) which have more than two (2) different maturity dates;

(ii) except as to interest rates, fees, amortization, final maturity date, premium, required prepayment dates and participation in prepayments (which shall, subject to immediately succeeding clauses (iii), (iv) and (v), be determined by the Borrowers and set forth in the relevant Extension Offer), the Term Loans of any Lender (an “Extending Term Lender”) extended pursuant to any Extension (“Extended Term Loans”) shall have the same terms as the class of Term Loans subject to such Extension Offer (except for covenants or other provisions contained therein applicable only to periods after the then latest Maturity Date of any class of Term Loans hereunder or, to the extent such classes of Term Loans are later prepaid, the period after such prepayment);

(iii) the final maturity date of any Extended Term Loans shall be no earlier than the final maturity date of the class of Term Loans subject to such Extension Offer and the amortization schedule applicable to Term Loans pursuant to Section 2.07 for periods prior to such final maturity date of the Term Loans subject to such Extension Offer may not be increased;

(iv) the weighted average life to maturity of any Extended Term Loans shall be no shorter than the remaining weighted average life to maturity of the Term Loans extended thereby;

(v) any Extended Term Loans may 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 hereunder, as specified in the applicable Extension Offer;

(vi) if the aggregate principal amount of the class of Term Loans (calculated on the face amount thereof) or Revolving Credit Commitments, as the case may be, in respect of which Term Lenders or Revolving Credit Lenders, as the case may be, shall have accepted the relevant Extension Offer shall exceed the maximum aggregate principal amount of Term Loans or Revolving Credit Commitments of such class, as the case may be, offered to be extended by the Borrowers pursuant to such Extension Offer, then the Term Loans or Revolving Credit Commitments of such class, as the case may be, of such Term Lenders or Revolving Credit Lenders, as the case may be, shall be extended ratably up to such maximum amount based on the respective principal amounts (but not to exceed actual holdings of record) with respect to which such Term Lenders or Revolving Credit Lenders, as the case may be, have accepted such Extension Offer;

(vii) the establishment of any Extended Revolving Credit Commitments shall be accompanied by a reduction in the Revolving Credit Commitments in at least the amount of such Extended Revolving Credit Commitments; provided that any reduction in the Revolving Credit Commitments may, at the option of the Borrowers, be directed to a disproportional reduction of the Revolving Credit Commitments of any Lender providing an Extended Revolving Credit Commitment;

(viii) all documentation in respect of such Extension shall be consistent with the foregoing and otherwise acceptable to the Administrative Agent; and

(ix) any applicable minimum extension condition required by the Borrowers shall be satisfied unless waived by the Borrowers.

(b) With respect to all Extensions consummated by the Borrowers pursuant to Section 2.14(a), (i) such Extensions shall not constitute voluntary or mandatory payments or prepayments for purposes of Section 2.05 and (ii) there shall be not more than five (5) classes of Extended Term Loans outstanding at any time. The Administrative Agent and the Lenders hereby consent to the transactions contemplated by this Section 2.14 (including, for the avoidance of doubt, payment of any interest, fees or premium in respect of any Extended Term Loans and/or Extended Revolving Credit Commitments on the such terms as may be set forth in the relevant Extension Offer) and hereby waive the requirements of any provision of this Agreement (including, without limitation, Sections 2.05, 2.12 and 2.13) or any other Loan Document that may otherwise prohibit any such Extension or any other transaction contemplated by this Section 2.14.

(c) No consent of any Lender or the Administrative Agent shall be required to effectuate any Extension, other than (i) the consent of each Lender agreeing to such Extension with respect to one (1) or more of its Term Loans and/or Revolving Credit Commitments (or a portion thereof) and (ii) with respect to any Extension of any class of Revolving Credit Commitments, the consent of the L/C Issuer and Swing Line Lender (if such L/C Issuer or Swing Line Lender is being requested to issue letters of credit or make swing line loans with respect to the class of Extended Revolving Credit Commitments). The Lenders hereby irrevocably authorize the Administrative Agent to enter into an Additional Credit Extension Amendment to this Agreement and the other Loan Documents with the Borrowers and the other applicable Loan Parties as may be necessary in order to establish new classes in respect of Revolving Credit Commitments or Term Loans so extended and such technical amendments as may be necessary or appropriate in the reasonable opinion of the Administrative Agent in connection with the establishment of such new classes, in each case on terms consistent with this Section 2.14.

(d) In connection with any Extension, the Borrowers shall provide the Administrative Agent at least five (5) Business Days' (or such shorter period as may be agreed by the Administrative Agent) prior written notice thereof, and shall agree to such procedures (including, without limitation, regarding timing, rounding and other adjustments and to ensure reasonable administrative management of the credit facilities hereunder after such Extension), if any, as may be established by, or acceptable to, the Administrative Agent, in each case acting reasonably to accomplish the purposes of this Section 2.14.

(e) This Section shall supersede any provisions in Sections 2.13 or 10.01 to the contrary. Notwithstanding any language to the contrary, no Lender's Commitments may be extended without such Lender's consent and any such decision whether to extend its Term Loan or Revolving Credit Commitment shall be in such Lender's sole and absolute discretion.

## 2.15 *Increase in Commitments.*

(a) Request for Increase. The Borrowers may by written notice to the Administrative Agent elect to request (x) prior to the Maturity Date for the Revolving Credit Facility, an increase to the existing Revolving Credit Commitments (each, an “Incremental Revolving Credit Commitment”) and/or (y) prior to the Maturity Date for the Term A Loans, the establishment of one (1) or more new term loan commitments for an additional Class of term loans or as an increase to an existing Class of Term Loans (each, an “Incremental Term Commitment”), by an aggregate amount not in excess of the sum of (i) \$100,000,000 in the aggregate plus (ii) an unlimited amount provided that, in respect of this clause (ii) only, after giving pro forma effect to the incurrence of each Incremental Commitment (assuming for purposes of such calculation that (x) the full committed amount of any Incremental Revolving Credit Commitment shall be treated as fully drawn for such purpose and (y) cash proceeds of any such increase shall not be netted from Indebtedness for purposes of calculating compliance with the Consolidated Leverage Ratio), the Consolidated Leverage Ratio does not exceed 2.50 to 1.00. Each Incremental Commitment shall be in a minimum amount of \$25,000,000. At the time of sending such notice, the Borrowers (in consultation with the Administrative Agent) shall specify the time period within which each Lender is requested to respond (which shall in no event be less than ten (10) Business Days from the date of delivery of such notice to the Lenders or such shorter period as the Borrowers and the Administrative Agent may agree).

(b) Lender Elections to Increase. Each Lender may elect or decline, in its sole discretion, to provide any Incremental Commitment and shall notify the Administrative Agent within such time period whether or not it agrees to provide any Incremental Commitment and, if so, whether by an amount equal to, greater than, or less than its Applicable Percentage of such requested Incremental Commitment. Any Lender not responding within such time period shall be deemed to have declined to provide such Incremental Commitment.

(c) Notification by Administrative Agent; Additional Lenders. The Administrative Agent shall notify the Borrowers and each Lender of the Lenders’ responses to each request made hereunder. To the extent the Lenders have not agreed to provide Incremental Commitments in an amount sufficient to provide the full amount of the requested Incremental Commitments, subject to the approval of the Administrative Agent, and, in connection with any Incremental Revolving Credit Commitment, the L/C Issuer and the Swing Line Lender (which approvals shall not be unreasonably withheld), the Borrowers may also invite additional Eligible Assignees to become Lenders in order to provide, together with the existing Lenders providing Incremental Commitments, the aggregate requested Incremental Commitments. In order to become a Lender, each such additional Eligible Assignee shall execute and deliver to the Administrative Agent a joinder agreement in form and substance satisfactory to the Administrative Agent and its counsel (the “Increase Joinder”). Notwithstanding the provisions of Section 10.01, the Increase Joinder or other related Additional Credit Extension Amendment 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 reasonable opinion of the Administrative Agent, to effect the provisions of this Section 2.15.

(d) Effective Date and Allocations. If the Aggregate Commitments are increased in accordance with this Section, the Administrative Agent and the Borrowers shall determine the



effective date (the “Increase Effective Date”) and the final allocation of such increase. The Administrative Agent shall promptly notify the Borrowers and the Lenders of the final allocation of such increase and the Increase Effective Date.

(e) Conditions to Effectiveness of Incremental Commitments. The Incremental Commitments shall become effective as of the Increase Effective Date; provided that the Borrowers shall deliver to the Administrative Agent a certificate of each Loan Party dated as of the Increase Effective Date (in sufficient copies for each Lender) signed by a Responsible Officer of such Loan Party (i) certifying and attaching the resolutions adopted by such Loan Party approving or consenting to such increase, and (ii) in the case of the Borrowers, certifying that, before and after giving effect to such increase and the use of proceeds thereof (and assuming, in the case of an Incremental Revolving Credit Commitments, that the entire amount of such increase is funded), each of the following are satisfied: (A) the representations and warranties contained in Article V and the other Loan Documents are true and correct on and as of the Increase Effective Date, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct as of such earlier date, and except that for purposes of this Section 2.15, the representations and warranties contained in subsections (a) and (b) of Section 5.05 shall be deemed to refer to the most recent statements furnished pursuant to clauses (a) and (b), respectively, of Section 6.01, (B) no Default exists, and (C) as of the last day of the most recent Measurement Period, the Borrowers are in *pro forma* compliance with the covenant set forth in Section 7.11(a) and, if such Incremental Commitment is incurred pursuant to Section 2.15(a)(ii), the Consolidated Leverage Ratio does not exceed 2.50 to 1.00 (assuming for purposes of such calculations in this Clause (C) that (i) the full committed amount of any increase to the Revolving Credit Commitments shall be treated as outstanding for such purpose and (ii) cash proceeds of any such increase shall not be netted from Indebtedness for purposes of calculating compliance with the Consolidated Leverage Ratio); provided, that notwithstanding the foregoing, solely to the extent the proceeds from an Incremental Term Commitment are incurred to fund a Permitted Acquisition, compliance with the forgoing clauses (B) and (C) of this subsection (e) shall only be required to be satisfied as of the time of entering into of the definitive acquisition agreement governing such Permitted Acquisition so long as the proceeds of such Incremental Term Loan are intended to and are used to substantially contemporaneously fund all or a portion of the consideration for a Permitted Acquisition consummated within ninety (90) days after the date of execution of the acquisition agreement related thereto and assuming that such Permitted Acquisition is consummated substantially in accordance with the terms of such acquisition agreement (giving effect to any amendments that, taken as a whole, would not be materially adverse to the Lenders).

(f) Adjustment of Revolving Credit Loans. To the extent the Commitments being increased on the relevant Increase Effective Date are Incremental Revolving Credit Commitments, then, on such Increase Effective Date, (i) each relevant Revolving Credit Lender that is increasing its Revolving Credit Commitment shall make available to the Administrative Agent such amounts in immediately available funds as such Administrative Agent shall determine, for the benefit of the other relevant Revolving Credit Lenders, as being required in order to cause, after giving effect to such increase and the application of such amounts to make payments to such other relevant Revolving Credit Lenders, the outstanding Revolving Credit Loans (and risk participations in outstanding Swing Line Loans and L/C Obligations) to be held ratably by all Revolving Credit Lenders in accordance with their respective revised Applicable Revolving Credit Percentages, (ii)

the Borrowers shall be deemed to have prepaid and reborrowed the outstanding Revolving Credit Loans as of such Increase Effective Date to the extent necessary to keep the outstanding Revolving Credit Loans ratable with any revised Applicable Revolving Credit Percentages arising from any nonratable increase in the Revolving Credit Commitments under this Section 2.15, and (iii) the Borrowers shall pay to the relevant Revolving Credit Lenders the amounts, if any, required pursuant to Section 3.05 as a result of such prepayment.

(g) Terms of New Loans and Commitments. The terms and provisions of Loans made pursuant to Incremental Commitments shall be as follows:

(i) terms and provisions of Incremental Term Loans shall be, except as otherwise set forth herein, in the Increase Joinder or other related Additional Credit Extension Amendment, identical to the Term A Loans (it being understood that Incremental Term Loans may be a part of the Term A Loans) and to the extent that the terms and provisions of Incremental Term Loans are not identical to the Term A Loans (except to the extent permitted by clause 2.15(g)(iii)(iii), (iv), (v) or (vi) below) they shall be reasonably satisfactory to the Administrative Agent; provided that in any event the Incremental Term Loans must comply with clause 2.15(g)(iii)(iii), (iv), (v) or (vi) below;

(ii) the terms and provisions of Revolving Credit Loans made pursuant to new Commitments shall be identical to the Revolving Credit Loans;

(iii) the scheduled principal amortization payments under each Incremental Term Loan shall be as set forth in the related Increase Joinder or other related Additional Credit Extension Amendment; provided that the weighted average life to maturity of each Incremental Term Loan shall not be less than the remaining weighted average life to maturity of the then existing Term A Loans;

(iv) the maturity date of each Incremental Term Loan shall be as set forth in the Increase Joinder or other Additional Credit Extension Amendment; provided that such date shall not be earlier than the Maturity Date for the Term A Loans;

(v) the Applicable Rate, fees and amortization schedule applicable to Incremental Term Loans shall be determined by the Borrowers and the Lenders of the Incremental Term Loans and set forth in the related Increase Joinder or other related Additional Credit Extension Amendment; provided, that the Yield applicable to any Incremental Term Commitment will not be more than 0.50% higher than the corresponding Yield for the existing Term A Loan unless the interest rate margin with respect to the existing Term A Loan is increased by an amount equal to the difference between the Yield with respect to the Incremental Term Commitment and the corresponding Yield on the existing Term Loan minus 0.50%;

(vi) any Incremental Term Loans may 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 hereunder (whether by acceleration or otherwise), as specified in the Increase Joinder or other Additional Credit Extension Amendment; and

(vii) Schedule 2.01 shall be deemed revised to reflect the commitments and commitment percentages of the Incremental Term Loan Lenders as set forth in the Increase Joinder or other Additional Credit Extension Amendment.

(h) Equal and Ratable Benefit. The Loans and Commitments established pursuant to this paragraph shall constitute Loans and Commitments under, and shall be entitled to all the benefits afforded by, this Agreement and the other Loan Documents, and shall, without limiting the foregoing, benefit equally and ratably from the Guaranty, except that the new Loans may be subordinated in right of payment to the extent set forth in the Increase Joinder.

(i) Conflicting Provisions. This Section shall supersede any provisions in Sections 2.13 or 10.01 to the contrary.

## **2.16** *Cash Collateral.*

(a) Certain Credit Support Events. If (i) the L/C Issuer has honored any full or partial drawing request under any Letter of Credit and such drawing has resulted in an L/C Borrowing, (ii) as of the Letter of Credit Expiration Date, any L/C Obligation for any reason remains outstanding, (iii) the Borrowers shall be required to provide Cash Collateral pursuant to Section 8.02(c), or (iv) there shall exist a Defaulting Lender, the Borrowers shall immediately (in the case of clause (iii) above) or within one (1) Business Day (in all other cases), following any request by the Administrative Agent or the L/C Issuer, provide Cash Collateral in an amount not less than the applicable Minimum Collateral Amount (determined in the case of Cash Collateral provided pursuant to clause (iv) above, after giving effect to Section 2.17(a)(iv) and any Cash Collateral provided by the Defaulting Lender). If at any time the Administrative Agent determines that any funds held as Cash Collateral are subject to any right or claim of any Person other than the Administrative Agent or that the total amount of such funds is less than the aggregate Outstanding Amount of all L/C Obligations, the Borrowers will, forthwith upon demand by the Administrative Agent, pay to the Administrative Agent, as additional funds to be deposited as Cash Collateral, an amount equal to the excess of (x) such aggregate Outstanding Amount over (y) the total amount of funds, if any, then held as Cash Collateral that the Administrative Agent determines to be free and clear of any such right and claim. Upon the drawing of any Letter of Credit for which funds are on deposit as Cash Collateral, such funds shall be applied, to the extent permitted under applicable Laws, to reimburse the L/C Issuer.

(b) Grant of Security Interest. The Borrowers, and to the extent provided by any Defaulting Lender, such Defaulting Lender, hereby grants to (and subjects to the control of) the Administrative Agent, for the benefit of the Administrative Agent, the L/C Issuer and the Lenders, and agrees to maintain, a first priority security interest in all such cash, deposit accounts and all balances therein, and all other property so provided as collateral pursuant hereto, and in all proceeds of the foregoing, all as security for the obligations to which such Cash Collateral may be applied pursuant to Section 2.16(c). If at any time the Administrative Agent determines that Cash Collateral is subject to any right or claim of any Person other than the Administrative Agent or the L/C Issuer as herein provided, or that the total amount of such Cash Collateral is less than the Minimum Collateral Amount, the Borrowers 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. All Cash Collateral (other than credit support not

constituting funds subject to deposit) shall be maintained in one (1) or more Cash Collateral Accounts at Bank of America. The Borrowers shall pay on demand therefor from time to time all customary account opening, activity and other administrative fees and charges in connection with the maintenance and disbursement of Cash Collateral.

(c) Application. Notwithstanding anything to the contrary contained in this Agreement, Cash Collateral provided under any of this Section 2.16 or Sections 2.04, 2.05, 2.06, 2.17 or 8.02 in respect of Letters of Credit or Swing Line Loans shall be held and applied to the satisfaction of the specific L/C Obligations, Swing Line Loans, obligations to fund participations therein (including, as to Cash Collateral provided by a Defaulting Lender, any interest accrued on such obligation) and other obligations for which the Cash Collateral was so provided, prior to any other application of such property as may be provided for herein.

(d) Release. Cash Collateral (or the appropriate portion thereof) provided to reduce Fronting Exposure or to secure other obligations shall be released promptly following (i) the elimination of the applicable Fronting Exposure or other obligations giving rise thereto (including by the termination of Defaulting Lender status of the applicable Lender (or, as appropriate, its assignee following compliance with Section 11.06(b)(vi))) or (ii) the determination by the Administrative Agent and the L/C Issuer that there exists excess Cash Collateral; provided, however, (x) any such release shall be without prejudice to, and any disbursement or other transfer of Cash Collateral shall be and remain subject to, any other Lien conferred under the Loan Documents and the other applicable provisions of the Loan Documents, and (y) the Person providing Cash Collateral and the L/C Issuer may agree that Cash Collateral shall not be released but instead held to support future anticipated Fronting Exposure or other obligations.

## **2.17 Defaulting Lenders.**

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

(i) Waivers and Amendments. Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in Section 10.01 and in the definition of "Required Lender".

(ii) Defaulting Lender Waterfall. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article VIII or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to Section 10.08 shall be applied at such time or times as may be determined by the Administrative Agent as follows: *first*, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder; *second*, to the payment on a *pro rata* basis of any amounts owing by such Defaulting Lender to the L/C Issuer or Swing Line Lender hereunder; *third*, to Cash Collateralize the L/C Issuer's Fronting Exposure with respect to such Defaulting Lender in accordance with Section 2.16; *fourth*, as the Borrowers may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required

by this Agreement, as determined by the Administrative Agent; *fifth*, if so determined by the Administrative Agent and the Borrowers, to be held in a deposit account and released *pro rata* in order to (x) satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement and (y) Cash Collateralize the L/C Issuer's future Fronting Exposure with respect to such Defaulting Lender with respect to future Letters of Credit issued under this Agreement, in accordance with Section 2.16; *sixth*, to the payment of any amounts owing to the Lenders, the L/C Issuer or Swing Line Lender as a result of any judgment of a court of competent jurisdiction obtained by any Lender, the L/C Issuer or the Swing Line 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 Borrowers as a result of any judgment of a court of competent jurisdiction obtained by the Borrowers against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and *eighth*, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (x) such payment is a payment of the principal amount of any Loans or L/C Borrowings 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 4.02 were satisfied or waived, such payment shall be applied solely to pay the Loans of, and L/C Obligations owed to, all Non-Defaulting Lenders on a *pro rata* basis prior to being applied to the payment of any Loans of, or L/C Obligations owed to, such Defaulting Lender until such time as all Loans and funded and unfunded participations in L/C Obligations and Swing Line Loans are held by the Lenders *pro rata* in accordance with the Commitments hereunder without giving effect to Section 2.17(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 2.17(a)(ii) shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) Certain Fees.

(A) No Defaulting Lender shall be entitled to receive any fee payable under Section 2.09(a) for any period during which that Lender is a Defaulting Lender (and the Borrowers shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender).

(B) Each Defaulting Lender shall be entitled to receive Letter of Credit 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 2.16.

(C) With respect to any fee payable under Section 2.09(a) or (b) or any Letter of Credit Fee not required to be paid to any Defaulting Lender pursuant to clause (A) or (B) above, the Borrowers shall (x) pay to each Non-Defaulting Lender that portion of any such fee otherwise payable to such Defaulting Lender with respect to such Defaulting Lender's participation in L/C Obligations or Swing Line Loans that has been reallocated to such Non-Defaulting Lender pursuant to clause

(iv) below, (y) pay to the L/C Issuer and Swing Line Lender, as applicable, the amount of any such fee otherwise payable to such Defaulting Lender to the extent allocable to such L/C Issuer's or Swing Line Lender's Fronting Exposure to such Defaulting Lender, and (z) not be required to pay the remaining amount of any such fee.

(iv) Reallocation of Applicable Percentages to Reduce Fronting Exposure. All or any part of such Defaulting Lender's participation in L/C Obligations and Swing Line Loans 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 Commitment. Subject to Section 11.22, no reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that Lender having become a Defaulting Lender, including any claim of a Non-Defaulting Lender as a result of such Non-Defaulting Lender's increased exposure following such reallocation.

(v) Cash Collateral, Repayment of Swing Line Loans. If the reallocation described in clause (a)(iv) above cannot, or can only partially, be effected, the Borrowers shall, without prejudice to any right or remedy available to it hereunder or under applicable Law, (x) first, prepay Swing Line Loans in an amount equal to the Swing Line Lenders' Fronting Exposure and (y) second, Cash Collateralize the L/C Issuers' Fronting Exposure in accordance with the procedures set forth in Section 2.16.

(b) Defaulting Lender Cure. If the Borrowers, the Administrative Agent, Swing Line Lender and the L/C Issuer 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 Revolving Credit Loans and funded and unfunded participations in Letters of Credit and Swing Line Loans to be held on a *pro rata* basis by the Lenders in accordance with their Applicable Percentages (without giving effect to Section 2.17(a)(iv)), whereupon such Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrowers while 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.

**2.18** *Joint and Several.* The Obligations of the Borrowers hereunder and under the other Loan Documents are joint and several. Without limiting the generality of the foregoing:

(a) Anything herein or in any other Loan Document to the contrary notwithstanding, the maximum liability of each Borrower hereunder and under the other Loan Documents shall in no event exceed the amount which can be guaranteed by such Borrower under applicable foreign,

federal and state Laws relating to the insolvency of debtors (after giving effect to the right of contribution established in clause (b) below);

(b) Each Borrower hereby agrees that to the extent that a Borrower shall have paid more than its proportionate share of any payment made hereunder, such Borrower shall be entitled to seek and receive contribution from and against any other Borrower hereunder which has not paid its proportionate share of such payment. Each Borrower's right of contribution shall be subject to the terms and conditions of clause (c) below. The provisions of this clause (b) shall in no respect limit the obligations and liabilities of any Borrower to the Administrative Agent and the Lenders, and each Borrower shall remain liable to the Administrative Agent and the Lenders for the full amount borrowed by such Borrower hereunder.

(c) Notwithstanding any payment made by any Borrower hereunder or any set-off or application of funds of any Borrower by the Administrative Agent or any Lender, no Borrower shall be entitled to be subrogated to any of the rights of the Administrative Agent or any Lender against any other Borrower or any collateral security or guaranty or right of offset held by the Administrative Agent or any Lender for the payment of the Obligations, nor shall any Borrower seek or be entitled to seek any contribution or reimbursement from any other Borrower in respect of payments made by such Borrower hereunder, until all of the Obligations are paid in full. If any amount shall be paid to any Borrower on account of such subrogation rights at any time when all of the Obligations shall not have been paid in full, such amount shall be held by such Borrower in trust for the Lenders, segregated from other funds of such Borrower, and shall, forthwith upon receipt by such Borrower, be turned over to the Administrative Agent in the exact form received by such Borrower (duly indorsed by such Borrower, if required), to be applied against the Obligations, whether matured or unmatured, in such order as the Administrative Agent may determine.

**2.19 *Borrower Representative.*** Each Borrower hereby designates and appoints Ichor Systems (the "Borrower Representative") as its representative and agent on its behalf for the purposes of issuing Committed Loan Notices (each such notice to be submitted as soon as practicable after receipt of a request to do so by a Borrower), delivering certificates (including Compliance Certificates), giving instructions with respect to the disbursement of the proceeds of the Loans, giving and receiving all other notices and consents hereunder or under any of the other Loan Documents and taking all other actions (including in respect of compliance with covenants) on behalf of any Borrower or the Borrowers under the Loan Documents. The Borrower Representative hereby accepts such appointment. The Administrative Agent and the Lenders may regard any notice or other communication pursuant to any Loan Document from the Borrower Representative as a notice or communication from all Borrowers. Each warranty, covenant, agreement and undertaking made on behalf of a Borrower by the Borrower Representative shall be deemed for all purposes to have been made by such Borrower and shall be binding upon and enforceable against such Borrower to the same extent as if the same had been made directly by such Borrower.

**2.20 *Designated Lenders.*** Each of the Administrative Agent, the L/C Issuer, the Swing Line Lender and each Lender at its option may make any Credit Extension or otherwise perform its obligations hereunder through any Lending Office (each, a "Designated Lender"); provided that any exercise of such option shall not affect the obligation of such Borrowers to repay any Credit

Extension in accordance with the terms of this Agreement. Any Designated Lender shall be considered a Lender; provided that in the case of an Affiliate or branch of a Lender, all provisions applicable to a Lender that would be applicable with respect to Credit Extensions actually provided by such Affiliate or branch of such Lender shall apply to such Affiliate or branch of such Lender to the same extent as such Lender; provided that for the purposes only of voting in connection with any Loan Document, any participation by any Designated Lender in any outstanding Credit Extension shall be deemed a participation of such Lender.

**2.21** *Financial Statement Adjustments or Restatements.* If, as a result of any restatement of or other adjustment to the financial statements of the Borrowers and their Subsidiaries or for any other reason, the Borrowers, or the Lenders determine that (i) the Consolidated Leverage Ratio as calculated by the Borrower as of any applicable date was inaccurate and (ii) a proper calculation of the Consolidated Leverage Ratio would have resulted in higher pricing for such period, the Borrowers shall immediately and retroactively be obligated to pay to the Administrative Agent for the account of the applicable Lenders or the L/C Issuer, as the case may be, promptly on demand by the Administrative Agent (or, after the occurrence of an actual or deemed entry of an order for relief with respect to any of the Borrowers under the Bankruptcy Code of the United States, automatically and without further action by the Administrative Agent, any Lender or the L/C Issuer), an amount equal to the excess of the amount of interest and fees that should have been paid for such period over the amount of interest and fees actually paid for such period. This paragraph shall not limit the rights of the Administrative Agent, any Lender or the L/C Issuer, as the case may be, under any provision of this Agreement to payment of any Obligations hereunder at the Default Rate or under Article VIII. The Borrowers' obligations under this paragraph shall survive the termination of the Aggregate Commitments and the repayment of all other Obligations hereunder.

### **ARTICLE III TAXES, YIELD PROTECTION AND ILLEGALITY**

#### **3.01** *Taxes.*

(a) Payments Free of Taxes; Obligation to Withhold; Payments on Account of Taxes.

(i) Any and all payments by or on account of any obligation of any Loan Party hereunder or under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by applicable Laws. If any applicable Laws require the deduction or withholding of any Tax from any such payment by the Administrative Agent or a Loan Party, then the Administrative Agent or such Loan Party shall be entitled to make such deduction or withholding, upon the basis of the information and documentation to be delivered pursuant to subsection (e) below, as applicable.

(ii) If any Loan Party or the Administrative Agent shall be required by the Code to withhold or deduct any Taxes, including both United States Federal backup withholding and withholding taxes, from any payment, then (A) such Loan Party or the Administrative Agent shall withhold or make such deductions as are determined by such Loan Party or the Administrative Agent to be required based upon the information and documentation it has received pursuant to subsection (e) below, as applicable, (B) such Loan Party or the



Administrative Agent shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with the Code, and (C) to the extent that the withholding or deduction is made on account of Indemnified Taxes, the sum payable by the applicable Loan Party shall be increased as necessary so that after any required withholding or the making of all required deductions (including deductions applicable to additional sums payable under this Section 3.01) the applicable Recipient receives an amount equal to the sum it would have received had no such withholding or deduction been made.

(iii) If any Loan Party or the Administrative Agent shall be required by any applicable Laws other than the Code to withhold or deduct any Taxes from any payment, then (A) such Loan Party or the Administrative Agent, as required by such Laws, shall withhold or make such deductions as are determined by it to be required based upon the information and documentation it has received pursuant to subsection (e) below, (B) such Loan Party or the Administrative Agent, to the extent required by such Laws, shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with such Laws, and (C) to the extent that the withholding or deduction is made on account of Indemnified Taxes, the sum payable by the applicable Loan Party shall be increased as necessary so that after any required withholding or the making of all required deductions (including deductions applicable to additional sums payable under this Section 3.01) the applicable Recipient receives an amount equal to the sum it would have received had no such withholding or deduction been made.

(b) Payment of Other Taxes by the Borrowers. Without limiting the provisions of subsection (a) above, the Loan Parties shall timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of the Administrative Agent timely reimburse it for the payment of, any Other Taxes.

(c) Tax Indemnifications. (i) Without duplication of any amounts paid pursuant to Section 3.01(a) or Section 3.01(b), each of the Loan Parties shall, and does hereby, jointly and severally, indemnify each Recipient, and shall make payment in respect thereof within ten (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 3.01) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient, and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrowers by a Lender or the L/C Issuer (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender or the L/C Issuer, shall be conclusive absent manifest error.

(i) Each Lender and the L/C Issuer shall, and does hereby, severally indemnify, and shall make payment in respect thereof within ten (10) days after demand therefor, (x) the Administrative Agent against any Indemnified Taxes attributable to such Lender or the L/C Issuer (but only to the extent that any Loan Party has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Loan Parties to do so), (y) the Administrative Agent against any Taxes attributable to

such Lender's failure to comply with the provisions of Section 11.06(d) relating to the maintenance of a Participant Register and (z) the Administrative Agent against any Excluded Taxes attributable to such Lender or the L/C Issuer, 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 and the L/C Issuer hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender or the L/C Issuer, as the case may be, under this Agreement or any other Loan Document against any amount due to the Administrative Agent under this clause (ii).

(d) Evidence of Payments. Upon the request by the Borrowers or the Administrative Agent, as the case may be, as soon as reasonably practicable after any payment of Taxes by any Loan Party or the Administrative Agent to a Governmental Authority as provided in this Section 3.01, the Borrowers shall deliver to the Administrative Agent, or the Administrative Agent shall deliver to the Borrowers, as the case may be, the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of any return required by Laws to report such payment or other evidence of such payment reasonably satisfactory to the Borrowers or the Administrative Agent, as the case may be.

(e) Status of Lenders; Tax Documentation.

(i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrowers and the Administrative Agent, at the time or times reasonably requested by the Borrowers or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrowers or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrowers or the Administrative Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Borrowers or the Administrative Agent as will enable the Borrowers or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two (2) sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 3.01(e)(ii)(A), (ii)(B), (ii)(D), (iii) and (iv) 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 any Borrower is a U.S. Person,

(A) any Lender that is a U.S. Person shall deliver to the Borrowers and the Administrative Agent on or prior to the date on which such Lender becomes a

Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrowers or the Administrative Agent), executed originals of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

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

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

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

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

(4) to the extent a Foreign Lender is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN-E (or W-8BEN, as applicable), a U.S. Tax Compliance Certificate substantially in the form of Exhibit I-2 or Exhibit I-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 (1) 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 I-4 on behalf of each such direct and indirect partner;

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

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

(iii) Each Lender agrees that if any form or certification it previously delivered pursuant to this Section 3.01 expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrowers and the Administrative Agent in writing of its legal inability to do so.

(iv) If Bank of America shall assign its role as Administrative Agent to a successor Administrative Agent that is not a U.S. Person (including any foreign branch of Bank of America that is not a U.S. Person), such successor Administrative Agent (in its capacity as Administrative Agent) shall, to the extent applicable, provide to the Borrowers executed, properly completed originals of IRS Form W-8IMY (together with any required attachments) on or before the date such successor Administrative Agent becomes the Administrative Agent hereunder.

(v) For purposes of this Section 3.01(e), any reference to "Lender" or "Foreign Lender" shall include a domestic or foreign L/C Issuer, as applicable.

(f) Treatment of Certain Refunds. Unless required by applicable Laws, at no time shall the Administrative Agent have any obligation to file for or otherwise pursue on behalf of a Lender or the L/C Issuer, or have any obligation to pay to any Lender or the L/C Issuer, any refund of

Taxes withheld or deducted from funds paid for the account of such Lender or the L/C Issuer, as the case may be. If any Recipient 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 by any Loan Party or with respect to which any Loan Party has paid additional amounts pursuant to this Section 3.01, it shall pay to the Loan Party an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by a Loan Party under this Section 3.01 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) incurred by such Recipient, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), provided that the Loan Party, upon the request of the Recipient, agrees to repay the amount paid over to the Loan Party (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Recipient in the event the Recipient is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this subsection, in no event will the applicable Recipient be required to pay any amount to the Loan Party pursuant to this subsection the payment of which would place the Recipient in a less favorable net after-Tax position than such Recipient would have been in if 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 subsection shall not be construed to require any Recipient to make available its tax returns (or any other information relating to its taxes that it deems confidential) to any Loan Party or any other Person.

(g) VAT.

(i) All amounts set out or expressed to be payable under a Loan Document or Foreign Obligation Loan Document by any Loan Party which (in whole or in part) constitute the consideration for a supply or supplies for VAT purposes shall be deemed to be exclusive of any VAT. If VAT is or becomes chargeable on any supply made by any Lender, Foreign Obligation Provider, L/C Issuer or Related Party thereof to any Loan Party under a Loan Document or Foreign Obligation Loan Document, and such Lender, Foreign Obligation Provider, L/C Issuer or Related Party thereof (as the case may be) is required to account to the relevant tax authority for the VAT, that Loan Party shall pay to such Lender, Foreign Obligation Provider, L/C Issuer or Related Party thereof (in addition to and at the same time as paying any other consideration for such supply) an amount equal to the amount of such VAT (and such Lender, Foreign Obligation Provider, L/C Issuer or Related Party thereof (as the case may be) must promptly provide to that Loan Party an appropriate VAT invoice relating to that VAT complying with the relevant law).

(ii) Where a Loan Document or Foreign Obligation Loan Document requires any Loan Party to reimburse or indemnify a Lender, Foreign Obligation Provider, L/C Issuer or Related Party thereof for any cost or expense, that Loan Party shall reimburse or indemnify (as the case may be) the Lender, Foreign Obligation Provider, L/C Issuer or Related Party thereof for the full amount of such cost or expense, including such part thereof as represents VAT, save to the extent that such Lender, Foreign Obligation Provider, L/C Issuer or Related Party thereof reasonably determines that it is entitled to credit or repayment in respect of such VAT from the relevant tax authority.

(h) Survival. Each party's obligations under this Section 3.01 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender or the L/C Issuer, the termination of the Commitments and the repayment, satisfaction or discharge of all other Obligations.

### **3.02 *Illegality; Designated Lenders.***

(a) If any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable Lending Office to perform any of its obligations hereunder or to make, maintain or fund or charge interest with respect to Loans, or to determine or charge interest rates based upon the BSBY Rate, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, Dollars in the London interbank market, then, on notice thereof by such Lender to the Borrowers through the Administrative Agent, (i) any obligation of such Lender to issue, make, maintain, fund or charge interest with respect to any such Loans or continue BSBY Rate Loans or to convert Base Rate Loans to BSBY Rate Loans shall be suspended, and (ii) if such notice asserts the illegality of such Lender making or maintaining Base Rate Loans the interest rate on which is determined by reference to the BSBY Rate component of the Base Rate, the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the BSBY Rate component of the Base Rate, in each case until such Lender notifies the Administrative Agent and the Borrowers that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, (x) the Borrowers shall, upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all BSBY Rate Loans of such Lender to Base Rate Loans (the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the BSBY Rate component of the Base Rate), either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such BSBY Rate Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such BSBY Rate Loans and (y) if such notice asserts the illegality of such Lender determining or charging interest rates based upon the BSBY Rate, the Administrative Agent shall during the period of such suspension compute the Base Rate applicable to such Lender without reference to the BSBY Rate component thereof until the Administrative Agent is advised in writing by such Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon the BSBY Rate. Upon any such prepayment or conversion, the Borrowers shall also pay accrued interest on the amount so prepaid or converted.

(b) If, in any applicable jurisdiction, the Administrative Agent, the L/C Issuer or any Lender or any Designated Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for the Administrative Agent, the L/C Issuer or any Lender or its applicable Designated Lender to (i) perform any of its obligations hereunder or under any other Loan Document, (ii) to fund or maintain its participation in any Loan or (iii) issue, make, maintain, fund or charge interest or fees with respect to any Credit Extension, such Person shall promptly notify the Administrative Agent and then, upon the Administrative Agent notifying the Borrower Representative and until such notice by such Person is revoked, any obligation of such Person to issue, make, maintain, fund or charge interest or fees with respect to any such Credit Extension shall be suspended, and to the extent required by applicable Law,

cancelled. Upon receipt of such notice, the Loan Parties shall, (A) repay that Person's participation in the Loans or other applicable Obligations on the last day of the Interest Period for each Loan or other Obligation occurring after the Administrative Agent has notified the Borrower Representative or, if earlier, the date specified by such Person in the notice delivered to the Administrative Agent (being no earlier than the last day of any applicable grace period permitted by applicable Law) and (B) take all reasonable actions requested by such Person to mitigate or avoid such illegality.

### **3.03        *Inability to Determine Rates.***

(a) If in connection with any request for a BSBY Rate Loan or a conversion to or continuation thereof, as applicable, (i) the Administrative Agent determines (which determination shall be conclusive absent manifest error) that (A) no Successor Rate has been determined in accordance with Section 3.03(b), and the circumstances under clause (i) of Section 3.03(b) or the Scheduled Unavailability Date has occurred (as applicable) or (B) adequate and reasonable means do not otherwise exist for determining the BSBY Rate for any requested Interest Period with respect to a proposed BSBY Rate Loan or in connection with an existing or proposed Base Rate Loan or (ii) the Administrative Agent or the Required Lenders determine that for any reason that the BSBY Rate for any requested Interest Period with respect to a proposed BSBY Rate Loan does not adequately and fairly reflect the cost to such Lenders of funding such Loan, the Administrative Agent will promptly so notify the Borrower Representative and each Lender. Thereafter, (x) the obligation of the Lenders to make or maintain BSBY Rate Loans or to convert Base Rate Loans to BSBY Rate Loans shall be suspended (to the extent of the affected BSBY Rate Loans or Interest Periods), and (y) in the event of a determination described in the preceding sentence with respect to the BSBY Rate component of the Base Rate, the utilization of the BSBY Rate component in determining the Base Rate shall be suspended, in each case until the Administrative Agent (or, in the case of a determination by the Required Lenders described in clause (ii) of this Section 3.03(a), until the Administrative Agent upon instruction of the Required Lenders revokes such notice. Upon receipt of such notice, (i) the Borrower Representative may revoke any pending request for a borrowing of, conversion to or continuation of BSBY Rate Loans (to the extent of the affected BSBY Rate Loans or Interest Periods) or, failing that, will be deemed to have converted such request into a request for a borrowing of Base Rate Loans in the amount specified therein and (ii) any outstanding BSBY Rate Loans shall be deemed to have been converted to Base Rate Loans immediately at the end of their respective applicable Interest Period.

(b) Notwithstanding anything to the contrary in this Agreement or any other Loan Documents, but without limiting Sections 3.03(a) and (b) above, if the Administrative Agent determines (which determination shall be conclusive and binding upon all parties hereto absent manifest error), or the Borrower Representative or Required Lenders notify the Administrative Agent (with, in the case of the Required Lenders, a copy to the Borrower Representative) that the Borrower Representative or Required Lenders (as applicable) have determined (which determination likewise shall be conclusive and binding upon all parties hereto absent manifest error), that:

(i) adequate and reasonable means do not exist for ascertaining one month, three month and six month interest periods of the BSBY Rate, including, without limitation,

because the BSBY Screen Rate is not available or published on a current basis, and such circumstances are unlikely to be temporary; or

(ii) Bloomberg or any successor administrator of the BSBY Screen Rate or a Governmental Authority having or purporting to have jurisdiction over the Administrative Agent or Bloomberg or such administrator has made a public statement identifying a specific date after which one month, three month and six month interest periods of the BSBY Rate or the BSBY Screen Rate shall or will no longer be representative or made available, or used for determining the interest rate of loans, or shall or will otherwise cease; provided that, at the time of such statement, there is no successor administrator that is satisfactory to the Administrative Agent, that will continue to provide such representative interest periods of the BSBY Rate after such specific date (the latest date on which one month, three month, six month interest periods of the BSBY Rate or the BSBY Screen Rate are no longer representative or available permanently or indefinitely, the “Scheduled Unavailability Date”);

then, on a date and time determined by the Administrative Agent (any such date, the “BSBY Replacement Date”), which date shall be at the end of an Interest Period or on the relevant interest payment date, as applicable, for interest calculated and, solely with respect to clause (ii) above, no later than the Scheduled Unavailability Date, the BSBY Rate will be replaced hereunder and under any Loan Document with, subject to the proviso below, the first available alternative set forth in the order below for any payment period for interest calculated that can be determined by the Administrative Agent, in each case, without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document (the “Successor Rate”):

- (x) Term SOFR plus the SOFR Adjustment; and
- (y) Daily Simple SOFR plus the SOFR Adjustment;

provided that, if initially the BSBY Rate is replaced with the rate contained in clause (y) above (Daily Simple SOFR plus the SOFR Adjustment) and subsequent to such replacement, the Administrative Agent determines that Term SOFR has become available and is administratively feasible for the Administrative Agent in its sole discretion, and the Administrative Agent notifies the Borrower Representative and each Lender of such availability, then from and after the beginning of the Interest Period, relevant interest payment date or payment period for interest calculated, in each case, commencing no less than thirty (30) days after the date of such notice, the Successor Rate shall be Term SOFR *plus* the SOFR Adjustment.

If the Successor Rate is Daily Simple SOFR plus the SOFR Adjustment, all interest payments will be payable on a quarterly basis.

Notwithstanding anything to the contrary herein, (i) if the Administrative Agent determines that neither of the alternatives set forth in clauses (x) and (y) above are available on or prior to the BSBY Replacement Date or (ii) if the events or circumstances of the type described in Section 3.03(b)(i) or (ii) have occurred with respect to the Successor Rate then in effect, then in each case, the Administrative Agent and the Borrower Representative may amend this Agreement solely for purpose of replacing the BSBY Rate or any then current Successor Rate in accordance with this



Section 3.03 at the end of any Interest Period, relevant interest payment date or payment period for interest calculated, as applicable, with another alternate benchmark rate giving due consideration to any evolving or then existing convention for similar U.S. dollar denominated syndicated credit facilities for such alternative benchmarks and, in each case, including any mathematical or other adjustments to such benchmark giving due consideration to any evolving or then existing convention for similar U.S. dollar denominated syndicated credit facilities for such benchmarks which adjustment or method for calculating such adjustment shall be published on an information service as selected by the Administrative Agent from time to time in its reasonable discretion and may be periodically updated. For the avoidance of doubt, any such proposed rate and adjustments shall constitute a “Successor Rate”. Any such amendment shall become effective at 5:00 p.m. on the fifth Business Day after the Administrative Agent shall have posted such proposed amendment to all Lenders and the Borrower Representative unless, prior to such time, Lenders comprising the Required Lenders have delivered to the Administrative Agent written notice that such Required Lenders object to such amendment.

The Administrative Agent will promptly (in one or more notices) notify the Borrower Representative and each Lender of the implementation of any Successor Rate.

Any Successor Rate shall be applied in a manner consistent with market practice; provided that to the extent such market practice is not administratively feasible for the Administrative Agent, such Successor Rate shall be applied in a manner as otherwise reasonably determined by the Administrative Agent.

Notwithstanding anything else herein, if at any time any Successor Rate as so determined would otherwise be less than zero%, the Successor Rate will be deemed to be zero% for the purposes of this Agreement and the other Loan Documents.

In connection with the implementation of a Successor Rate, the Administrative Agent will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement; provided that, with respect to any such amendment effected, the Administrative Agent shall post each such amendment implementing such Conforming Changes to the Borrower Representative and the Lenders reasonably promptly after such amendment becomes effective.

### **3.04        *Increased Costs.***

(a)        Increased Costs Generally. 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 contemplated by Section 3.04(e)) or the L/C Issuer;

(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 the L/C Issuer or the London interbank market any other condition, cost or expense (other than Taxes) affecting this Agreement or BSBY Rate 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 of making, converting to, continuing or maintaining any Loan the interest on which is determined by reference to BSBY (or, in the case of clause (ii) above, any Loan), or of maintaining its obligation to make any such Loan, or to increase the cost to such Lender or the L/C Issuer 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 or the L/C Issuer hereunder (whether of principal, interest or any other amount) then, upon request of such Lender or the L/C Issuer, the Borrowers will pay to such Lender or the L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or the L/C Issuer, as the case may be, for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If any Lender or the L/C Issuer determines that any Change in Law affecting such Lender or the L/C Issuer or any Lending Office of such Lender or such Lender's or the L/C Issuer'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 the L/C Issuer's capital or on the capital of such Lender's or the L/C Issuer'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 or Swing Line Loans held by, such Lender, or the Letters of Credit issued by the L/C Issuer, to a level below that which such Lender or the L/C Issuer or such Lender's or the L/C Issuer's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or the L/C Issuer's policies and the policies of such Lender's or the L/C Issuer's holding company with respect to capital adequacy or liquidity), then from time to time the Borrowers will pay to such Lender or the L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or the L/C Issuer or such Lender's or the L/C Issuer's holding company for any such reduction suffered.

(c) Mandatory Costs. If any Lender or the L/C Issuer incurs any Mandatory Costs attributable to the Obligations, then from time to time the Borrowers will pay to such Lender or the L/C Issuer, as the case may be, such Mandatory Costs. Such amount shall be expressed as a percentage rate per annum and shall be payable on the full amount of the applicable Obligations.

(d) Certificates for Reimbursement. A certificate of a Lender or the L/C Issuer setting forth the amount or amounts necessary to compensate such Lender or the L/C Issuer or its holding company, as the case may be, as specified in subsection (a) or (b) of this Section and delivered to the Borrowers shall be conclusive absent manifest error. The Borrowers shall pay such Lender or the L/C Issuer, as the case may be, the amount shown as due on any such certificate within ten (10) days after receipt thereof.

(e) Delay in Requests. Failure or delay on the part of any Lender or the L/C Issuer to demand compensation pursuant to the foregoing provisions of this Section 3.04 shall not constitute

a waiver of such Lender's or the L/C Issuer's right to demand such compensation, provided that the Borrowers shall not be required to compensate a Lender or the L/C Issuer pursuant to the foregoing provisions of this Section for any increased costs incurred or reductions suffered more than nine (9) months prior to the date that such Lender or the L/C Issuer, as the case may be, notifies the Borrowers of the Change in Law giving rise to such increased costs or reductions and of such Lender's or the L/C Issuer'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- (9-) month period referred to above shall be extended to include the period of retroactive effect thereof).

**3.05**        ***Compensation for Losses.*** Upon demand of any Lender (with a copy to the Administrative Agent) from time to time, the Borrowers shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost or expense incurred by it as a result of:

(a)        any continuation, conversion, payment or prepayment of any Loan other than a Base Rate Loan on a day other than the last day of the Interest Period for such Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise);

(b)        any failure by the Borrowers (for a reason other than the failure of such Lender to make a Loan) to prepay, borrow, continue or convert any Loan other than a Base Rate Loan on the date or in the amount notified by the Borrowers; or

(c)        any assignment of a BSBY Rate Loan on a day other than the last day of the Interest Period therefor as a result of a request by the Borrowers pursuant to Section 11.13; including any loss of anticipated profits and any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain such Loan or from fees payable to terminate the deposits from which such funds were obtained. The Borrowers shall also pay any customary administrative fees charged by such Lender in connection with the foregoing.

**3.06**        ***Mitigation Obligations; Replacement of Lenders.***

(a)        Designation of a Different Lending Office. Each Lender may make any Credit Extension to the Borrowers through any Lending Office, provided that the exercise of this option shall not affect the obligation of the Borrowers to repay the Credit Extension in accordance with the terms of this Agreement. If any Lender requests compensation under Section 3.04, or requires the Borrowers to pay any Indemnified Taxes or additional amounts to any Lender, the L/C Issuer, or any Governmental Authority for the account of any Lender or the L/C Issuer pursuant to Section 3.01, or if any Lender gives a notice pursuant to Section 3.02, then at the request of the Borrowers such Lender or the L/C Issuer shall, as applicable, 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 or the L/C Issuer, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 3.01 or 3.04, as the case may be, in the future, or eliminate the need for the notice pursuant to Section 3.02, as applicable, and (ii) in each case, would not subject such Lender or the L/C Issuer, as the case may be, to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender or the L/C Issuer, as the case may be. The Borrowers hereby agree to pay all reasonable costs and expenses incurred by any Lender or the L/C Issuer in connection with any such designation or assignment.

(b) Replacement of Lenders. If any Lender requests compensation under Section 3.04, or if the Borrowers are 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 3.01, and in each case, such Lender has declined or is unable to designate a different Lending Office in accordance with Section 3.06(a), the Borrowers may replace such Lender in accordance with Section 11.13.

**3.07** *Survival*. All of the Borrowers' obligations under this Article III shall survive termination of the Aggregate Commitments, repayment of all other Obligations hereunder, and resignation of the Administrative Agent.

#### ARTICLE IV CONDITIONS PRECEDENT TO CREDIT EXTENSIONS

**4.01** *Conditions of Initial Credit Extension*. The obligation of the L/C Issuer and each Lender to make its initial Credit Extension hereunder and to amend and restate the Existing Credit Agreement is subject to satisfaction of the following conditions precedent:

(a) The Administrative Agent's receipt of the following, each of which shall be originals or telecopies (followed promptly by originals) unless otherwise specified, each properly executed by a Responsible Officer of the signing Loan Party, each dated the Restatement Date (or, in the case of certificates of governmental officials, a recent date before the Restatement Date) and each in form and substance satisfactory to the Administrative Agent and each of the Lenders:

(i) executed counterparts of this Agreement, sufficient in number for distribution to the Administrative Agent, each Lender and the Borrowers;

(ii) a Note executed by the Borrowers in favor of each Lender requesting a Note;

(iii) a reaffirmation agreement, duly executed by each domestic Loan Party and Holdings (the "Reaffirmation Agreement"), together with:

(A) proper UCC financing statements in form appropriate for filing under the Uniform Commercial Code of all jurisdictions that the Administrative Agent may deem necessary or desirable in order to perfect the Liens created under the Security and Pledge Agreement, covering the Collateral described in the Security and Pledge Agreement,

(B) certified copies of UCC, United States Patent and Trademark Office and United States Copyright Office, tax and judgment lien searches, or equivalent reports or searches, each of a recent date listing all effective financing statements, lien notices or comparable documents (together with copies of such financing statements and documents) that name any Loan Party as debtor and that are filed in those state and county jurisdictions in which any Loan Party is organized, incorporated or maintains its principal place of business and such other searches that the Administrative Agent deems necessary or appropriate, none of which

encumber the Collateral covered or intended to be covered by the Collateral Documents (other than Permitted Liens),

(C) to the extent applicable in the relevant jurisdiction, certified copy of the (i) register of mortgages and charges or equivalent document of each non-U.S. Loan Party and (ii) register of members of each non-U.S. Loan Party, each referencing the security created by each Loan Party in the Loan Documents;

(D) the supplemental Singapore Collateral Documents dated as of the Restatement Date; and

(E) evidence that all other actions, recordings and filings that the Administrative Agent may deem necessary or desirable in order to perfect the Liens created under the Security and Pledge Agreement, Dutch Collateral Documents and supplemental Singapore Collateral Documents have been, or substantially concurrently therewith will be, taken;

(iv) such written resolutions, minutes of meetings, certificates of resolutions or other action, incumbency certificates and/or other certificates of Responsible Officers of each Loan Party as the Administrative Agent may require (i) approving the entry into this Agreement and the other Loan Documents to which such Loan Party is a party or is to be a party and (ii) evidencing the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with this Agreement and the other Loan Documents to which such Loan Party is a party or is to be a party;

(v) to the extent applicable in the relevant jurisdiction, such documents and certifications as the Administrative Agent may reasonably require to evidence that each Loan Party is duly incorporated, organized or formed, is validly existing, in good standing and qualified to engage in business in each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification;

(vi) a favorable opinion of Kirkland & Ellis LLP, counsel to the Loan Parties, addressed to the Administrative Agent and each Lender, as to such matters concerning the Loan Parties and the Loan Documents as the Required Lenders may reasonably request;

(vii) (A) a favorable opinion of NautaDutilh, local counsel in the Netherlands, addressed to the Administrative Agent and each Lender, as to such matters concerning the Loan Parties and the Loan Documents as the Required Lenders may reasonably request and (B) a favorable opinion of Clifford Chance Pte Ltd, local counsel in Singapore, addressed to the Administrative Agent and each Lender, as to such matters concerning the Loan Parties and the Loan Documents as the Required Lenders may reasonably request;

(viii) [Intentionally Omitted];

(ix) a certificate of a Responsible Officer of the Borrower Representative either (A) attaching copies of all consents, licenses and approvals required in connection with the consummation by such Loan Party of the Transaction and the execution, delivery and performance by such Loan Party and the validity against such Loan Party of the Loan

Documents to which it is a party, and such consents, licenses and approvals shall be in full force and effect, or (B) stating that no such consents, licenses or approvals are so required;

(x) a certificate signed by a Responsible Officer of the Borrower Representative certifying (A) that the conditions specified in Sections 4.02(a) and (b) have been satisfied, and (B) that there has been no event or circumstance since the date of the Audited Financial Statements that has had or could be reasonably expected to have, either individually or in the aggregate, a Material Adverse Effect;

(xi) certificates attesting to the Solvency of the Loan Parties and their Subsidiaries taken as a whole after giving effect to the Transaction, from a Responsible Officer of the Borrower Representative, substantially in the form of Exhibit H;

(xii) evidence that all insurance required to be maintained pursuant to the Loan Documents has been obtained and is in effect, together with the certificates of insurance, naming the Administrative Agent, on behalf of the Secured Parties, as an additional insured or lenders loss payee, as the case may be, under all insurance policies (including flood insurance policies) maintained with respect to the assets and properties of the Loan Parties that constitutes Collateral;

(xiii) evidence that the obligations under the Existing Credit Agreement have been, or concurrently with the Restatement Date are being, repaid in full (other than obligations continuing hereunder); and

(xiv) such other assurances, certificates, documents, consents or opinions as the Administrative Agent, the L/C Issuer, the Swing Line Lender or any Lender reasonably may require.

(b) (i) All fees required to be paid to the Administrative Agent and the Arrangers on or before the Restatement Date shall have been paid and (ii) all fees required to be paid to the Lenders on or before the Restatement Date shall have been paid.

(c) Unless waived by the Administrative Agent, the Borrowers shall have paid all fees, charges and disbursements of counsel to the Administrative Agent (directly to such counsel if requested by the Administrative Agent) to the extent invoiced prior to or on the Restatement Date, plus such additional amounts of such fees, charges and disbursements as shall constitute its reasonable estimate of such fees, charges and disbursements incurred or to be incurred by it through the closing proceedings (provided that such estimate shall not thereafter preclude a final settling of accounts between the Borrowers and the Administrative Agent).

(d) There shall not have occurred since December 31, 2020 any event or condition that has had or could reasonably be expected, either individually or in the aggregate, to have a Material Adverse Effect.

(e) Each Lender shall have obtained all applicable licenses, consents, permits and approvals as deemed necessary by such Lender in order to execute and perform the transactions contemplated by the Loan Documents.

(f) The Administrative Agent and the Lenders shall have received copies of the financial statements referred to in Section 5.05, each in form and substance satisfactory to each of them.

(g) Upon the reasonable request of any Lender, the Borrowers shall have provided to such Lender, and such Lender shall be reasonably satisfied with, the documentation and other information so requested in connection with applicable “know your customer” and anti-money-laundering rules and regulations, including, without limitation, the Patriot Act, and any Loan Party that qualifies as a “legal entity customer” under the Beneficial Ownership Regulation shall have delivered to each Lender that so requests, a Beneficial Ownership Certification in relation to such Loan Party.

Without limiting the generality of the provisions of the last paragraph of Section 9.03, for purposes of determining compliance with the conditions specified in this Section 4.01, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Restatement Date specifying its objection thereto.

**4.02** *Conditions to All Credit Extensions.* The obligation of each Lender to honor any Request for Credit Extension (other than a Committed Loan Notice requesting only a conversion of Loans to the other Type, or a continuation of BSBY Rate Loans) is subject to the following conditions precedent:

(a) The representations and warranties of the Borrowers and each other Loan Party contained in Article V or any other Loan Document, or which are contained in any document furnished at any time under or in connection herewith or therewith, shall be true and correct in all material respects (but in all respects if such representation or warranty is qualified by “material” or “Material Adverse Effect”) on and as of the date of such Credit Extension, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects (but in all respects if such representation or warranty is qualified by “material” or “Material Adverse Effect”) as of such earlier date.

(b) No Default shall exist, or would result from such proposed Credit Extension or from the application of the proceeds thereof.

(c) The Administrative Agent and, if applicable, the L/C Issuer or the Swing Line Lender shall have received a Request for Credit Extension in accordance with the requirements hereof.

Each Request for Credit Extension (other than a Committed Loan Notice requesting only a conversion of Loans to the other Type or a continuation of BSBY Rate Loans) submitted by the Borrowers shall be deemed to be a representation and warranty that the conditions specified in Sections 4.02(a) and (b) have been satisfied on and as of the date of the applicable Credit Extension.

**ARTICLE V**  
**REPRESENTATIONS AND WARRANTIES**

Each Loan Party represents and warrants to the Administrative Agent and the Lenders that:

**5.01**        ***Existence, Qualification and Power.*** Each Loan Party and each of its Subsidiaries (a) is duly incorporated, organized or formed, validly existing and, as applicable, in good standing under the Laws of the jurisdiction of its incorporation or organization, (b) has all requisite power and authority and all requisite governmental licenses, authorizations, consents and approvals to (i) own or lease its assets and carry on its business and (ii) execute, deliver and perform its obligations under the Loan Documents to which it is a party and consummate the Transaction, and (c) is duly qualified and is licensed and, as applicable, in good standing under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license; except in each case referred to in clause (b)(i) or (c), to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect.

**5.02**        ***Authorization; No Contravention.*** The execution, delivery and performance by each Loan Party of each Loan Document to which such Person is or is to be a party have been duly authorized by all necessary corporate or other organizational action, and do not and will not (a) contravene the terms of any of such Person's Organization Documents; (b) conflict with or result in any breach or contravention of, or the creation of any Lien under, or require any payment to be made under (i) any Contractual Obligation to which such Person is a party or affecting such Person or the properties of such Person or any of its Subsidiaries or (ii) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject, except to the extent in the case of clause (b)(i) that such failure could not reasonably be expected to have a Material Adverse Effect; or (c) violate any Law.

**5.03**        ***Governmental Authorization; Other Consents.*** No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with (a) the execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement or any other Loan Document, (b) the grant by any Loan Party of the Liens granted by it pursuant to the Collateral Documents, (c) the perfection or maintenance of the Liens created under the Collateral Documents (including the first priority nature thereof subject to Permitted Liens) or (d) the exercise by the Administrative Agent or any Lender of its rights under the Loan Documents or the remedies in respect of the Collateral pursuant to the Collateral Documents, except for (i) the authorizations, approvals, actions, notices and filings listed on Schedule 5.03, (ii) the authorizations, approvals, actions, notices and filings which have been duly obtained, taken, given or made and are in full force and effect, (iii) such actions as may be required by Laws affecting the offering and sale of securities, and (iv) such actions as may be required by applicable foreign Laws affecting the pledge of the Pledged Equity of Foreign Subsidiaries.

**5.04**        ***Binding Effect.*** This Agreement has been, and each other Loan Document, when delivered hereunder, will have been, duly executed and delivered by each Loan Party that is party thereto. This Agreement constitutes, and each other Loan Document when so delivered will constitute, a legal, valid and binding obligation of such Loan Party, enforceable against each Loan Party that is party thereto 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). The choice of the relevant governing Laws of the Loan documents will be recognized and enforced in each Loan Party's jurisdiction of incorporation.

**5.05** ***Financial Statements; No Material Adverse Effect.*** (a) The Audited Financial Statements (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; (ii) fairly present in all material respects the financial condition of Holdings and its Subsidiaries on a consolidated basis as of the date thereof and their results of operations, cash flows and changes in shareholders' equity for the period covered thereby in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; and (iii) show all material indebtedness and other liabilities, direct or contingent, of Holdings and its Subsidiaries as of the date thereof, including liabilities for Taxes, material commitments and Indebtedness.

(a) The unaudited consolidated balance sheets of Holdings and its Subsidiaries dated June 30, 2021, and the related consolidated statements of income or operations, and cash flows for the fiscal quarter ended on that date (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein, and (ii) fairly present in all material respects the financial condition of Holdings and its Subsidiaries as of the date thereof and their results of operations and cash flows for the period covered thereby, subject, in the case of clauses (i) and (ii), to the absence of footnotes and to normal year-end audit adjustments.

(b) Since the date of the balance sheet included in the Audited Financial Statements, there has been no event or circumstance, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect.

(c) The consolidated *pro forma* balance sheets of Holdings and its Subsidiaries as at June 30, 2021 and the related consolidated *pro forma* statements of income and cash flows of Holdings and its Subsidiaries for the three (3) months then ended, certified by the chief financial officer or treasurer of each of the Borrowers, copies of which have been furnished to each Lender, fairly present in all material respects the consolidated *pro forma* financial condition of Holdings and its Subsidiaries as at such date and the consolidated *pro forma* results of operations of Holdings and its Subsidiaries for the period ended on such date, in each case giving effect to the Transaction, all in accordance with GAAP.

(d) The consolidated forecasted balance sheets, statements of income and cash flows of Holdings and its Subsidiaries delivered pursuant to Section 4.01 or Section 6.01(c) were prepared in good faith on the basis of the assumptions stated therein, which assumptions were believed by Holdings to be reasonable in light of the conditions existing at the time of delivery of such forecasts, and represented, at the time of delivery, the Borrowers' best estimate of its future financial condition and performance.

**5.06** ***Litigation.*** There are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of the Borrowers after due and diligent investigation, threatened, or contemplated

at law, in equity, in arbitration or before any Governmental Authority, by or against Holdings or any of its Subsidiaries or against any of their properties or revenues that (a) purport to affect or pertain to this Agreement or any other Loan Document, or (b) except as specifically disclosed in Schedule 5.06, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

**5.07** *No Default.* Neither any Loan Party nor any Subsidiary thereof is in default under or with respect to, or a party to, any Contractual Obligation that could, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. No Default has occurred and is continuing or would result from the consummation of the transactions contemplated by this Agreement or any other Loan Document.

**5.08** *Ownership of Property.* Each Loan Party and each of its Subsidiaries has good record and marketable title in fee simple to, or valid leasehold interests in, all real property necessary or used in the ordinary conduct of its business, except for such defects in title as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Schedule 5.08 sets forth as of the date hereof (a) all real property owned by each Loan Party and each of its Subsidiaries, showing as of the date hereof the street address, county or other relevant jurisdiction, state, record owner and book value thereof and (b) all leases of real property under which any Loan Party or any Subsidiary is the lessee, showing as of the date hereof the street address, county or other relevant jurisdiction, state, lessor, lessee, expiration date and annual rental cost thereof.

**5.09** *Environmental Compliance.*

Except as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect:

(a) Except as otherwise specifically disclosed in Part A of Schedule 5.09, the Loan Parties and their respective Subsidiaries conduct in the ordinary course of business a review of the effect of existing Environmental Laws and no claims alleging potential liability or responsibility for violation of any Environmental Law on their respective businesses, operations and properties of any Loan Party or their respective Subsidiaries are pending or threatened.

(b) Except as otherwise set forth in Part B of Schedule 5.09, (i) none of the properties currently or formerly owned or operated by any Loan Party or any of its Subsidiaries is listed or formally proposed for listing on the NPL or on the CERCLIS or any analogous foreign, state or local list or is adjacent to any such property; (ii) there are no and to the best knowledge of the Loan Parties and their Subsidiaries never have been any underground or above-ground storage tanks or any surface impoundments, septic tanks, pits, sumps or lagoons in which Hazardous Materials are being or have been treated, stored or disposed on any property currently owned or operated by any Loan Party or any of its Subsidiaries or, to the best of the knowledge of the Loan Parties, on any property formerly owned or operated by any Loan Party or any of its Subsidiaries; (iii) there is no asbestos or asbestos-containing material on, at or in any property currently owned or operated by any Loan Party or any of its Subsidiaries; and (iv) Hazardous Materials have not been Released on, at, under or from any property currently or formerly owned or operated by any Loan Party or any of its Subsidiaries.

(c) Except as otherwise set forth on Part C of Schedule 5.09, (i) neither any Loan Party nor any of its Subsidiaries is undertaking, and has not completed, either individually or together with other potentially responsible parties, any investigation or assessment or remedial or response action relating to any actual or threatened Release of Hazardous Materials at, on, under, or from any site, location or operation, either voluntarily or pursuant to the order of any Governmental Authority or the requirements of any Environmental Law; and (ii) all Hazardous Materials generated, used, treated, handled or stored at, or transported to or from, any property currently or formerly owned or operated by any Loan Party or any of its Subsidiaries have been disposed of in compliance with all Environmental Laws.

(d) Except as otherwise set forth on Part D of Schedule 5.09(d), the Loan Parties and their respective Subsidiaries: (i) are, and within the period of all applicable statutes of limitation have been, in compliance with all applicable Environmental Laws; (ii) hold all Environmental Permits (each of which is in full force and effect) required for any of their current or intended operations or for any property owned, leased, or otherwise operated by any of them; (iii) are, and within the period of all applicable statutes of limitation have been, in compliance with all of their Environmental Permits; and (iv) to the extent within the control of the Loan Parties and their respective Subsidiaries, each of their Environmental Permits will be timely renewed and complied with, any additional Environmental permits that may be required of any of them will be timely obtained and complied with, without material expense, and compliance with any Environmental Law that is or is expected to become applicable to any of them will be timely attained and maintained, without material expense.

**5.10 Insurance.** The properties of Holdings and its Subsidiaries are insured with financially sound and reputable insurance companies not Affiliates of the Borrowers, in such amounts, with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where each Borrower or the applicable Subsidiary operates.

**5.11 Taxes.** The Loan Parties and each of their Subsidiaries have timely filed all income and other material tax returns and reports required to be filed, and have timely paid all income and other material Taxes (whether or not shown on a tax return), including in its capacity as a withholding agent, levied or imposed upon it or its properties, income or assets otherwise due and payable, except those which are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves have been provided in accordance with GAAP. As of the date hereof, there is no proposed material tax assessment or other claim against, and no material tax audit with respect to, Holdings or any Subsidiary. Neither any Loan Party nor any Subsidiary thereof is party to any tax sharing agreement (other than an agreement entered into in the ordinary course of business the primary purpose of which does not relate to Taxes) with any Person other than a Loan Party.

**5.12 ERISA Compliance.** Except where such failure could not reasonably be expected to have a Material Adverse Effect:

(a) Each Plan is in compliance in all material respects with the applicable provisions of ERISA, the Code and other Federal or state Laws. Each Pension Plan that is intended to be a qualified plan under Section 401(a) of the Code has received a favorable determination letter from

the Internal Revenue Service to the effect that the form of such Plan is qualified under Section 401(a) of the Code and the trust related thereto has been determined by the Internal Revenue Service to be exempt from federal income tax under Section 501(a) of the Code, or an application for such a letter is currently being processed by the Internal Revenue Service. To the best knowledge of the Borrowers, nothing has occurred that would prevent or cause the loss of such tax-qualified status.

(b) There are no pending or, to the best knowledge of the Borrowers, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan that could 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 could reasonably be expected to result in a Material Adverse Effect.

(c) (i) No ERISA Event has occurred, and neither any Borrower nor any ERISA Affiliate is aware of any fact, event or circumstance that could reasonably be expected to constitute or result in an ERISA Event with respect to any Pension Plan or Multiemployer Plan; (ii) as of the most recent valuation date for any Pension Plan, the funding target attainment percentage (as defined in Section 430(d)(2) of the Code) is 60% or higher and neither any Borrower nor any ERISA Affiliate knows of any facts or circumstances that could reasonably be expected to cause the funding target attainment percentage for any such plan to drop below 60% as of the most recent valuation date; (iii) neither any Borrower nor any ERISA Affiliate has incurred any liability to the PBGC other than for the payment of premiums, and there are no premium payments which have become due that are unpaid; (iv) neither any Borrower nor any ERISA Affiliate has engaged in a transaction that could be subject to Section 4069 or Section 4212(c) of ERISA; and (v) no Pension Plan has been terminated by the plan administrator thereof nor by the PBGC, and no event or circumstance has occurred or exists that could reasonably be expected to cause the PBGC to institute proceedings under Title IV of ERISA to terminate any Pension Plan.

(d) Neither any Borrower nor any ERISA Affiliate maintains or contributes to, or has any unsatisfied obligation to contribute to, or liability under, any active or terminated Pension Plan other than (A) on the Restatement Date, those listed on Schedule 5.12(d) hereto and (B) thereafter, Pension Plans not otherwise prohibited by this Agreement.

(e) With respect to each scheme or arrangement mandated by a government other than the United States (a “Foreign Government Scheme or Arrangement”) and with respect to each employee benefit plan maintained or contributed to by any Loan Party or any Subsidiary of any Loan Party that is not subject to United States law (a “Foreign Plan”):

(i) any employer and employee contributions required by law or by the terms of any Foreign Government Scheme or Arrangement or any Foreign Plan have been made, or, if applicable, accrued, in accordance with normal accounting practices;

(ii) the fair market value of the assets of each funded Foreign Plan, the liability of each insurer for any Foreign Plan funded through insurance or the book reserve established for any Foreign Plan, together with any accrued contributions, is sufficient to procure or provide for the accrued benefit obligations, as of the date hereof, with respect to all current and former participants in such Foreign Plan according to the actuarial

assumptions and valuations most recently used to account for such obligations in accordance with applicable generally accepted accounting principles; and

(iii) each Foreign Plan required to be registered has been registered and has been maintained in good standing with applicable regulatory authorities.

(f) As of the Restatement Date and throughout the term of this Agreement, each Loan Party is not (i) an employee benefit plan subject to ERISA, (ii) a plan or account subject to Section 4975 of the Code, (iii) an entity deemed to hold “plan assets” of any such plans or accounts for purposes of ERISA or the Code; or (iv) a “governmental plan” within the meaning of ERISA.

**5.13 *Subsidiaries; Equity Interests; Loan Parties.*** As of the Restatement Date, no Loan Party has any Subsidiaries other than those specifically disclosed in Part (a) of Schedule 5.13, and all of the outstanding Equity Interests in such Subsidiaries have been validly issued, are fully paid and non-assessable and are owned by a Loan Party in the amounts specified on Part (a) of Schedule 5.13 free and clear of all Liens except Permitted Liens. All of the outstanding Equity Interests in the Borrowers have been validly issued, are fully paid and non-assessable and are owned by the Persons and in the amounts specified on Part (b) of Schedule 5.13 free and clear of all Liens except Permitted Liens. As of the Restatement Date, set forth on Part (c) of Schedule 5.13 is a complete and accurate list of all Loan Parties, showing as of the Restatement Date (as to each Loan Party) the jurisdiction of its incorporation, the address of its principal place of business and its U.S. taxpayer identification number or, in the case of any non-U.S. Loan Party that does not have a U.S. taxpayer identification number, its unique identification number issued to it by the jurisdiction of its incorporation.

**5.14 *Margin Regulations; Investment Company Act.*** (a) The Loan Parties are not engaged and will not engage, principally or as one (1) of their important activities, in the business of purchasing or carrying margin stock (within the meaning of Regulation U issued by the FRB), or extending credit for the purpose of purchasing or carrying margin stock.

(a) None of Holdings or any Subsidiary is or is required to be registered as an “investment company” under the Investment Company Act of 1940.

**5.15 *Disclosure.*** The Loan Parties have disclosed to the Administrative Agent and the Lenders all agreements, instruments and corporate or other restrictions to which it or any of its Subsidiaries is subject, and all other matters known to it, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. The reports, financial statement, certificates and other written information (other than projections, estimates and other forward-looking statements and general economic and industry information) furnished by or on behalf of any Loan Party to the Administrative Agent or any Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or under any other Loan Document, when taken as a whole, at the Restatement Date (in the case of all previously delivered information) or at the time furnished (in the case of all other reports, financial statements, certificates or other information), contains any material misstatement of fact or omitted to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not materially misleading; provided that, with respect to projected financial information, the Borrowers represent that such information was prepared in

good faith based upon assumptions believed to be reasonable at the time of preparation; it being understood that such projections are not to be viewed as facts or as a guarantee of performance or achievement of any particular results and that actual results may vary from actual results and that such variances may be material and that no assurance can be given that the projected results will be realized.

**5.16** *Compliance with Laws.* Each Loan Party and each Subsidiary thereof is in compliance in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its properties, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted or (b) the failure to comply therewith, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

**5.17** *Intellectual Property; Licenses, Etc.* Except to the extent such failure could not reasonably be expected to have a Material Adverse Effect, each Loan Party and each of its Subsidiaries own, or possess the right to use, all of the trademarks, service marks, trade names, copyrights, patents, patent rights, franchises, licenses and other intellectual property rights (collectively, “IP Rights”) that are reasonably necessary for the operation of their respective businesses (which IP Rights are set forth on Schedule 5.17), to the best knowledge of the Borrowers without conflict with the rights of any other Person. To the best knowledge of the Borrowers, no slogan or other advertising device, product, process, method, substance, part or other material now employed by any Loan Party or any of its Subsidiaries infringes upon any rights held by any other Person, except where such infringement could not reasonably be expected to have a Material Adverse Effect. Except as specifically disclosed in Schedule 5.17, no claim or litigation regarding any of the foregoing is pending or, to the best knowledge of the Borrowers, threatened in writing, which, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

**5.18** *Solvency.* The Loan Parties and their Subsidiaries are, on a consolidated basis, Solvent.

**5.19** *Casualty, Etc.* Neither the businesses nor the properties of any Loan Party or any of its Subsidiaries are affected by any fire, explosion, accident, strike, lockout or other labor dispute, drought, storm, hail, earthquake, embargo, act of God or of the public enemy or other casualty (whether or not covered by insurance), condemnation or eminent domain proceeding that, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

**5.20** *Labor Matters.* There are no collective bargaining agreements or Multiemployer Plans covering the employees of any of Holdings or any Subsidiaries as of the Restatement Date and none of the Borrowers nor any Subsidiary has suffered any strikes, walkouts, work stoppages or other material labor difficulty within the last five (5) years.

**5.21** *Works Council.* No works council (*ondernemingsraad*) has been established or is in the process of being established with respect to the business of Holdings.

**5.22** *OFAC; Sanction Concerns.* Neither the Loan Parties, nor any of their Subsidiaries, nor, to the Loan Parties' knowledge, any director, officer or employee thereof, is an individual or entity that is, or is owned or controlled by any individual or entity that is (i) the subject or target of any Sanctions, (ii) included on the then-current OFAC's List of Specially Designated Nationals, HMT's Consolidated List of Financial Sanctions Targets and the Investment Ban List, or any similar list enforced by any other relevant sanctions authority or (iii) located, organized or resident in a Designated Jurisdiction.

**5.23** *Anti-Corruption Laws.* The Loan Parties and their Subsidiaries have conducted their business in compliance with the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010 and other similar anti-corruption legislation in other jurisdictions, in each case to the extent applicable, and have instituted and maintained policies and procedures designed to promote and achieve compliance in all material respects with such laws.

**5.24** *Affected Financial Institution.* No Loan Party is an Affected Financial Institution.

**5.25** *Beneficial Ownership.* As of the Restatement Date and as of the effective date of any Incremental Commitments pursuant to Section 2.15, if any, the information included in the Beneficial Ownership Certification is true and correct in all respects.

**5.26** *Covered Entities.* No Loan Party is a Covered Entity.

## ARTICLE VI AFFIRMATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation hereunder shall remain unpaid or unsatisfied (other than unasserted contingent indemnity and reimbursement obligations and obligations under Secured Cash Management Agreement and Secured Hedging Agreements), or any Letter of Credit shall remain outstanding (other than Letters of Credit that have been Cash Collateralized), the Borrowers shall, and shall (except in the case of the covenants set forth in Sections 6.01, 6.02, 6.03 and 6.11) cause each Subsidiary to:

**6.01** *Financial Statements.* Deliver to the Administrative Agent (for itself and each Lender):

(a) within one hundred twenty (120) days after the end of each fiscal year of Holdings (commencing with the fiscal year ending December 31, 2021), a consolidated and consolidating balance sheet of Holdings and its Subsidiaries as at the end of such fiscal year, and the related consolidated and consolidating statements of income or operations, changes in shareholders' equity, and cash flows for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail and prepared in accordance with GAAP, such consolidated statements to be audited and accompanied by a report and opinion of an independent certified public accountant of nationally recognized standing or otherwise reasonably acceptable to the Administrative Agent, which report and opinion shall be prepared in accordance with generally accepted auditing standards and shall not be subject to any "going concern" or like qualification or exception or any qualification or exception (except as the result of the impending maturity of any of the Obligations) as to the scope of such audit, and such consolidating statements to be certified by the chief executive officer, chief financial officer, treasurer or controller of

Holdings to the effect that such statements are fairly stated in all material respects when considered in relation to the consolidated financial statements of Holdings and its Subsidiaries.

(b) within forty-five (45) days after the end of each of the first three (3) fiscal quarters of each fiscal year of Holdings (commencing with the fiscal quarter ending September 30, 2021), a consolidated and consolidating balance sheet of Holdings and its Subsidiaries as at the end of such fiscal quarter, and the related consolidated and consolidating statements of income or operations and cash flows for such fiscal quarter and for the portion of Holdings' fiscal year then ended, setting forth in each case in comparative form the figures for the corresponding fiscal quarter of the previous fiscal year and the corresponding portion of the previous fiscal year, all in reasonable detail, such consolidated statements to be certified by the chief executive officer, chief financial officer, treasurer or controller of Holdings as fairly presenting in all material respects the financial condition, results of operations, and cash flows of Holdings and its Subsidiaries in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes and such consolidating statements to be certified by the chief executive officer, chief financial officer, treasurer or controller of Holdings to the effect that such statements are fairly stated in all material respects when considered in relation to the consolidated financial statements of Holdings and its Subsidiaries; and

(c) as soon as reasonably available but in any event within sixty (60) days after the end of each fiscal year of Holdings, an annual business plan and budget of Holdings and its Subsidiaries on a consolidated basis, including forecasts prepared by management of the Borrowers, in form reasonably satisfactory to the Administrative Agent, of consolidated balance sheets and statements of income or operations and cash flows of Holdings and its Subsidiaries on a quarterly basis for the immediately following fiscal year (including the fiscal year in which the Maturity Date for the Term A Facility occurs).

As to any information contained in materials furnished pursuant to Section 6.02(d), the Borrowers shall not be separately required to furnish such information under Section 6.01(a) or (b) above, but the foregoing shall not be in derogation of the obligation of the Borrowers to furnish the information and materials described in Sections 6.01(a) and (b) above at the times specified therein. The obligations in Sections 6.01(a), (b) and (c) above may be satisfied by furnishing the applicable financial statements of Parent and its Subsidiaries, so long as, in each case, such information is accompanied by unaudited consolidating information, in form and substance reasonably acceptable to the Administrative Agent, that explains in reasonable detail the differences between the information relating to Parent and its consolidated Subsidiaries, on the one hand, and the information relating to Holdings and its consolidated Subsidiaries on a standalone basis, on the other hand. In addition, to the extent that, (x) for any four fiscal quarter period ending as of the last day of (i) any fiscal year for which financial statements are required to be delivered pursuant to Section 6.01(a) or (ii) any fiscal quarter for which financial statements are required to be delivered pursuant to Section 6.01(b), any direct or indirect parent of Holdings that is a Subsidiary of Parent directly generates in excess of 10% of the sales of Parent and its Subsidiaries on a consolidated basis or (y) as of the last day of (i) any fiscal year for which financial statements are required to be delivered pursuant to Section 6.01(a) or (ii) any fiscal quarter for which financial statements are required to be delivered pursuant to Section 6.01(b), any direct or indirect parent of Holdings that is a Subsidiary of Parent directly holds in excess of 10% of the total assets of Parent and its Subsidiaries on a consolidated basis, the foregoing reports shall also



be accompanied by unaudited consolidating information, in form and substance reasonably acceptable to the Administrative Agent, that presents, in reasonable detail, the consolidating results of such parent company.

**6.02 Certificates; Other Information.** Deliver to the Administrative Agent and each Lender:

(a) promptly following any request therefor, information and documentation reasonably requested by the Administrative Agent or any Lender for purposes of compliance with applicable “know your customer” requirements under the PATRIOT Act, the Beneficial Ownership Regulation or other applicable anti-money laundering laws;

(b) concurrently with the delivery of the financial statements referred to in Sections 6.01(a) and (b) (i) a duly completed Compliance Certificate signed by the chief executive officer, chief financial officer, treasurer or controller of Holdings (which delivery may, unless the Administrative Agent, or a Lender requests executed originals, be by electronic communication including fax or email and shall be deemed to be an original authentic counterpart thereof for all purposes); and (ii) a copy of management’s discussion and analysis with respect to such financial statements;

(c) promptly after any request by the Administrative Agent or any Lender, copies of any detailed audit reports, final management letters or recommendations submitted to the board of directors (or the audit committee of the board of directors) of any Loan Party by independent accountants in connection with the accounts or books of any Loan Party or any of its Subsidiaries, or any audit of any of them;

(d) promptly after the same are available, copies of all annual, regular, periodic and special reports and registration statements which the Borrowers may file or be required to file with the SEC under Section 13 or 15(d) of the Securities Exchange Act of 1934, or with any national securities exchange, and in any case not otherwise required to be delivered to the Administrative Agent pursuant hereto;

(e) [Intentionally Omitted];

(f) concurrently with the delivery of the financial statements referred to in Section 6.01(a), a report summarizing the insurance coverage (specifying type, amount and carrier) in effect for each Loan Party and its Subsidiaries and containing such additional information as the Administrative Agent, or any Lender through the Administrative Agent, may reasonably specify;

(g) promptly, and in any event within five (5) Business Days after receipt thereof by any Loan Party or any Subsidiary thereof, copies of each notice or other correspondence received from the SEC (or comparable agency in any applicable non-U.S. jurisdiction) concerning any investigation or possible investigation or other inquiry by such agency regarding financial or other operational results of any Loan Party or any Subsidiary thereof;

(h) [Intentionally Omitted];

(i) promptly after the assertion or occurrence thereof, notice of any action or proceeding against or of any noncompliance by any Loan Party or any of its Subsidiaries with any Environmental Law or Environmental Permit that could reasonably be expected to have a Material Adverse Effect;

(j) concurrently with the delivery of the financial statements pursuant to Section 6.01(a), (i) a report supplementing Schedule 5.08, including an identification of all owned and leased real property disposed of by any Loan Party or any Subsidiary thereof during such fiscal year, a list and description (including the street address, county or other relevant jurisdiction, state, record owner, book value thereof and, in the case of leases of property, lessor, lessee, expiration date and annual rental cost thereof) of all real property acquired or leased during such fiscal year and a description of such other changes in the information included in such Schedules as may be necessary for such Schedules to be accurate and complete; (ii) a report supplementing Schedule 5.17, setting forth (A) a list of registration numbers for all patents, trademarks, service marks, trade names and copyrights awarded to any Loan Party or any Subsidiary thereof during such fiscal year and (B) a list of all patent applications, trademark applications, service mark applications, trade name applications and copyright applications submitted by any Loan Party or any Subsidiary thereof during such fiscal year and the status of each such application; and (iii) a report supplementing Schedule 5.13 containing a description of all changes in the information included in such Schedules as may be necessary for such Schedules to be accurate and complete, each such report to be signed by a Responsible Officer of each of the Borrowers and to be in a form reasonably satisfactory to the Administrative Agent; and

(k) promptly, such additional information regarding the business, financial, legal or corporate affairs of any Loan Party or any Subsidiary thereof, or compliance with the terms of the Loan Documents, as the Administrative Agent or any Lender may from time to time reasonably request (provided that no Loan Party shall be required to disclose any information if such disclosure would breach any confidentiality obligation of such Loan Party or any of its Subsidiaries or result in the waiver of attorney-client privilege).

Documents required to be delivered pursuant to Section 6.01(a) or (b) or Section 6.02(d) (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 Borrowers post such documents, or provides a link thereto on the Borrowers' website on the Internet at the website address listed on Schedule 11.02; or (ii) on which such documents are posted on the Borrowers' 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 or whether sponsored by the Administrative Agent); provided that: (i) the Borrowers shall deliver paper copies of such documents to the Administrative Agent or any Lender upon its request to the Borrowers to deliver such paper copies until a written request to cease delivering paper copies is given by the Administrative Agent or such Lender and (ii) the Borrowers shall notify the Administrative Agent and each Lender (by telecopier or electronic mail) of the posting of any such documents and provide to the Administrative Agent by electronic mail electronic versions (i.e., soft copies) of such documents. The Administrative Agent shall have no obligation to request the delivery of or to maintain paper copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Borrowers with any such request by a Lender

for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

The Borrowers hereby acknowledge that (a) the Administrative Agent and/or the Arrangers will make available to the Lenders and the L/C Issuer materials and/or information provided by or on behalf of the Borrowers hereunder (collectively, “Borrower Materials”) by posting the Borrower Materials on IntraLinks, Syndtrak, ClearPar, or a substantially similar electronic transmission system (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 Borrowers 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 Borrowers hereby agree that they 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 Borrowers shall be deemed to have authorized the Administrative Agent, the Arrangers, the L/C Issuer 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 Borrowers or its securities for purposes of United States Federal and state securities Laws (provided, however, that to the extent such Borrower Materials constitute Information, they shall be treated as set forth in Section 11.07); (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 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.”

**6.03** *Notices.* Promptly notify the Administrative Agent and each Lender upon a Responsible Officer obtaining knowledge thereof:

- (a) of the occurrence of any Default;
- (b) of any matter that has resulted or could reasonably be expected to result in a Material Adverse Effect;
- (c) of any occurrence of, or change in, any dispute, litigation, proceeding or suspension that could reasonably be expected to result in an Event of Default;
- (d) of the occurrence of any ERISA Event;
- (e) of any material change in accounting policies or financial reporting practices by any Loan Party or any Subsidiary thereof; and
- (f) of the (i) occurrence of any Disposition of property or assets for which the Borrowers are required to make a mandatory prepayment pursuant to Section 2.05(b)(ii), (ii) incurrence or issuance of any Indebtedness for which the Borrowers are required to make a mandatory prepayment pursuant to Section 2.05(b)(iv), and (iii) receipt of any Casualty/Condemnation Receipt for which the Borrowers are required to make a mandatory prepayment pursuant to Section 2.05(b)(v).

Each notice pursuant to Section 6.03 (other than Section 6.03(e)) shall be accompanied by a statement of a Responsible Officer of each of the Borrowers setting forth details of the occurrence referred to therein and stating what action the Borrowers have taken and propose to take with respect thereto. Each notice pursuant to Section 6.03(a) shall describe with particularity any and all provisions of this Agreement and any other Loan Document that have been breached.

**6.04** *Payment of Tax Obligations.* (a) Pay and discharge as the same shall become due and payable, all material Tax liabilities, assessments and governmental charges or levies upon it or its properties or assets, unless the same are being contested in good faith by appropriate proceedings diligently conducted (which proceedings have the effect of preventing the forfeiture or sale of the property or assets subject to any such Lien) and adequate reserves in accordance with GAAP are being maintained by the Borrowers or such Subsidiary or the same could not reasonably be expected to have a Material Adverse Effect; and (b) timely file all material tax returns required to be filed.

**6.05** *Preservation of Existence, Etc.* (a) Preserve, renew and maintain in full force and effect its legal existence and good standing under the Laws of the jurisdiction of its organization or incorporation except in a transaction permitted by Section 7.04 or 7.05; (b) take all reasonable action to maintain all rights, privileges, permits, licenses and franchises necessary or desirable in the normal conduct of its business, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect; and (c) preserve or renew all of its registered patents, trademarks, trade names and service marks, the non-preservation of which could reasonably be expected to have a Material Adverse Effect.

**6.06** *Maintenance of Properties.* (a) Maintain, preserve and protect all of its material properties and equipment necessary in the operation of its business in good working order and condition, ordinary wear and tear, casualty and condemnation excepted; (b) make all necessary repairs thereto and renewals and replacements thereof except where the failure to do so could not reasonably be expected to have a Material Adverse Effect; and (c) use the standard of care typical in the industry in the operation and maintenance of its facilities.

**6.07** *Maintenance of Insurance.* Maintain with financially sound and reputable insurance companies not Affiliates of the Borrowers, insurance with respect to its properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business, of such types and in such amounts as are customarily carried under similar circumstances by such other Persons, including, without limitation, (i) terrorism insurance and (ii) flood hazard insurance on all Mortgaged Properties that are Flood Hazard Properties, on such terms and in such amounts as required by the National Flood Insurance Reform Act of 1994 or as otherwise required by the Administrative Agent, and all such insurance shall, subject to Section 6.24 (a) provide for not less than thirty (30) days' prior notice (or ten (10) days' in the case of non-payment) to the Administrative Agent of termination, lapse or cancellation of such insurance unless such insurer has internal policies against providing such notice, (b) name the Administrative Agent as mortgagee (in the case of property insurance) or additional insured on behalf of the Secured Parties (in the case of liability insurance) or loss payee (in the case of property insurance), as applicable and (c) be reasonably satisfactory in all other respects to the Administrative Agent.

**6.08 Compliance with Laws.** Comply in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its business or property, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted; or (b) the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect.

**6.09 Books and Records.** (a) Maintain proper books of record and account, in which full, true and correct entries in conformity with GAAP consistently applied shall be made of all financial transactions and matters involving the assets and business of such Borrower or such Subsidiary, as the case may be; and (b) maintain such books of record and account in material conformity with all applicable requirements of any Governmental Authority having regulatory jurisdiction over such Borrower or such Subsidiary, as the case may be.

**6.10 Inspection Rights.** Permit representatives and independent contractors of the Administrative Agent to visit and inspect any of its properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its directors, officers, and independent public accountants, all at the expense of the Borrowers and at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to the Borrowers; provided, however, that when an Event of Default exists the Administrative Agent (or any of their respective representatives or independent contractors) may do any of the foregoing at the expense of the Borrowers at any time during normal business hours and without advance notice; provided further that unless an Event of Default has occurred and is continuing, only one (1) such visit per fiscal year shall be at the Borrowers' expense; provided that the Lenders may at their sole cost and expense accompany the Administrative Agent on any visit or inspection.

**6.11 Use of Proceeds.** Use the proceeds of the Credit Extensions (i) on the Restatement Date to refinance the Existing Credit Agreement and to pay fees and expenses in connection therewith and (ii) thereafter, for permitted Investments and general corporate purposes not in contravention of any Law or of any Loan Document.

**6.12 Covenant to Guarantee Obligations and Give Security.** (a) Upon the formation or acquisition or other designation of any new direct or indirect Material Subsidiary by any Loan Party, then the Borrowers shall, at the Borrowers' expense:

(i) within the Collateral Delivery Period after such formation or acquisition (or such later date as the Administrative Agent may agree) or designation, cause such Material Subsidiary, and cause each direct and indirect parent of such Material Subsidiary that is a Loan Party (if it has not already done so), to duly execute and deliver to the Administrative Agent a guaranty or guaranty supplement, in form and substance reasonably satisfactory to the Administrative Agent and such Material Subsidiary, guaranteeing the other Loan Parties' obligations under the Loan Documents,

(ii) within the Collateral Delivery Period after such formation or acquisition or designation (or such later date as the Administrative Agent may agree), furnish to the Administrative Agent a description of the real and personal properties of such Material Subsidiary, in detail satisfactory to the Administrative Agent,

(iii) within the Collateral Delivery Period after such formation or acquisition or designation (or such later date as the Administrative Agent may agree), cause such Material Subsidiary and each direct and indirect parent of such Material Subsidiary that is a Loan Party (if it has not already done so) to duly execute and deliver to the Administrative Agent deeds of trust, trust deeds, deeds to secure debt, mortgages, leasehold mortgages, leasehold deeds of trust, Security Agreement Supplements, Perfection Certificate, IP Security Agreements and other security and pledge agreements, as specified by and in form and substance reasonably satisfactory to the Administrative Agent (including delivery of all certificates, if any, representing the Equity Interests in and of such Subsidiary, and other instruments of the type specified in Section 4.01(a)(iii)), securing payment of all the Obligations of such Material Subsidiary or such parent, as the case may be, under the Loan Documents and constituting Liens on all such real and personal properties constituting Collateral (other, for the avoidance of doubt, real property that does not constitute Material Real Property or Excluded Assets),

(iv) within the Collateral Delivery Period after such formation or acquisition or designation (or such later date as the Administrative Agent may agree), cause such Material Subsidiary and each direct and indirect parent of such Material Subsidiary that is a Loan Party (if it has not already done so) to take whatever action (including the recording of mortgages, the filing of UCC financing statements, the giving of notices and the endorsement of notices on title documents) may be necessary or advisable in the opinion of the Administrative Agent to vest in the Administrative Agent (or in any representative of the Administrative Agent designated by it) valid and subsisting Liens on the properties purported to be subject to the deeds of trust, trust deeds, deeds to secure debt, mortgages, leasehold mortgages, leasehold deeds of trust, Security Agreement Supplements, IP Security Agreements and security and pledge agreements delivered pursuant to this Section 6.12, enforceable against all third parties in accordance with their terms,

(v) within sixty (60) days after such formation or acquisition or designation (or such later date as the Administrative Agent may agree), deliver to the Administrative Agent, upon the request of the Administrative Agent in its sole discretion at least fifteen (15) days prior thereto, a signed copy of a favorable opinion, addressed to the Administrative Agent and the other Secured Parties, of counsel for the Loan Parties reasonably acceptable to the Administrative Agent as to the matters contained in clauses (i), (iii) and (iv) above, and as to such other matters as the Administrative Agent may reasonably request; provided that the Administrative Agent shall not require counsel for the Loan Parties to provide a legal opinion in any jurisdiction where it is uncustomary to do so, and

(vi) as promptly as practicable after such formation or acquisition or designation, deliver, upon the request of the Administrative Agent in its sole discretion, to the Administrative Agent with respect to each parcel of Material Real Property located in the United States and owned by the entity that is the subject of such formation or acquisition title policies, surveys and engineering, soils and other reports, and existing environmental assessment reports and flood certification documents, each in scope, form and substance reasonably satisfactory to the Administrative Agent, provided, however, that to the extent that any Loan Party or any of its Subsidiaries shall have otherwise received any of the

foregoing items with respect to such Material Real Property, such items shall, promptly after the receipt thereof, be delivered to the Administrative Agent.

(b) Upon the acquisition of any property by any Loan Party, if such property shall not already be subject to a perfected first priority security interest in favor of the Administrative Agent for the benefit of the Secured Parties (subject to Permitted Liens and agreed carve-outs), then the Borrowers shall, at the Borrowers' expense:

(i) within the Collateral Delivery Period after such acquisition (or such later date as the Administrative Agent may agree), furnish to the Administrative Agent a description of the property so acquired in detail satisfactory to the Administrative Agent,

(ii) within the Collateral Delivery Period after such acquisition (or such later date as the Administrative Agent may agree), cause the applicable Loan Party to duly execute and deliver to the Administrative Agent deeds of trust, trust deeds, deeds to secure debt, mortgages, leasehold mortgages, leasehold deeds of trust, Security Agreement Supplements, IP Security Agreement supplements and other security and pledge agreements (including instruments of the type specified in Section 4.01(a)(iii)), as specified by and in form and substance reasonably satisfactory to the Administrative Agent, securing payment of all the Obligations of the applicable Loan Party under the Loan Documents and constituting Liens on all such properties constituting Collateral (other, for the avoidance of doubt, real property that does not constitute Material Real Property or Excluded Assets),

(iii) within the Collateral Delivery Period after such acquisition (or such later date as the Administrative Agent may agree), cause the applicable Loan Party to take whatever action (including the recording of mortgages, the filing of UCC financing statements, the giving of notices and the endorsement of notices on title documents) may be necessary or advisable in the opinion of the Administrative Agent to vest in the Administrative Agent (or in any representative of the Administrative Agent designated by it) valid and subsisting Liens on such property, enforceable against all third parties,

(iv) within sixty (60) days after such acquisition (or such later date as the Administrative Agent may agree), deliver to the Administrative Agent, upon the request of the Administrative Agent in its sole discretion, a signed copy of a favorable opinion, addressed to the Administrative Agent and the other Secured Parties, of counsel for the Loan Parties reasonably acceptable to the Administrative Agent as to the matters contained in clauses (ii) and (iii) above and as to such other matters as the Administrative Agent may reasonably request; provided that the Administrative Agent shall not require counsel for the Loan Parties to provide a legal opinion in any jurisdiction where it is uncustomary to do so, and

(v) as promptly as practicable after any acquisition of a real property, deliver, upon the request of the Administrative Agent in its sole discretion, to the Administrative Agent with respect to such real property title reports, surveys and engineering, soils and other reports, and existing environmental assessment reports and flood certification documents, each in scope, form and substance reasonably satisfactory to the Administrative Agent, provided, however, that to the extent that any Loan Party or any of its Subsidiaries

shall have otherwise received any of the foregoing items with respect to such real property, such items shall, promptly after the receipt thereof, be delivered to the Administrative Agent,

(c) At any time upon request of the Administrative Agent, promptly execute and deliver any and all further instruments and documents and take all such other action (including promptly completing any registration or stamping of documents as may be applicable) as the Administrative Agent may deem necessary or desirable in obtaining the full benefits of, or (as applicable) in perfecting and preserving the Liens of, such guaranties, deeds of trust, trust deeds, deeds to secure debt, mortgages, Security Agreement Supplements, IP Security Agreements and other security and pledge agreements.

(d) Notwithstanding the foregoing or anything else herein to the contrary, (i) if the Administrative Agent determines in its reasonable discretion that the cost to the Loan Parties of obtaining a security interest in the personal property of a Subsidiary is overly burdensome in relation to the benefit to the Secured Parties of obtaining such security interest, the Administrative Agent may consent to the delivery of a less onerous form of collateral, including but not limited to a pledge of the Equity Interests of such Subsidiary and (ii) no mortgages shall be required on any leasehold interests.

(e) Notwithstanding the foregoing or any Loan Agreement to the contrary, (1) no direct or indirect Subsidiary of any Borrower shall be required to become a Guarantor or grant Liens on its assets if (i) such Subsidiary is prohibited from guaranteeing the Obligations (x) by applicable law, rule regulation or by any contractual obligation (to the extent not created for such purpose) existing on the Restatement Date or (y) by applicable law, rule, regulation or by any contractual obligation (to the extent not created for such purpose) existing at the time of acquisition of such Subsidiary after the Restatement Date, for so long as such prohibition exists or (ii) such Subsidiary which would require governmental or regulatory consent, approval, license or authorization to provide a guarantee, unless such consent, approval, license or authorization has been received; (2) neither a CFC nor a CFC Holdco shall be required to be a Guarantor of any Obligations of a U.S. Loan Party; (3) the security for the Obligations of the U.S. Loan Parties shall include 65% of the voting Equity Interests (and 100% of the non-voting Equity Interests) of each first-tier CFC and each CFC Holdco (and Equity Interests of any CFC or CFC Holdco in excess of the foregoing shall not secure the Obligations); and (4) none of the assets of any CFC or CFC Holdco shall be pledged as security for payment of the Obligations of the U.S. Loan Parties.

(f) Notwithstanding anything contained in this Agreement to the contrary, no Mortgage shall be executed and delivered with respect to any real property unless and until each Lender has received, at least twenty (20) days in advance of execution and delivery, a life of loan flood zone determination and such other documents as it may reasonably request to complete its flood insurance due diligence and has confirmed to the Administrative Agent that flood insurance due diligence and flood insurance compliance has been completed to its satisfaction.

**6.13 Compliance with Environmental Laws.** Except where such failure could not reasonably be expected to result in a Material Adverse Effect: (i) comply, and require and take commercially reasonable steps to cause all lessees and other Persons operating or occupying its properties to comply, in all material respects, with all applicable Environmental Laws and



Environmental Permits; (ii) obtain and renew all Environmental Permits necessary for its operations and properties; and (iii) conduct any investigation, study, sampling and testing, and undertake any cleanup, response or other corrective action necessary to address all Hazardous Materials at, on, under or emanating from any of properties owned, leased or operated by it in accordance with the requirements of all Environmental Laws; provided, however, that neither the Borrowers nor any of its Subsidiaries shall be required to undertake any such cleanup, removal, remedial or other action to the extent that its obligation to do so is being contested in good faith and by proper proceedings and appropriate reserves are being maintained with respect to such circumstances in accordance with GAAP.

**6.14** *[Intentionally Omitted].*

**6.15** *Further Assurances.* Promptly upon request by the Administrative Agent, or any Lender through the Administrative Agent, (a) correct any material defect or error that may be discovered in any Loan Document or in the execution, acknowledgment, filing or recordation thereof, and (b) do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts, deeds, certificates, assurances and other instruments (including promptly completing any registration or stamping of documents as may be applicable) as the Administrative Agent, or any Lender through the Administrative Agent, may reasonably require from time to time in order to (i) carry out more effectively the purposes of the Loan Documents, (ii) to the fullest extent permitted by applicable law, subject any Loan Party's or any of its Subsidiaries' properties, assets, rights or interests to the Liens now or hereafter intended to be covered by any of the Collateral Documents, (iii) subject to the limitations on perfecting and protecting Liens set forth herein and in the other Loan Documents perfect and maintain the validity, effectiveness and priority of any of the Collateral Documents and any of the Liens intended to be created thereunder and (iv) assure, convey, grant, assign, transfer, preserve, protect and confirm more effectively unto the Secured Parties the rights granted or now or hereafter intended to be granted to the Secured Parties under any Loan Document or under any other instrument executed in connection with any Loan Document to which any Loan Party or any of its Subsidiaries is or is to be a party, and cause each of its Subsidiaries to do so.

**6.16** *[Intentionally Omitted].*

**6.17** *[Intentionally Omitted].*

**6.18** *Information Regarding Collateral.* (a) Not effect any change (i) in any Loan Party's legal name, (ii) in the location of any Loan Party's chief executive or registered office, (iii) in any Loan Party's identity or organizational structure, or (iv) in any Loan Party's jurisdiction of organization or incorporation (in each case, including by merging with or into any other entity, reorganizing, dissolving, liquidating, reorganizing or organizing in any other jurisdiction), until (A) it shall have given the Administrative Agent not less than fifteen (15) (or less if acceptable to the Administrative Agent) days' prior written notice (in the form of certificate signed by a Responsible Officer), or such lesser notice period agreed to by the Administrative Agent, of its intention so to do, clearly describing such change and providing such other information in connection therewith as the Administrative Agent may reasonably request and (B) it shall have taken all action reasonably satisfactory to the Administrative Agent to maintain the perfection and priority of the security interest of the Administrative Agent for the benefit of the Secured Parties

in the Collateral, if applicable. Each Loan Party agrees to promptly provide the Administrative Agent with certified Organization Documents reflecting any of the changes described in the preceding sentence.

(a) Concurrently with the delivery of financial statements pursuant to Section 6.01(a), deliver to the Administrative Agent a Perfection Certificate Supplement (except as noted therein with respect to any continuation statements to be filed within such period).

**6.19** *[Intentionally Omitted].*

**6.20** *Cash Collateral Accounts.* Maintain, and cause each of the other Loan Parties (other than Ichor Systems Singapore Pte. Ltd.) to maintain, all Cash Collateral Accounts with Bank of America, but only to the extent that Bank of America agrees to provide such accounts to the Loan Parties.

**6.21** *Deposit Accounts.* No later than one hundred eighty (180) days following the Restatement Date (or such later date as the Administrative Agent may agree), each U.S. Loan Party shall maintain a Lender as such Person's principal domestic depository bank.

**6.22** *Anti-Corruption Laws and Sanctions.* Conduct its business in compliance with the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010 and other applicable anti-corruption legislation and Sanctions, in each case to the extent applicable and (b) implement and maintain in effect policies and procedures designed to ensure compliance in all material respects by Holdings and its Subsidiaries and their respective directors, officers, employees and agents with the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010 and other applicable anti-corruption legislation and Sanctions, in each case to the extent applicable.

**6.23** *Centre of Main Interest and Establishments.* Holdings shall not, without the prior written consent of the Administrative Agent, take any action that shall cause its centre of main interests (as that term is used in Article 3(1) of the Insolvency Regulation) to be situated outside of its jurisdiction of incorporation, or cause it to have an establishment (as that term is used in Article 2(h) of the Insolvency Regulation) situated outside of its jurisdiction of incorporation.

**6.24** *Post-Closing Matters.* Borrowers shall, and shall cause each of their Subsidiaries to, satisfy the requirements set forth on Schedule 6.24 on or before the date thereon specified for such requirement, in each case as such date may be extended by the Administrative Agent in its sole discretion.

## **ARTICLE VII NEGATIVE COVENANTS**

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation hereunder shall remain unpaid or unsatisfied (other than unasserted contingent indemnity and reimbursement obligations and obligations under Secured Cash Management Agreement and Secured Hedging Agreements), or any Letter of Credit shall remain outstanding (other than Letters of Credit that have been Cash Collateralized), the Loan Parties shall not, nor shall it permit any Subsidiary to, directly or indirectly:

**7.01** *Liens.* Create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired, other than the following:

(a) Liens pursuant to any Loan Document;

(b) Liens existing on the date hereof and listed on Schedule 7.01(b) and any renewals or extensions thereof, provided that (i) the property covered thereby is not changed, (ii) the amount secured or benefited thereby is not increased except as contemplated by Section 7.02(d), (iii) the direct or any contingent obligor with respect thereto is not changed, and (iv) any renewal or extension of the obligations secured or benefited thereby is permitted by Section 7.02(d);

(c) Liens for taxes not yet delinquent, Liens in respect of taxes not in excess of \$250,000 at any time outstanding or Liens for taxes which are being contested in good faith and by appropriate proceedings diligently conducted (which proceedings have the effect of preventing the forfeiture or sale of the property or assets subject to any such Lien), if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP;

(d) carriers', warehousemen's, mechanics', materialmen's, repairmen's or other like Liens arising in the ordinary course of business which are not overdue for a period of more than sixty (60) days or which are being contested in good faith and by appropriate proceedings diligently conducted (which proceedings have the effect of preventing the forfeiture or sale of the property or assets subject to any such Lien), if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP;

(e) pledges or deposits in the ordinary course of business in connection with workers' compensation, unemployment insurance and other social security legislation, other than any Lien imposed by ERISA;

(f) deposits to secure the performance of bids, trade contracts and leases (other than Indebtedness), statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business;

(g) easements, rights-of-way, restrictions and other similar encumbrances affecting real property which, in the aggregate, are not substantial in amount, and which do not in any case materially interfere with the ordinary conduct of the business of the applicable Person;

(h) Liens securing judgments for the payment of money not constituting an Event of Default under Section 8.01(h);

(i) Liens securing Indebtedness permitted under Section 7.02(f); provided that (i) such Liens do not at any time encumber any property other than the property financed by such Indebtedness and (ii) the Indebtedness secured thereby does not exceed the cost or fair market value, whichever is lower, of the property being acquired on the date of acquisition;

(j) bankers' Liens, rights of setoff and other similar Liens existing solely with respect to cash and Cash Equivalents on deposit in one (1) or more accounts maintained by Holdings or any of its Subsidiaries with any Lender, in each case in the ordinary course of business in favor of the bank or banks with which such accounts are maintained, securing solely the customary amounts

owing to such bank with respect to cash management and operating account arrangements; provided, that, unless such Liens are under clause 24 and 25 of the general terms and conditions (*algemene voorwaarden*) of the Dutch Banker's Association (*Nederlandse Vereniging van Banken*) or any similar term applied by a Dutch bank, in no case shall any such Liens secure (either directly or indirectly) the repayment of any Indebtedness;

(k) Liens arising out of judgments or awards not resulting in an Event of Default; provided the applicable Loan Party or Subsidiary shall in good faith be prosecuting an appeal or proceedings for review;

(l) Any interest or title of a lessor, sublessor, licensor, sublessor or sublicensor under any lease, license, sublease or sublicense entered into by any Loan Party or any Subsidiary thereof and covering only the assets so leased, licensed, subleased or sublicensed;

(m) Liens of a collection bank arising under Section 4-210 of the UCC on items in the course of collection;

(n) (i) Liens on insurance policies and the proceeds thereof securing the financing of the premiums with respect thereto and (ii) deposits made in the ordinary course of business to secure liability for premiums to insurance carriers;

(o) Liens attaching solely to cash earnest money deposits in connection with any letter of intent or purchase agreement in connection with a Permitted Acquisition or other acquisition of property not otherwise prohibited hereunder;

(p) to the extent constituting a Lien, the filing of UCC (or equivalent) financing statements solely as a precautionary measure in connection with operating leases or consignment of goods;

(q) Liens securing Indebtedness permitted under Section 7.02(1);

(r) other Liens securing Indebtedness outstanding in an aggregate principal amount not to exceed the greater of (i) \$2,000,000 and (ii) 1.5% of TTM Consolidated EBITDA, at any time outstanding;

(s) the replacement, extension or renewal of any Lien permitted by clauses (b) and (i) above upon or in the same property theretofore subject thereto or the replacement, extension or renewal (without increase in the amount or change in any direct or contingent obligor) of the Indebtedness secured thereby;

(t) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods;

(u) Liens arising out of conditional sale, title retention, consignment or similar arrangements for the sale of goods entered into by any Loan Party or Subsidiary in the ordinary course of business in accordance with the past practices of such Person;

(v) (i) non-exclusive licenses of intellectual property or intellectual property rights and (ii) licenses of intellectual property or intellectual property rights that could not result in a legal transfer of title of such intellectual property or intellectual property rights that may be exclusive in respects other than territory and that may be exclusive as to territory only as to discreet geographical areas, in each case granted by any Loan Party or any Subsidiary in the ordinary course of business, and not interfering in any material respect with the ordinary conduct of business of such Person;

(w) Liens granted by a Non-Guarantor Subsidiary in favor of a Borrower or another Loan Party in respect of Indebtedness or other obligations owed by such Subsidiary to such Borrower or such other Loan Party; and

(x) Liens permitted to remain outstanding under any Dutch Collateral Document or Singapore Collateral Document.

**7.02** ***Indebtedness.*** Create, incur, assume or suffer to exist any Indebtedness, except:

(a) obligations (contingent or otherwise) existing or arising under any Swap Contract, provided that (i) such obligations are (or were) entered into by such Person in the ordinary course of business for the purpose of directly mitigating risks associated with fluctuations in interest rates, commodities or foreign exchange rates and (ii) such Swap Contract does not contain any provision exonerating the non-defaulting party from its obligation to make payments on outstanding transactions to the defaulting party;

(b) Indebtedness of a Loan Party or a Subsidiary of a Loan Party owed to another Loan Party or Subsidiary of a Loan Party, which Indebtedness shall (i) in the case of Indebtedness owed to a Loan Party, constitute “Pledged Collateral” under the Security and Pledge Agreement and (ii) be otherwise expressly permitted under the provisions of Section 7.03;

(c) the Obligations;

(d) Indebtedness outstanding on the date hereof and listed on Schedule 7.02 and any refinancings, refundings, renewals or extensions thereof; provided that the amount of such Indebtedness is not increased at the time of such refinancing, refunding, renewal or extension except by an amount equal to a reasonable premium or other reasonable amount paid, and fees and expenses reasonably incurred, in connection with such refinancing and by an amount equal to any existing commitments unutilized thereunder and the direct or any contingent obligor with respect thereto is not changed, as a result of or in connection with such refinancing, refunding, renewal or extension; and provided, still further, that the terms relating to principal amount, amortization, maturity, collateral (if any) and subordination (if any), and other material terms taken as a whole, of any such refinancing, refunding, renewing or extending Indebtedness, and of any agreement entered into and of any instrument issued in connection therewith, are no less favorable in any material respect to the Loan Parties or the Lenders than the terms of any agreement or instrument governing the Indebtedness being refinanced, refunded, renewed or extended and the interest rate applicable to any such refinancing, refunding, renewing or extending Indebtedness does not exceed the then applicable market interest rate as reasonably determined by the Borrowers;

(e) Guarantees of a Loan Party or a Subsidiary of a Loan Party in respect of Indebtedness otherwise permitted hereunder of a Loan Party or a Subsidiary of a Loan Party; provided that guarantees by any Loan Party of the obligations of any Non-Guarantor Subsidiary shall be subject to Section 7.03;

(f) (x) Indebtedness in respect of Capitalized Leases, Synthetic Lease Obligations and purchase money obligations for fixed or capital assets within the limitations set forth in Section 7.01(i); provided, however, that the aggregate amount of all such Indebtedness at any one (1) time outstanding shall not exceed the greater of (i) \$5,000,000 and (ii) 3.5% of TTM Consolidated EBITDA and (y) any Permitted Refinancing thereof;

(g) earn-out obligations arising in connection with a Permitted Acquisition which are payable based on the achievement of specified financial results over time, and which are structured such that, they are not required to be paid if (and for so long as) the Loan Party cannot satisfy any condition contained in Section 7.06(h);

(h) Indebtedness of any Person that becomes a Subsidiary of Holdings after the date hereof in a transaction permitted hereunder in an aggregate principal amount not to exceed the greater of (i) \$3,500,000 and (ii) 2.5% of TTM Consolidated EBITDA at any time outstanding (provided that such Indebtedness is existing at the time such Person becomes a Subsidiary of Holdings and was not incurred solely in contemplation of such Person's becoming a Subsidiary of Holdings) and any Permitted Refinancing thereof;

(i) (i) Indebtedness owed to any depository bank in respect of any netting services or overdraft and related liabilities arising from cash management agreements, in each case in connection with deposit accounts incurred in the ordinary course and (ii) Indebtedness arising from or the honoring by a bank or other financial institution of a check, draft or similar instrument inadvertently (except in the case of daylight over drafts) drawn against insufficient funds in the ordinary course of business;

(j) Indebtedness consisting of the financing of insurance premiums in the ordinary course of business;

(k) Indebtedness consisting of unsecured promissory notes issued by Holdings or any of its Subsidiaries to current or former officers, directors, employees and consultants, their respective estates, heirs, permitted transferees, spouses or former spouses to finance the purchase or redemption of Equity Interests of Holdings or any direct or indirect parent thereof permitted by Section 7.06(g);

(l) Indebtedness of Subsidiaries of Holdings that are not Loan Parties in an aggregate principal amount not to exceed the greater of (i) \$2,000,000 and (ii) 1.5% of TTM Consolidated EBITDA at any one (1) time;

(m) surety and appeal bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business;

(n) Indebtedness in an aggregate principal amount not to exceed the greater of (i) \$4,000,000 and (ii) 3% of TTM Consolidated EBITDA at any time outstanding;

(o) any joint and several liability arising as a result of the establishment of a fiscal unity (*fiscale eenheid*) between Holdings and Icicle Acquisition Holding Co-op or any other Subsidiary incorporated in the Netherlands or its equivalent in any other relevant jurisdiction;

(p) any DP Amount and Accrued DP Interest;

(q) other unsecured subordinated Indebtedness approved in writing by the Required Lenders; provided, however, that (i) the Loan Parties are in *pro forma* compliance with the financial covenants set forth in Section 7.11 after giving effect to the incurrence of such subordinated Indebtedness, (ii) no Default or Event of Default shall exist immediately prior to the incurrence of such subordinated Indebtedness or would result therefrom, and (iii) such subordinated Indebtedness is subject to a subordination agreement or other subordination terms acceptable to the Required Lenders (which shall include, without limitation, unlimited payment blockage and standstill provisions);

(r) (i) purchase price adjustments in connection with Permitted Acquisitions, (ii) indemnity payments in connection with Permitted Acquisitions, and (iii) Permitted Seller Debt; provided that in each case, the conditions to a Permitted Acquisition in Section 7.03(g) are satisfied; and

(s) Indebtedness arising in connection with endorsement of instruments for deposit in the ordinary course of business.

**7.03** *Investments.* Make or hold any Investments, except:

(a) Investments held by the Loan Parties and Subsidiaries in the form of cash and Cash Equivalents;

(b) advances to officers, directors and employees of the Borrowers and Subsidiaries in an aggregate amount not to exceed \$500,000 at any time outstanding, for travel, entertainment, relocation and analogous ordinary business purposes;

(c) (i) Investments by Holdings and its Subsidiaries in their respective Subsidiaries outstanding on the date hereof, (ii) additional Investments by Holdings and its Subsidiaries in Loan Parties, (iii) additional Investments by Subsidiaries of the Borrowers that are not Loan Parties in other Subsidiaries that are not Loan Parties and (iv) so long as no Default has occurred and is continuing or would result from such Investment, additional Investments by the Loan Parties in wholly-owned Subsidiaries that are not Loan Parties in an aggregate amount invested from the date hereof not to exceed 10% of TTM Consolidated EBITDA;

(d) 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 to the extent reasonably necessary in order to prevent or limit loss;

(e) Guarantees permitted by Section 7.02;

(f) Investments existing on the date hereof (other than those referred to in Section 7.03(c)(i)) and set forth on Schedule 7.03(f), together with any renewal, replacement or extension thereof;

(g) the purchase or other acquisition of all of the Equity Interests in, or all or substantially all of the property of, any Person that, upon the consummation thereof, will be wholly-owned directly by the Borrowers or one (1) or more of its wholly-owned Subsidiaries (including as a result of a merger or consolidation) (each a “Permitted Acquisition”); provided that, with respect to each purchase or other acquisition made pursuant to this Section 7.03(g):

(i) the lines of business of the Person to be (or the property of which is to be) so purchased or otherwise acquired shall be substantially the same, reasonably related or incidental lines of business as one (1) or more of the principal businesses of the Loan Parties and their Subsidiaries in the ordinary course;

(ii) [intentionally omitted];

(iii) [intentionally omitted];

(iv) (A) immediately before and immediately after giving *pro forma* effect to any such purchase or other acquisition, no Default shall have occurred and be continuing and (B) immediately after giving effect to such purchase or other acquisition, the Loan Parties and their Subsidiaries shall be in *pro forma* compliance with the covenants set forth in Section 7.11, each such compliance to be determined on the basis of the financial information most recently delivered to the Administrative Agent and the Lenders pursuant to Section 6.01(a) or (b) as though such purchase or other acquisition had been consummated as of the first day of the fiscal period covered thereby; provided that the aggregate amount of such Investments by Loan Parties in assets that will not (or will not become) owned by a Loan Party or in Equity Interests of Persons that will not become Loan Parties shall not exceed the greater of (i) \$20,000,000 and (ii) 14.5% of TTM Consolidated EBITDA plus any portion of Cumulative Amount used to make such acquisition; and

(v) the Borrowers shall have delivered to the Administrative Agent and each Lender, at least five (5) Business Days prior to the date on which any such purchase or other acquisition is to be consummated, a certificate of a Responsible Officer, in form and substance reasonably satisfactory to the Administrative Agent, certifying that all of the requirements set forth in this Section 7.03(g) have been satisfied or will be satisfied on or prior to the consummation of such purchase or other acquisition; and

(h) to the extent constituting Investments, advances in respect of transfer pricing and cost-sharing arrangements (i.e. “cost-plus” arrangements) that are in the ordinary course of business;

(i) Investments in Swap Contracts to the extent permitted pursuant to Section 7.02(a);

(j) to the extent deemed to be an Investment, deposits of cash that constitute Permitted Liens;



(k) advances made in connection with purchases of goods or services by the Loan Parties in the ordinary course of business;

(l) Investments received as the non-cash portion of consideration received in connection with transactions permitted pursuant to Section 7.05;

(m) Investments acquired in a Permitted Acquisition to the extent that such Investments were not made in contemplation of or in connection with such Permitted Acquisition and were in existence prior to the date of such Permitted Acquisition;

(n) So long as no Event of Default has occurred and is continuing under Section 8.01(a), (f) or (g) or would result therefrom, Investments by the Borrower and its wholly-owned Subsidiaries in joint ventures in an aggregate amount invested from the date hereof not to exceed 10% of TTM Consolidated EBITDA at any time outstanding;

(o) Equity Interests acquired in connection with Restricted Payments permitted by Section 7.06;

(p) Investments consisting of cash earnest money deposits in connection with any letter of intent or purchase agreement in connection with an acquisition or other Investment or disposition permitted hereunder or, if upon consummation thereof, the Obligations would be repaid in full;

(q) Investments in the nature of pledges or deposits with respect to the leases or utilities provided to third parties in the ordinary course of business;

(r) Investments in the ordinary course of business consisting of Article 3 of the Uniform Commercial Code endorsements for collection or deposit and Article 4 of the Uniform Commercial Code customary trade arrangements with customers;

(s) So long as no Event of Default has occurred and is continuing under Section 8.01(a), (f) or (g) or would result therefrom, Investments by the Loan Parties and their Subsidiaries not otherwise permitted under this Section 7.03 in an aggregate amount not to exceed the greater of (i) \$4,000,000 and (ii) 3% of TTM Consolidated EBITDA at any time outstanding, plus the then applicable Cumulative Amount;

(t) any Loan Party or Subsidiary may acquire and hold accounts receivables owing to any of them if created or acquired in the ordinary course of business and payable or dischargeable in accordance with customary terms; and

(u) Investments consisting of or resulting from Dispositions permitted under Section 7.05.

Notwithstanding any statement to the contrary contained in this Section 7.03 or any other provision of this Agreement, no Investment or other transfer of assets may be made, directly or indirectly, by any Loan Party in Precision Flow.

**7.04**        **Fundamental Changes.** Merge, dissolve, liquidate, consolidate with or into another Person, or Dispose of (whether in one (1) transaction or in a series of transactions or by Division) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any Person:

(a)        any Subsidiary may merge with (i) any of the Borrowers, provided that such Borrower shall be the continuing or surviving Person, or (ii) any one (1) or more other Subsidiaries, provided that when any Loan Party is merging with another Subsidiary, such Loan Party shall be the continuing or surviving Person;

(b)        (i) any domestic Loan Party may Dispose of all or substantially all of its assets (upon voluntary liquidation or otherwise) to another domestic Loan Party, (ii) any foreign Loan Party may Dispose of all or substantially all of its assets (upon voluntary liquidation or otherwise) to any domestic Loan Party or other foreign Loan Party;

(c)        any Non-Guarantor Subsidiary may Dispose of all or substantially all its assets (including any Disposition that is in the nature of a liquidation) to (i) another Non-Guarantor Subsidiary or (ii) to a Loan Party;

(d)        in connection with any acquisition permitted under Section 7.03, any Subsidiary of any Borrower may merge into or consolidate with any other Person or permit any other Person to merge into or consolidate with it; provided that (i) the Person surviving such merger shall be a wholly-owned Subsidiary of such Borrower and (ii) in the case of any such merger to which any Loan Party (other than the Borrowers) is a party, such Loan Party is the surviving Person;

(e)        Dispositions permitted by Section 7.05 (other than Section 7.05(e)) and Restricted Payments permitted by Section 7.06; and

(f)        so long as no Default has occurred and is continuing or would result therefrom, each of the Borrowers and any of its Subsidiaries may merge into or consolidate with any other Person or permit any other Person to merge into or consolidate with it; provided, however, that in each case, immediately after giving effect thereto (i) in the case of any such merger to which the such Borrower is a party, such Borrower is the surviving corporation and (ii) in the case of any such merger to which any Loan Party (other than the Borrowers) is a party, such Loan Party is the surviving corporation.

**7.05**        **Dispositions.** Make any Disposition, except:

(a)        Dispositions of obsolete, surplus, uneconomical or worn out property, whether now owned or hereafter acquired, in the ordinary course of business;

(b)        Dispositions of inventory in the ordinary course of business (including pursuant to cost-plus or transfer pricing arrangements to Subsidiaries of Holdings that are not Loan Parties);

(c)        Dispositions of equipment or real 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;

(d) (i) Dispositions of property by any Subsidiary to any Borrower or to a wholly-owned Subsidiary; provided that the amount of Dispositions by transferors that are Loan Parties to transferees that are not Loan Parties shall not exceed \$2,000,000 per fiscal year and (ii) Dispositions of property by any Non-Guarantor Subsidiary to a Non-Guarantor Subsidiary;

(e) Liens permitted by Section 7.02, Investments permitted by Section 7.03 (other than Section 7.03(u)), Dispositions permitted by Section 7.04 (other than Section 7.04(e)), Restricted Payments permitted by Section 7.06 and payments of Indebtedness permitted by Section 7.09;

(f) Dispositions by Holdings and its Subsidiaries not otherwise permitted under this Section 7.05; provided that (i) at the time of such Disposition, no Default or Event of Default shall exist or would result from such Disposition, (ii) the aggregate fair market value of all property Disposed of in reliance on this clause (f) in any fiscal year shall not exceed 2.5% of Total Assets of Holdings and its Subsidiaries and (iii) not less than 75% of the purchase price for such asset shall be paid to the Borrowers or such Subsidiaries in cash (it being understood that for the purposes of this clause (f)(iii), the following shall be deemed to be cash: (A) any liabilities (as shown on the most recent balance sheet of Holdings and its Subsidiaries provided hereunder or in the footnotes thereto) of Holdings and its Subsidiaries, other than liabilities that are by their terms subordinated to the payment in cash of the Obligations, that are assumed by the transferee with respect to the applicable Disposition and for which Holdings and its Subsidiaries shall have been released by all applicable creditors in writing and (B) any securities received by Holdings or any Subsidiary from such transferee that are converted by such Borrower or such Subsidiary into cash or Cash Equivalents (to the extent of the cash or Cash Equivalents received) within one hundred eighty (180) days following the closing of the applicable Disposition);

(g) so long as no Default shall occur and be continuing, the grant of any option or other right to purchase any asset in a transaction that would be permitted under the provisions of Section 7.05(f);

(h) Dispositions of a *de minimis* number of Equity Interests of a Subsidiary in order to qualify members of the governing body of such Subsidiary, if required by applicable law;

(i) Dispositions resulting from casualty or condemnation events or any taking under power of eminent domain;

(j) the terminating or unwinding of any Swap Contract in accordance with its terms;

(k) (i) the lapse of registered patents, trademarks, copyrights and other intellectual property to the extent not economically desirable in the conduct of their business (ii) the abandonments of patent, trademarks, copyrights or other intellectual property rights in the ordinary course of business, so long as, in each case, such lapse or abandonment is not materially adverse to the interest of the Lenders in their capacities as such;

(l) Dispositions of accounts receivable in connection with the collection or compromise thereof;

(m) licenses, sublicenses, leases or subleases granted to others not interfering in any material respect with the business of Holdings and its Subsidiaries;

(n) the use or transfer of money or Cash Equivalents in the ordinary course of business in a manner not otherwise prohibited by this Agreement or the other Loan Documents;

(o) 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; and

(p) sales of non-core assets acquired in connection with Permitted Acquisitions or other Investments.

**7.06** ***Restricted Payments.*** Declare or make, directly or indirectly, any Restricted Payment, except that:

(a) each Borrower and Guarantor may make Restricted Payments to the other Borrowers and the Guarantors;

(b) each Subsidiary of a Borrower or a Guarantor may make Restricted Payments to the Borrowers, any Subsidiaries of the Borrowers that are Guarantors and any other Person that owns a direct Equity Interest in such Subsidiary, ratably according to their respective holdings of the type of Equity Interest in respect of which such Restricted Payment is being made;

(c) the Loan Parties and each 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) the Borrowers and each Subsidiary may purchase, redeem or otherwise acquire its common Equity Interests with the proceeds received from the substantially concurrent issue of new common Equity Interests;

(e) Holdings and the Borrowers may make direct or indirect Restricted Payments to any direct or indirect parent in order for such parent to pay any consolidated, combined, unitary or similar income taxes (and franchise or other similar taxes imposed in lieu of income taxes) of the applicable tax group; provided that the amount of such distributions in the aggregate shall not be greater than the amount of taxes that would have been due and payable by Holdings and its relevant Subsidiaries had Holdings and its relevant Subsidiaries filed a consolidated, combined, unitary or similar type return with Holdings as the consolidated parent;

(f) Holdings may make direct or indirect Restricted Payments:

(i) the proceeds of which shall be used by such direct or indirect parent to pay its operating expenses and other corporate overhead costs and expenses (including administrative, legal, accounting and similar expenses provided by third parties), in each case, that are reasonable and customary and incurred in the ordinary course of business and that are directly attributable to the ownership or operations of Holdings and its Subsidiaries and any reasonable and customary indemnification claims made by directors or officers of Holdings (or such parent) directly attributable to the ownership or operations of Holdings and its Subsidiaries;

(ii) [intentionally omitted]; and

(iii) the proceeds of which shall be used by Holdings or any direct or indirect parent of Holdings to pay franchise taxes and other fees, taxes and expenses required to maintain its corporate existence;

provided that the amount of Restricted Payments made pursuant to this clause (f) shall not exceed \$1,000,000 in any fiscal year;

(g) the proceeds of which shall be used to pay customary salary, bonus and other benefits payable to officers and employees of Holdings (or any direct or indirect parent of Holdings) or any director of such Person to the extent such salaries, bonuses and other benefits are directly attributable to the ownership or operation of Holdings and its Subsidiaries in an amount not to exceed the greater of (i) \$1,000,000 and (ii) of 1% of TTM Consolidated EBITDA in the aggregate in any fiscal year;

(h) so long as (i) no Event of Default shall have occurred and be continuing or would result therefrom, and (ii) the aggregate amount of cash payments made pursuant to this clause (h) does not exceed \$3,000,000 in any fiscal year of Holdings (with unused amounts in any fiscal year being carried over to succeeding fiscal years subject to a maximum of \$5,000,000 in any fiscal year), plus the then applicable Cumulative Amount, Restricted Payments to Holdings (or any direct or indirect parent thereof) to permit Holdings (or any direct or indirect parent thereof) to (A) repurchase, retire or otherwise acquire or retire for value Equity Interests issued by Holdings (or any direct or indirect parent thereof) to any future, present or former employee, officer, director or consultant of Holdings or any of its Subsidiaries or (B) make payments of principal or interest on promissory notes that were issued in lieu of cash payments for the repurchase, retirement or other acquisition or retirement for value of such Equity Interests, in each case pursuant to any employee or director equity plan, employee, officer or director stock option plan or any other employee or director benefit plan or any agreement (including any stock subscription or shareholder agreement) with any employee, director or consultant of Holdings or any of its Subsidiaries; provided that any cancellation of Indebtedness owing to Holdings in connection with and as consideration for a repurchase of Equity Interests of Holdings shall not be deemed to constitute a Restricted Payment for the purposes of this clause (h);

(i) so long as no Default or Event of Default shall have occurred and be continuing or would result there from, Holdings and its Subsidiaries may make payments with respect to earn-out obligations, DP Amounts and Accrued DP Interest; and

(j) Holdings shall be permitted to make additional Restricted Payments not otherwise permitted pursuant to this Section 7.06 so long as (i) no Default or Event of Default shall have occurred and be continuing or would result therefrom and (ii) as of the last day of the most recent period for which financial statements have been furnished pursuant to clauses (a) and (b), respectively, of Section 6.01, the Consolidated Leverage Ratio does not exceed 2.50 to 1.00 on a pro forma basis after giving effect thereto.

**7.07** *Change in Nature of Business.* Engage in any material line of business substantially different from those lines of business conducted by Holdings and its Subsidiaries on the date hereof or any business reasonably related or incidental thereto.

**7.08** *Transactions with Affiliates.* Enter into any transaction of any kind with any Affiliate of the Borrowers, whether or not in the ordinary course of business, other than:

(a) on fair and reasonable terms substantially as favorable to such Borrower or such Subsidiary as would be obtainable by such Borrower or such Subsidiary at the time in a comparable arm's length transaction with a Person other than an Affiliate;

(b) reimburse any equity holder up to reasonable and documented director fees, board travel expenses and other out of pocket expenses incurred with respect to Holdings and its Subsidiaries;

(c) any Indebtedness incurred pursuant to Section 7.02, any Disposition permitted under Section 7.05, any Restricted Payment permitted under Section 7.06 and any Investments permitted under Section 7.03;

(d) transactions between or among Holdings and its Subsidiaries not otherwise prohibited hereunder;

(e) employment and severance arrangements between Holdings and its Subsidiaries and their respective officers, directors and employees in the ordinary course of business and transactions pursuant to stock option plans and employee benefit plans and arrangements in the ordinary course of business;

(f) payments by Holdings and its Subsidiaries pursuant to the tax sharing agreements among Holdings and its Subsidiaries on customary terms to the extent attributable to the ownership or operation of the Subsidiaries;

(g) the payment of customary fees and reasonable out of pocket costs and expenses to, and indemnities provided on behalf of, directors, officers and employees of Holdings (and any of its direct or indirect parents) and its Subsidiaries in the ordinary course of business to the extent attributable to the ownership or operation of Holdings and its Subsidiaries;

(h) the issuance of Equity Interests (other than Disqualified Capital Stock) of Holdings to any officer, director, employee or consultant of any Holdings or any of its Subsidiaries; and

(i) the issuance or transfer of Equity Interests (other than Disqualified Capital Stock) of Holdings or its direct or indirect parents to any direct or indirect equity holder or to any former, current or future director, manager, officer, employee or consultant (or any Affiliate of any of the foregoing) of Holdings, any of its Subsidiaries or any direct or indirect parent thereof.

**7.09** *Burdensome Agreements.* Enter into or permit to exist any Contractual Obligation (other than this Agreement or any other Loan Document) that limits the ability (i) of any Subsidiary to make Restricted Payments to the Borrowers or any Guarantor or to otherwise transfer property to or invest in the Borrowers or any Guarantor, (ii) of any Subsidiary to Guarantee the Indebtedness

of the Borrowers or (iii) of Holdings or any Subsidiary to create, incur, assume or suffer to exist Liens on property of such Person; provided, however, that the foregoing restrictions in this Section 7.09 shall not apply to restrictions that:

- (a) exist under the Loan Documents,
- (b) (x) exist on the date hereof and (to the extent not otherwise permitted by this Section 7.09) are listed on Schedule 7.09 hereto and (y) to the extent restrictions permitted by clause (x) are set forth in an agreement evidencing Indebtedness, any permitted modification, replacement, renewal, extension or refinancing of such Indebtedness so long as such modification, replacement, renewal, extension or refinancing is not less favorable to the Lenders,
- (c) are binding on a Subsidiary at the time such Subsidiary first becomes a Subsidiary of Holdings, so long as such restrictions were not entered into in contemplation of such Person becoming a Subsidiary of Holdings,
- (d) are binding on a Non-Guarantor Subsidiary and represent Indebtedness which is permitted by Section 7.02,
- (e) arise in connection with any Disposition permitted by Section 7.05 (so long as the applicable restriction applies solely to the assets the subject of such Disposition and not to the proceeds to be received by any of its Subsidiaries in connection with such Disposition),
- (f) are customary provisions in joint venture agreements and other similar agreements applicable to joint ventures permitted under Section 7.03 and applicable solely to such joint venture,
- (g) are negative pledges and restrictions on Liens in favor of any holder of Indebtedness permitted under Section 7.02 but solely to the extent any negative pledge relates to the property financed by or the subject of such Indebtedness,
- (h) are customary restrictions on leases, subleases, licenses or asset sale agreements otherwise permitted hereby so long as such restrictions relate to the assets subject thereto,
- (i) are customary provisions restricting subletting or assignment of any lease governing a leasehold interest of any Subsidiary,
- (j) with respect to clause (b) above only, are customary provisions restricting assignment or transfer of any agreement entered into in the ordinary course of business,
- (k) are restrictions on cash or other deposits imposed by customers under contracts entered into in the ordinary course of business,
- (l) arise in connection with cash or other deposits permitted under Sections 7.02 and 7.03 and limited to such cash or deposit,
- (m) are restrictions regarding licensing or sublicensing by Holdings and its Subsidiaries of intellectual property in the ordinary course of business that could not reasonably be expected to

have an adverse impact on the business of the Borrowers and its Subsidiaries, taken as a whole, and

(n) any amendments, modifications, restatements, refinancings or renewals of the agreements, contracts or instruments referred to in clauses (a) through (m) above, provided that such amendments, modifications, restatements or renewals are not more materially restrictive with respect to such encumbrances or restrictions than those contained in such predecessor agreements, contracts or instruments (as reasonably determined by Holdings).

**7.10 Use of Proceeds.** Use the proceeds of any Credit Extension, whether directly or indirectly, and whether immediately, incidentally or ultimately, to purchase or carry margin stock (within the meaning of Regulation U of the FRB) or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund indebtedness originally incurred for such purpose.

**7.11 Financial Covenants.**

(a) Consolidated Leverage Ratio. Permit the Consolidated Leverage Ratio as of the last day of any period of four (4) fiscal quarters of the Borrowers, commencing with the fiscal quarter ending March 31, 2022, to be greater than 3.50:1.00; provided, that if the Borrowers shall have consummated a Permitted Acquisition during any fiscal quarter with an aggregate purchase price (for all such Permitted Acquisitions during such fiscal quarter) in excess of \$75,000,000, the maximum Consolidated Leverage Ratio in this Section 7.11(a) shall be increased to 4.00:1.00 for such fiscal quarter and the three immediately succeeding fiscal quarters (such period, a “Financial Covenant Holiday Period”); provided, further, that after the occurrence of a Financial Covenant Holiday Period, a subsequent Financial Covenant Holiday Period may occur in accordance with the terms of this Section 7.11(a) only after the maximum Consolidated Leverage Ratio has returned to 3.50:1.00 for at least two full fiscal quarters.

(b) Consolidated Fixed Charge Coverage Ratio. Permit the Consolidated Fixed Charge Coverage Ratio as of the last day of any fiscal quarter of the Borrowers, commencing with the fiscal quarter ending March 31, 2022, to be less than 1.25:1.00.

**7.12 Sanctions.** Directly or indirectly, use the proceeds of any Credit Extension, or lend, contribute or otherwise make available such proceeds to any Subsidiary, joint venture partner or other individual or entity, to fund any activities of or business with any individual or entity, or in any Designated Jurisdiction, that, at the time of such funding, is the subject of Sanctions, or in any other manner that will result in a violation by any individual or entity (including any individual or entity participating in the transaction, whether as Lender, Arranger, Administrative Agent, L/C Issuer, Swing Line Lender, or otherwise) of Sanctions.

**7.13 Amendments of Organization Documents.** Amend any of its Organization Documents in a manner that would reasonably be expected to be materially adverse to the interests of the Lenders in their capacities as such.

**7.14 Accounting Changes.** Make any change in (a) accounting policies or reporting practices, except as required by GAAP, or (b) fiscal year, in each case, without the consent of the Administrative Agent (not to be unreasonably withheld, conditioned or delayed).



**7.15** *Prepayments, Etc.* of Indebtedness. Prepay, redeem, purchase, defease or otherwise satisfy prior to the scheduled maturity thereof in any manner, or make any payment in violation of any subordination terms of, any subordinated Indebtedness, except (a) the prepayment of the Credit Extensions in accordance with the terms of this Agreement and (b) regularly scheduled or required repayments or redemptions of Indebtedness set forth in Schedule 7.02 and refinancings and refundings of such Indebtedness in compliance with Section 7.02(d).

**7.16** *Anti-Corruption Laws.* Directly or indirectly, use any Credit Extension or the proceeds of any Credit Extension for any purpose which would breach the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010 and other similar anti-corruption legislation in other jurisdictions.

**7.17** *Holding Companies.* In the case of Holdings, engage in any business or activity other than: (a) the ownership of all outstanding direct and indirect Equity Interests in its Subsidiaries, (b) maintaining its corporate existence, (c) participating in tax, accounting and other administrative activities as a member of the consolidated group of companies, including the Loan Parties (including entering into engagement letters and similar type contracts and agreements with attorneys, advisors, accountants and other professionals and participating thereunder), (d) the execution and delivery of the Loan Documents and other documents relating to the Transaction to which they are a party, and the performance of their respective obligations under each of the foregoing, (e) providing indemnification to officers, directors, shareholders and employees, (f) holding any cash or property received in connection with Restricted Payments permitted under Section 7.06, (g) Investments and loans and advances to its Subsidiaries permitted hereunder, (h) providing guarantees for the benefit of Subsidiaries to the extent such Person is otherwise permitted to enter into the transactions under this Agreement (including guarantees of lease obligations), (i) holding nominal deposits in deposit and securities accounts in connection with any of the foregoing transactions, and (j) activities incidental to the businesses or activities described in clauses (a) through (i) of this Section.

## ARTICLE VIII EVENTS OF DEFAULT AND REMEDIES

**8.01** *Events of Default.* Any of the following shall constitute an “Event of Default”:

(a) Non-Payment. Any Borrower or any other Loan Party fails to (i) pay when and as required to be paid herein, any amount of principal of any Loan or any L/C Obligation or deposit any funds as Cash Collateral in respect of L/C Obligations, (ii) pay within three (3) days after the same becomes due, any interest on any Loan or on any L/C Obligation, or any fee due hereunder or (iii) pay within five (5) days after the same becomes due, any other amount payable hereunder or under any other Loan Document; or

(b) Specific Covenants. Any Borrower fails to perform or observe any term, covenant or agreement contained in any of Section 6.01, 6.02, 6.03, 6.05, 6.07, 6.10, 6.11, 6.12, 6.18, 6.20, 6.21, 6.24 or Article VII; or

(c) Other Defaults. Any Loan Party fails to perform or observe any other covenant or agreement (not specified in Section 8.01(a) or (b) above) contained in any Loan Document on its

part to be performed or observed and such failure continues for thirty (30) days after the earlier of a Responsible Officer of a Loan Party obtaining knowledge thereof and written notification of such failure by the Administrative Agent; or

(d) Representations and Warranties. Any representation, warranty, certification or written statement of fact made or deemed made by or on behalf of the Borrowers or any other Loan Party herein, in any other Loan Document, or in any document delivered in connection herewith or therewith shall be incorrect or misleading in any material respect (or in any respect if such representation or warranty is qualified by “material” or “Material Adverse Effect”) when made or deemed made; or

(e) Cross-Default. (i) Any Loan Party or any Subsidiary thereof (A) fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any Indebtedness or Guarantee (other than Indebtedness hereunder and Indebtedness under Swap Contracts) having an aggregate principal amount (including undrawn committed or available amounts and including amounts owing to all creditors under any combined or syndicated credit arrangement) of more than \$10,000,000, or (B) fails to observe or perform any other agreement or condition relating to any such Indebtedness or Guarantee or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which default or other event is to cause, or to permit the holder or holders of such Indebtedness or the beneficiary or beneficiaries of such Guarantee (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of notice if required, such Indebtedness to be demanded or to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Indebtedness to be made, prior to its stated maturity, or such Guarantee to become payable or cash collateral in respect thereof to be demanded; or (ii) there occurs under any Swap Contract an Early Termination Date (as defined in such Swap Contract) resulting from (A) any event of default under such Swap Contract as to which a Loan Party or any Subsidiary thereof is the Defaulting Party (as defined in such Swap Contract) or (B) any Termination Event (as so defined) under such Swap Contract as to which a Loan Party or any Subsidiary thereof is an Affected Party (as so defined) and, in either event, the Swap Termination Value owed by such Loan Party or such Subsidiary as a result thereof is greater than \$10,000,000 or (iii) there occurs any event of default (after giving effect to any grace or cure period with respect thereto) under any Foreign Obligation Loan Document of more than \$10,000,000; or

(f) Insolvency Proceedings, Etc. Any Loan Party or any Material Subsidiary or domestic Subsidiary thereof institutes or consents to the institution of any proceeding under any Debtor Relief Law, or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, judicial manager, receiver, manager rehabilitator or similar officer for it or for all or any material part of its property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator, judicial manager or similar officer is appointed without the application or consent of such Person and the appointment continues undischarged or unstayed for 60 calendar days; or any proceeding under any Debtor Relief Law relating to any such Person or to all or any material part of its property is instituted without the consent of such Person and continues undismissed or unstayed for 60 calendar days, or an order for relief is entered in any such proceeding; or

(g) Inability to Pay Debts; Attachment. (i) Any Loan Party or any Subsidiary thereof becomes unable or admits in writing its inability or fails generally to pay its debts as they become due, or (ii) any writ or warrant of attachment or execution or similar process is issued or levied against all or any material part of the property of any such Person and is not released, vacated or fully bonded within sixty (60) days after its issue or levy; or

(h) Judgments. There is entered against any Loan Party or any Subsidiary thereof (i) one (1) or more final judgments or orders for the payment of money in an aggregate amount (as to all such judgments and orders) exceeding \$10,000,000 (to the extent not covered by independent third-party insurance as to which the insurer is rated at least "A" by A.M. Best Company or is otherwise reasonably satisfactory to the Administrative Agent, has been notified of the potential claim and does not dispute coverage), or (ii) any one (1) or more non-monetary final judgments that have, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and, in either case, (A) enforcement proceedings are commenced by any creditor upon such judgment or order, or (B) there is a period of forty-five (45) consecutive days during which a stay of enforcement of such judgment, by reason of a pending appeal or otherwise, is not in effect; or

(i) ERISA. (i) An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan which has resulted or could reasonably be expected to result in a Material Adverse Effect, or (ii) any Borrower or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan which has resulted or could reasonably be expected to result in a Material Adverse Effect; or

(j) Invalidity of Loan Documents. Any provision of any Loan Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder or satisfaction in full of all the Obligations, ceases to be in full force and effect; or any Loan Party or any other Person contests in any manner the validity or enforceability of any provision of any Loan Document; or any Loan Party denies that it has any or further liability or obligation under any provision of any Loan Document, or purports to revoke, terminate or rescind any provision of any Loan Document; or

(k) Change of Control. There occurs any Change of Control; or

(l) Collateral Documents. Any Collateral Document after delivery thereof pursuant to Section 4.01 or 6.12 shall for any reason (other than pursuant to the terms thereof or as a result of any action or inaction within the control of the Administrative Agent) cease to create a valid and perfected first priority Lien (subject to Liens permitted by Section 7.01) on the Collateral purported to be covered thereby;

(m) Subordination. (i) The subordination provisions of the documents evidencing or governing any subordinated Indebtedness (the "Subordination Provisions") shall, in whole or in part, terminate, cease to be effective or cease to be legally valid, binding and enforceable against any holder of the applicable subordinated Indebtedness; or (ii) any Borrower or any other Loan Party shall, directly or indirectly, disavow or contest in any manner (A) the effectiveness, validity or enforceability of any of the Subordination Provisions, (B) that the Subordination Provisions

exist for the benefit of the Administrative Agent, the Lenders and the L/C Issuer or (C) that all payments of principal of or premium and interest on the applicable subordinated Indebtedness, or realized from the liquidation of any property of any Loan Party, shall be subject to any of the Subordination Provisions; or

(n) Declared company. A Loan Party or any Material Subsidiary thereof which is a company incorporated under the Companies Act, Chapter 50 of Singapore is declared by the Minister of Finance of Singapore to be a company to which Part IX of the Companies Act, Chapter 50 of Singapore applies.

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

(a) declare the commitment of each Lender to make Loans and any obligation of the L/C Issuer to make L/C Credit Extensions to be terminated, whereupon such commitments and obligation shall be terminated;

(b) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrowers;

(c) require that the Borrowers Cash Collateralize the L/C Obligations (in an amount equal to the Minimum Collateral Amount with respect thereto); and

(d) exercise on behalf of itself, the Lenders and the L/C Issuer all rights and remedies available to it, the Lenders and the L/C Issuer under the Loan Documents or applicable Law or equity; provided, however, that upon the occurrence of an actual or deemed entry of an order for relief with respect to the Borrowers under the Bankruptcy Code of the United States, the obligation of each Lender to make Loans and any obligation of the L/C Issuer to make L/C Credit Extensions shall automatically terminate, the unpaid principal amount of all outstanding Loans and all interest and other amounts as aforesaid shall automatically become due and payable, and the obligation of the Borrowers to Cash Collateralize the L/C Obligations as aforesaid shall automatically become effective, in each case without further act of the Administrative Agent or any Lender.

**8.03 Application of Funds.** After the exercise of remedies provided for in Section 8.02 (or after the Loans have automatically become immediately due and payable and the L/C Obligations have automatically been required to be Cash Collateralized as set forth in the proviso to Section 8.02), any amounts received on account of the Obligations shall, subject to the provisions of Sections 2.16 and 2.17, be applied by the Administrative Agent in the following order:

First, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (including fees, charges and disbursements of counsel to the Administrative Agent and amounts payable under Article III) payable to the Administrative Agent in its capacity as such;

Second, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal, interest and Letter of Credit Fees) payable to the Lenders, the Foreign Obligation Providers and the L/C Issuer (including fees, charges and disbursements of counsel to the respective Lenders, the Foreign Obligation Providers and the L/C Issuer (including fees and time charges for attorneys who may be employees of any Lender or the L/C Issuer)) arising under the Loan Documents and the Foreign Obligation Loan Documents and amounts payable under Article III, ratably among them in proportion to the respective amounts described in this clause Second payable to them;

Third, to payment of that portion of the Obligations constituting accrued and unpaid Letter of Credit Fees and interest on the Loans, L/C Borrowings and other Obligations arising under the Loan Documents and the Foreign Obligation Loan Documents, ratably among the Lenders, the Foreign Obligation Providers and the L/C Issuer in proportion to the respective amounts described in this clause Third payable to them;

Fourth, to payment of that portion of the Obligations constituting unpaid principal of the Loans, L/C Borrowings and Obligations then owing under the Foreign Obligation Loan Documents, the Secured Hedge Agreements and Secured Cash Management Agreements and to the Administrative Agent for the account of the L/C Issuer, to Cash Collateralize that portion of L/C Obligations comprised of the aggregate undrawn amount of Letters of Credit to the extent not otherwise Cash Collateralized by the Borrowers pursuant to Sections 2.03 and 2.16 and to the Foreign Obligation Providers, to Cash Collateralize undrawn contingent liability obligations owing to such Foreign Obligation Provider under the Foreign Obligation Loan Documents to the extent not otherwise cash collateralized by the applicable foreign Subsidiary, in each case ratably among the Administrative Agent, the Lenders, the Foreign Obligation Providers, the L/C Issuer, the Hedge Banks and the Cash Management Banks in proportion to the respective amounts described in this clause Fourth held by them; and

Last, the balance, if any, after all of the Obligations have been indefeasibly paid in full, to the Borrowers or as otherwise required by Law.

Subject to Sections 2.03(c) and 2.16, amounts used to Cash Collateralize the aggregate undrawn amount of Letters of Credit pursuant to clause Fourth above shall be applied to satisfy drawings under such Letters of Credit as they occur. If any amount remains on deposit as Cash Collateral after all Letters of Credit have either been fully drawn or expired, such remaining amount shall be applied to the other Obligations, if any, in the order set forth above. Excluded Swap Obligations with respect to any Loan Party shall not be paid with amounts received from such Loan Party or its assets, but appropriate adjustments shall be made with respect to payments from other Loan Parties to preserve the allocation to Secured Obligations otherwise set forth above in this Section.

Notwithstanding the foregoing, Obligations arising under Secured Cash Management Agreements and Secured Hedge Agreements shall be excluded from the application described above if the Administrative Agent has not received written notice thereof, together with such supporting documentation as the Administrative Agent may request, from the applicable Cash Management Bank or Hedge Bank, as the case may be. Each Cash Management Bank or Hedge Bank not a party to the Credit Agreement that has given the notice contemplated by the preceding

sentence shall, by such notice, be deemed to have acknowledged and accepted the appointment of the Administrative Agent pursuant to the terms of Article IX hereof for itself and its Affiliates as if a “Lender” party hereto.

**8.04** *Equity Cure.* In the event the Loan Parties fail to comply with the financial covenants set forth in Section 7.11(a) or (b) as of the last day of any fiscal quarter, any cash equity contribution to the Borrowers (funded with proceeds of common equity issued by Holdings or a parent entity thereof or other equity issued by Holdings or a parent entity thereof) on or prior to the day that is ten (10) days after the day on which financial statements are required to be delivered for that fiscal quarter will, at the irrevocable election of the Borrowers, be included in the calculation of Consolidated EBITDA solely for the purposes of determining compliance with such covenant at the end of such fiscal quarter and any subsequent period that includes such fiscal quarter (any such equity contribution so included in the calculation of Consolidated EBITDA, a “Specified Equity Contribution”); provided that (a) notice of the Borrowers’ intent to make a Specified Equity Contribution shall be delivered no later than the day on which financial statements are required to be delivered for the applicable fiscal quarter, (b) in each consecutive four (4) fiscal quarter period there will be at least two (2) fiscal quarters in which no Specified Equity Contribution is made, (c) the amount of any Specified Equity Contribution will be no greater than the amount required to cause the Loan Parties to be in compliance with such covenants, (d) all Specified Equity Contributions will be disregarded for purposes of the calculation of Consolidated EBITDA for all other purposes, including calculating basket levels, pricing and other items governed by reference to Consolidated EBITDA, (e) there shall be no more than four (4) Specified Equity Contributions made in the aggregate after the Restatement Date, (f) any Loans prepaid with the proceeds of Specified Equity Contributions shall be deemed outstanding for purposes of determining compliance with such covenants for the Fiscal Quarter being cured and the next three (3) fiscal quarters, and (g) the proceeds received by the Borrowers from each Specified Equity Contribution will be promptly used by the Borrowers to prepay the Term Loans. From the effective date of delivery of such cure notice to the Administrative Agent until the date that is ten (10) days after the day on which the applicable financial statements are required to be delivered, neither the Administrative Agent nor any Lender shall impose a default interest rate, accelerate the Obligations, terminate the Revolving Credit Commitment or exercise any other right or remedy against the Loan Parties or any of their Subsidiaries or any of their respective properties solely on the basis of an Event of Default having occurred under Section 8.01(b) as a result of the Loan Parties’ failure to comply with the financial covenants referenced in such cure notice; provided that for purposes of determining the satisfaction of the conditions precedent to a borrowing under the Revolving Credit Commitments pursuant to Section 4.02, a Default shall be deemed to exist. Upon receipt by Borrowers of the Specified Equity Contribution, any applicable Default or Event of Default shall be deemed to have been cured.

## ARTICLE IX ADMINISTRATIVE AGENT

**9.01** *Appointment and Authority.* (a) Each of the Lenders and the L/C Issuer hereby irrevocably appoints, designates and authorizes Bank of America to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions

and powers as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of the Administrative Agent, the Lenders and the L/C Issuer, and neither the Borrowers nor any other Loan Party shall have rights as a third party beneficiary of any of such provisions. It is understood and agreed that the use of the term “agent” herein or in any other Loan Documents (or any other similar term) with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable Law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

(a) The Administrative Agent shall also act as the “collateral agent” under the Loan Documents, and each of the Lenders (including in its capacities as a potential Hedge Bank, potential Foreign Obligation Provider and a potential Cash Management Bank) and the L/C Issuer hereby irrevocably appoints and authorizes the Administrative Agent to act as the agent of such Lender and the L/C Issuer for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Loan Parties to secure any of the Obligations, together with such powers and discretion as are reasonably incidental thereto. In this connection, the Administrative Agent, as “collateral agent” and any co-agents, sub-agents and attorneys-in-fact appointed by the Administrative Agent pursuant to Section 9.05 for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Collateral Documents, or for exercising any rights and remedies thereunder at the direction of the Administrative Agent, shall be entitled to the benefits of all provisions of this Article IX and Article XI (including Section 11.04(c)), as though such co-agents, sub-agents and attorneys-in-fact were the “collateral agent” under the Loan Documents) as if set forth in full herein with respect thereto.

**9.02** *Rights as a Lender.* The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of banking, trust, financial, advisory, underwriting or other business with any Loan Party or any Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders or to provide notice to or consent of the Lenders with respect thereto.

**9.03** *Exculpatory Provisions.* (a) The Administrative Agent or the Arrangers, as applicable, shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents, and its duties hereunder shall be administrative in nature. Without limiting the generality of the foregoing, the Administrative Agent or the Arrangers, as applicable, and their Related Parties:

- (i) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;
- (ii) 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 the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), provided that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or applicable law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law; and

(iii) shall not have any duty or responsibility to disclose, and shall not be liable for the failure to disclose, to any Lender or any L/C Issuer any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of any of the Loan Parties or any of their Affiliates that is communicated to, or in the possession of, the Administrative Agent, Arrangers or any of their Related Parties in any capacity, except for notices, reports and other documents expressly required to be furnished to the Lenders by the Administrative Agent herein.

(b) Neither the Administrative Agent nor any of its Related Parties shall be liable for any action taken or not taken by the Administrative Agent under or in connection with this Agreement or any other Loan Document or the transactions contemplated hereby or thereby (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 11.01 and 8.02) 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. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given in writing to the Administrative Agent by the Borrowers, a Lender or the L/C Issuer.

(c) The Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (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 Collateral Documents, (v) the value or the sufficiency of any Collateral, or (vi) the satisfaction of any condition set forth in Article IV or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

**9.04** *Reliance by Administrative Agent.* The Administrative Agent shall be entitled to rely upon, and shall be fully protected in relying and shall not incur any liability for relying upon, any notice, request, certificate, communication, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it



orally or by telephone and believed by it to have been made by the proper Person, and shall be fully protected in relying 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 the L/C Issuer, the Administrative Agent may presume that such condition is satisfactory to such Lender or the L/C Issuer unless the Administrative Agent shall have received notice to the contrary from such Lender or the L/C Issuer prior to the making of such Loan or the issuance of such Letter of Credit. The Administrative Agent may consult with legal counsel (who may be counsel for the Loan Parties), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts. For purposes of determining compliance with the conditions specified in Section 4.01, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Restatement Date specifying its objections. 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 sentence, the Administrative Agent shall not (w) be obligated to ascertain, monitor or inquire as to whether any Lender or Participant or prospective Lender or Participant is a Disqualified Institution, (x) be obligated to ascertain, monitor or inquire as to whether any Lender or Participant or prospective Lender or Participant is a fund managed or administered by a Person on the Excluded Persons List or any Affiliate of any such Person (but not a Person specifically named on the Excluded Persons List), (y) be obligated to ascertain, monitor or inquire as to whether any Lender or Participant or prospective Lender or Participant is a Competitor or Competitor Controller, and the Administrative Agent and any assignor may conclusively rely on a representation by the potential assignee that it is not a Competitor or Competitor Controller in the applicable assignment agreement; provided, however, that at any Lender's option (but with no obligation to do so), the Borrowers shall confirm, within ten (10) Business Days after such Lender's request therefor, whether a potential assignee or participant is a Competitor or Competitor Controller or (z) 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.

**9.05**        ***Delegation of Duties.*** The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one (1) or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent. The Administrative Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and nonappealable judgment that the Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

**9.06**        ***Resignation of Administrative Agent.*** The Administrative Agent may at any time give notice of its resignation to the Lenders, the L/C Issuer and the Borrowers. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the Borrowers, to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty (30) days after the retiring Administrative Agent gives notice of its resignation, (or such earlier day as shall be agreed by the Required Lenders) (the “Resignation Effective Date”), then the retiring Administrative Agent may (but shall not be obligated to) on behalf of the Lenders and the L/C Issuer, appoint a successor Administrative Agent meeting the qualifications set forth above; provided that in no event shall any Defaulting Lender be a successor Administrative Agent. Whether or not a successor has been appointed, such resignation shall become effective in accordance with such notice on the Resignation Effective Date.

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

(b)        With effect from the Resignation Effective Date or the Removal Effective Date (as applicable) (1) the retiring or removed Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Lenders or the L/C Issuer under any of the Loan Documents, the retiring Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed) and (2) except for any indemnity payments or other amounts then owed to the retiring or removed Administrative Agent, all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender and the L/C Issuer directly, until such time, if any, as the Required Lenders appoint a successor Administrative Agent as provided for above. Upon the acceptance of a successor’s appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or removed) Administrative Agent (other than as provided in Section 3.01(g) and other than any rights to indemnity payments or other amounts owed to the retiring or removed Administrative Agent as of the Resignation Effective Date or the Removal Effective Date, as applicable), and the retiring or removed Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section). The fees payable by the Borrowers to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrowers and such successor. After the retiring or removed Administrative Agent’s resignation or removal hereunder and under the other Loan Documents, the provisions of this Article and Section 10.04 shall continue in effect for the benefit of such retiring or removed Administrative Agent, its sub-agents and their respective Related

Parties in respect of any actions taken or omitted to be taken by any of them while the retiring or removed Administrative Agent was acting as Administrative Agent.

(c) Any resignation or removal by Bank of America as Administrative Agent pursuant to this Section shall also constitute its resignation as L/C Issuer and Swing Line Lender. If Bank of America resigns as an L/C Issuer, it shall retain all the rights, powers, privileges and duties of the L/C Issuer hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as L/C Issuer and all L/C Obligations with respect thereto, including the right to require the Lenders to make Base Rate Loans or fund risk participations in Unreimbursed Amounts pursuant to Section 2.03(c). If Bank of America resigns as Swing Line Lender, it shall retain all the rights of the Swing Line Lender provided for hereunder with respect to Swing Line Loans made by it and outstanding as of the effective date of such resignation, including the right to require the Lenders to make Base Rate Loans or fund risk participations in outstanding Swing Line Loans pursuant to Section 2.04(c). Upon the appointment by the Borrowers of a successor L/C Issuer or Swing Line Lender hereunder (which successor shall in all cases be a Lender other than a Defaulting Lender), (a) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer or Swing Line Lender, as applicable, (b) the retiring L/C Issuer and Swing Line Lender shall be discharged from all of their respective duties and obligations hereunder or under the other Loan Documents, and (c) the successor L/C Issuer shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to Bank of America to effectively assume the obligations of Bank of America with respect to such Letters of Credit.

(d) For purposes of any Dutch Collateral Document or any other right of pledge governed by Netherlands law, any resignation by the Administrative Agent is not effective with respect to its rights under the Parallel Debt until all rights and obligations under the Parallel Debt have been assigned and assumed to the successor agent. The Administrative Agent will reasonably cooperate in assigning its rights under the Parallel Debt to any such successor agent and will reasonably cooperate in transferring all rights under any Dutch Collateral Document or any other Security Document governed by Netherlands law (as the case may be) to such successor agent.

**9.07 *Non-Reliance on Administrative Agent, the Arrangers and the Other Lenders.*** Each Lender and each L/C Issuer expressly acknowledges that none of the Administrative Agent nor the Arranger has made any representation or warranty to it, and that no act by the Administrative Agent or the Arranger hereafter taken, including any consent to, and acceptance of any assignment or review of the affairs of any Loan Party or any Affiliate thereof, shall be deemed to constitute any representation or warranty by the Administrative Agent or the Arranger to any Lender or each L/C Issuer as to any matter, including whether the Administrative Agent or the Arranger have disclosed material information in their (or their Related Parties') possession. Each Lender and each L/C Issuer represents to the Administrative Agent and the Arranger that it has, independently and without reliance upon the Administrative Agent, the Arranger, any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis of, appraisal of, and investigation into, the business, prospects, operations, property, financial and other condition and creditworthiness of the Loan Parties and their Subsidiaries, and all applicable bank or other regulatory Laws relating to the transactions contemplated hereby, and made its own decision to enter into this Agreement and to extend credit to the Borrower hereunder. Each Lender and each L/C Issuer also acknowledges that

it will, independently and without reliance upon the Administrative Agent, the Arranger, any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder, and to make such investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition and creditworthiness of the Loan Parties. Each Lender and each L/C Issuer represents and warrants that (i) the Loan Documents set forth the terms of a commercial lending facility and (ii) it is engaged in making, acquiring or holding commercial loans in the ordinary course and is entering into this Agreement as a Lender or L/C Issuer for the purpose of making, acquiring or holding commercial loans and providing other facilities set forth herein as may be applicable to such Lender or L/C Issuer, and not for the purpose of purchasing, acquiring or holding any other type of financial instrument, and each Lender and each L/C Issuer agrees not to assert a claim in contravention of the foregoing. Each Lender and each L/C Issuer represents and warrants that it is sophisticated with respect to decisions to make, acquire and/or hold commercial loans and to provide other facilities set forth herein, as may be applicable to such Lender or such L/C Issuer, and either it, or the Person exercising discretion in making its decision to make, acquire and/or hold such commercial loans or to provide such other facilities, is experienced in making, acquiring or holding such commercial loans or providing such other facilities.

**9.08** *No Other Duties, Etc.* Anything herein to the contrary notwithstanding, none of the Bookrunners or Arrangers listed on the cover page hereof shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Administrative Agent, a Lender or the L/C Issuer hereunder.

**9.09** *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 Borrowers) 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 L/C Issuer and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the L/C Issuer and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders, the L/C Issuer and the Administrative Agent under Sections 2.03(i) and (j), 2.09 and 11.04) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same; and any custodian, receiver, assignee, trustee, liquidator, sequestrator, judicial manager or other similar official in any such judicial proceeding is hereby authorized by each Lender and the L/C Issuer 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 L/C Issuer, 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 2.09 and 11.04.

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 the L/C Issuer any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or the L/C Issuer to authorize the Administrative Agent to vote in respect of the claim of any Lender or the L/C Issuer 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 Obligations pursuant to a deed in lieu of foreclosure or otherwise) and in such manner purchase (either directly or through one (1) 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 Equity Interests 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 (1) 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 Equity Interests 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 clauses (a) through (j) of Section 11.01 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 Equity Interests 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 Equity Interests 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.

**9.10 Collateral and Guaranty Matters.** Without limiting the provisions of Section 9.09, each of the Lenders (including in its capacities as a potential Cash Management Bank, potential Foreign Obligation Provider and a potential Hedge Bank) and the L/C Issuer irrevocably authorize the Administrative Agent, at its option and in its discretion,

(a) to release any Lien on any property granted to or held by the Administrative Agent under any Loan Document (i) upon the Facility Termination Date, (ii) that is sold or otherwise disposed of or to be sold or otherwise disposed of as part of or in connection with any sale or other disposition permitted hereunder or under any other Loan Document to a Person that is not a Loan Party, (iii) that constitutes Excluded Assets, or (iv) if approved, authorized or ratified in writing in accordance with Section 11.01;

(b) to release any Guarantor from its obligations under the Guaranty if such Person ceases to be a Subsidiary as a result of a transaction permitted under the Loan Documents; and

(c) to subordinate any Lien on any property granted to or held by the Administrative Agent under any Loan Document to the holder of any Lien on such property that is permitted by Section 7.01(i).

Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's authority to release or subordinate its interest in particular types or items of property, or to release any Guarantor from its obligations under the Guaranty pursuant to this Section 9.10. In each case as specified in this Section 9.10, the Administrative Agent will, at the Borrowers' 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 Collateral Documents or to subordinate its interest in such item, or to release such Guarantor from its obligations under the Guaranty, in each case in accordance with the terms of the Loan Documents and this Section 9.10.

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

**9.11 Secured Cash Management Agreements and Secured Hedge Agreements.** No Cash Management Bank, Foreign Obligation Provider or Hedge Bank that obtains the benefits of Section 8.03, any Guaranty or any Collateral by virtue of the provisions hereof or of any Guaranty or any Collateral Document shall have any right to notice of any action or to consent to, direct or object to any action hereunder or under any other Loan Document or otherwise in respect of the Collateral (including the release or impairment of any Collateral) (or to notice of or to consent to any amendment, waiver or modification of the provisions hereof or of the Guaranty or any Collateral Document) other than in its capacity as a Lender and, in such case, only to the extent expressly provided in the Loan Documents. Notwithstanding any other provision of this Article IX to the contrary, the Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Obligations arising under Secured

Cash Management Agreements and Secured Hedge Agreements unless the Administrative Agent has received written notice of such Obligations, together with such supporting documentation as the Administrative Agent may request, from the applicable Cash Management Bank, Foreign Obligation Provider or Hedge Bank, as the case may be. The Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Secured Obligations arising under Secured Cash Management Agreements and Secured Hedge Agreements in the case of a Facility Termination Date.

**9.12 Parallel Debt.**

(a) Holdings, and any other Loan Party providing security under a Dutch Collateral Document (each a “Dutch Collateral Party”) hereby irrevocably and unconditionally undertakes to pay to the Administrative Agent an amount equal to the aggregate amount due by that Dutch Collateral Party in respect of the Corresponding Obligations as they may exist from time to time. Their payment undertaking of each of the Dutch Collateral Parties under this Section 9.12 (Parallel Debt) is to be referred to as its “Parallel Debt”.

(b) The Parallel Debt of each of the Dutch Collateral Parties will be payable in the currency or currencies of its Corresponding Obligations and will become due and payable as and when and to the extent one (1) or more of its Corresponding Obligations become due and payable. An Event of Default in respect of the Corresponding Obligations shall constitute a default (*verzuim*) within the meaning of section 3:248 of the Dutch Civil Code with respect to the Parallel Debts without any notice being required.

(c) Each of the parties to this Agreement hereby acknowledges that:

(i) each Parallel Debt constitutes an undertaking, obligation and liability to the Administrative Agent which is separate and independent from, and without prejudice to, the Corresponding Obligations of the relevant pledgor; and

(ii) each Parallel Debt represents the Administrative Agent's own separate and independent claim to receive payment of the Parallel Debt from the relevant Dutch Collateral Party,

it being understood, in each case, that pursuant to this Section 9.12(c) the amount which may become payable by each of the Dutch Collateral Parties as its Parallel Debt shall never exceed the total of the amounts which are payable under or in connection with its Corresponding Obligations.

(d) The Administrative Agent hereby confirms and accepts that to the extent the Administrative Agent irrevocably receives any amount in payment of a Parallel Debt, the Administrative Agent shall distribute that amount the Administrative Agent and the Lenders that are creditors of the relevant Corresponding Obligations in accordance with Section 8.03. Upon irrevocable receipt by the Administrative Agent of any amount in payment of a Parallel Debt (a “Received Amount”), the Corresponding Obligations shall be reduced, if necessary *pro rata* in respect of the Administrative Agent and each Lender individually, by amounts totaling an amount (a “Deductible Amount”) equal to the Received Amount in the manner as if the Deductible Amount were received by the Administrative Agent and the Lenders as a payment of the Corresponding

Obligations owed by the relevant Dutch Collateral Party on the date of receipt by the Administrative Agent of the Received Amount.

(e) For the purpose of this Section 9.12 the Administrative Agent acts in its own name and on behalf of itself and not as agent, trustee or representative of any other Lender.

**9.13** *ERISA Matters.*

(a) Each Lender (x) represents and warrants, as of the Restatement Date, to, and (y) covenants, from the Restatement Date to the date such Person ceases being a Lender party hereto, that at least one of the following is and will be true:

(i) such Lender is not using “plan assets” (within the meaning of 29 CFR §2510.3-101, as modified by Section 3(42) of ERISA) of one or more Benefit Plans in connection with the Loans, the Letters of Credit or the Commitments,

(ii) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable, and the conditions of such exemption have been 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

(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.

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion and such Lender.

**9.14** *Recovery of Erroneous Payments.* Without limitation of any other provision herein, if at any time the Administrative Agent makes a payment hereunder in error to any Secured Party, whether or not in respect of an Obligation due and owing by Borrowers at such time, where such payment is a Rescindable Amount, then in any such event each Secured Party receiving a Rescindable Amount severally agrees to repay to the Administrative Agent forthwith on demand the Rescindable Amount received by such Secured Party in immediately available funds in the



currency so received, with interest thereon for each day from and including the date such Rescindable Amount is received by it to but excluding the date of repayment to Administrative Agent, at the greater of the Federal Funds Rate and a rate determined by Agent in accordance with banking industry rules on interbank compensation. Each Secured Party irrevocably waives any and all defenses, including any discharge for value (under which a creditor might otherwise claim a right to retain funds mistakenly paid by a third party in respect of a debt owed by another) or similar defense to its obligation to return any Rescindable Amount. The Administrative Agent shall inform each Secured Party promptly upon determining that any payment made to such Secured Party was comprised, in whole or in part, of a Rescindable Amount. Notwithstanding anything to the contrary herein or in any other Loan Document, none of Holdings or any of its Subsidiaries has acquired or incurred (or will acquire or incur) any additional obligations under this Section 9.14.

## ARTICLE X CONTINUING GUARANTY

**10.01**        *Guaranty.* Each Guarantor hereby absolutely and unconditionally, jointly and severally guarantees, as primary obligor and as a guaranty of payment and performance and not merely as a guaranty of collection, prompt payment when due, whether at stated maturity, by required prepayment, upon acceleration, demand or otherwise, and at all times thereafter, of any and all of the Obligations, whether for principal, interest, premiums, fees, indemnities, damages, costs, expenses or otherwise, of the Borrowers (other than itself) to the Secured Parties, and whether arising hereunder or under any other Loan Document, any Secured Cash Management Agreement or any Secured Hedge Agreement (including all renewals, extensions, amendments, refinancings and other modifications thereof and all costs, attorneys' fees and expenses incurred by the Secured Parties in connection with the collection or enforcement thereof) (for each Guarantor, subject to the proviso in this sentence, its "Guaranteed Obligations"); provided that (a) the Guaranteed Obligations of a Guarantor shall exclude any Excluded Swap Obligations with respect to such Guarantor and (b) the liability of each Guarantor individually with respect to this Guaranty shall be limited to an aggregate amount equal to the largest amount that would not render its obligations hereunder subject to avoidance under Section 548 of the Bankruptcy Code of the United States or any comparable provisions of any applicable state law or other applicable Law. Without limiting the generality of the foregoing, the Guaranteed Obligations shall include any such indebtedness, obligations, and liabilities, or portion thereof, which may be or hereafter become unenforceable or compromised or shall be an allowed or disallowed claim under any proceeding or case commenced by or against any debtor under any Debtor Relief Laws. The Administrative Agent's books and records showing the amount of the Obligations shall be admissible in evidence in any action or proceeding, and shall be binding upon each Guarantor, and conclusive for the purpose of establishing the amount of the Obligations. This Guaranty shall not be affected by the genuineness, validity, regularity or enforceability of the Obligations or any instrument or agreement evidencing any Obligations, or by the existence, validity, enforceability, perfection, non-perfection or extent of any collateral therefor, or by any fact or circumstance relating to the Obligations which might otherwise constitute a defense to the obligations of any Guarantor under this Guaranty, and each Guarantor hereby irrevocably waives any defenses it may now have or hereafter acquire in any way relating to any or all of the foregoing.

**10.02** *Rights of Lenders.* Each Guarantor consents and agrees that the Secured Parties may, at any time and from time to time, without notice or demand, and without affecting the enforceability or continuing effectiveness hereof: (a) amend, extend, renew, compromise, discharge, accelerate or otherwise change the time for payment or the terms of the Obligations or any part thereof; (b) take, hold, exchange, enforce, waive, release, fail to perfect, sell, or otherwise dispose of any security for the payment of this Guaranty or any Obligations; (c) apply such security and direct the order or manner of sale thereof as the Administrative Agent, the L/C Issuer and the Lenders in their sole discretion may determine; and (d) release or substitute one (1) or more of any endorsers or other guarantors of any of the Obligations. Without limiting the generality of the foregoing, each Guarantor consents to the taking of, or failure to take, any action which might in any manner or to any extent vary the risks of such Guarantor under this Guaranty or which, but for this provision, might operate as a discharge of such Guarantor.

**10.03** *Certain Waivers.* Each Guarantor waives (a) any defense arising by reason of any disability or other defense of the Borrowers or any other guarantor, or the cessation from any cause whatsoever (including any act or omission of any Secured Party) of the liability of the Borrowers; (b) any defense based on any claim that such Guarantor's obligations exceed or are more burdensome than those of the Borrowers; (c) the benefit of any statute of limitations affecting any Guarantor's liability hereunder; (d) any right to proceed against the Borrowers, proceed against or exhaust any security for the Obligations, or pursue any other remedy in the power of any Secured Party whatsoever; (e) any benefit of and any right to participate in any security now or hereafter held by any Secured Party; and (f) to the fullest extent permitted by law, any and all other defenses or benefits that may be derived from or afforded by applicable law limiting the liability of or exonerating guarantors or sureties. Each Guarantor expressly waives all setoffs and counterclaims and all presentments, demands for payment or performance, notices of nonpayment or nonperformance, protests, notices of protest, notices of dishonor and all other notices or demands of any kind or nature whatsoever with respect to the Obligations, and all notices of acceptance of this Guaranty or of the existence, creation or incurrence of new or additional Obligations. As provided below, this Guaranty shall be governed by, and construed in accordance with, the Laws of the State of New York.

**10.04** *Obligations Independent.* The obligations of each Guarantor hereunder are those of primary obligor, and not merely as surety, and are independent of the Obligations and the obligations of any other guarantor, and a separate action may be brought against such Guarantor to enforce this Guaranty whether or not the Borrowers or any other Person or entity is joined as a party.

**10.05** *Subrogation.* No Guarantor shall exercise any right of subrogation, contribution, indemnity, reimbursement or similar rights with respect to any payments it makes under this Guaranty until all of the Obligations and any amounts payable under this Guaranty have been indefeasibly paid and performed in full and the Commitments and the Facilities are terminated. If any amounts are paid to any Guarantor in violation of the foregoing limitation, then such amounts shall be held in trust for the benefit of the Secured Parties and shall forthwith be paid to the Secured Parties to reduce the amount of the Obligations, whether matured or unmatured.

**10.06** *Termination; Reinstatement.* This Guaranty is a continuing and irrevocable guaranty of all Obligations now or hereafter existing and shall remain in full force and effect until

all Obligations and any other amounts payable under this Guaranty are indefeasibly paid in full in cash and the Commitments and the Facilities with respect to the Obligations are terminated. Notwithstanding the foregoing, this Guaranty shall continue in full force and effect or be revived, as the case may be, if any payment by or on behalf of the Borrowers or any Guarantor is made, or any of the Secured Parties exercises its right of setoff, in respect of the Obligations and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by any of the Secured Parties in their discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Laws or otherwise, all as if such payment had not been made or such setoff had not occurred and whether or not the Secured Parties are in possession of or have released this Guaranty and regardless of any prior revocation, rescission, termination or reduction. The obligations of each Guarantor under this paragraph shall survive termination of this Guaranty.

**10.07 Subordination.** Each Guarantor hereby subordinates the payment of all obligations and indebtedness of the Borrowers owing to such Guarantor, whether now existing or hereafter arising, including but not limited to any obligation of the Borrowers to any Guarantor as subrogee of the Secured Parties or resulting from such Guarantor's performance under this Guaranty, to the indefeasible payment in full in cash of all Obligations. If the Secured Parties so request, any such obligation or indebtedness of the Borrowers to any Guarantor shall be enforced and performance received by such Guarantor as trustee for the Secured Parties and the proceeds thereof shall be paid over to the Secured Parties on account of the Obligations, but without reducing or affecting in any manner the liability of any Guarantor under this Guaranty.

**10.08 Stay of Acceleration.** If acceleration of the time for payment of any of the Obligations is stayed, in connection with any case commenced by or against any Guarantor or the Borrowers under any Debtor Relief Laws, or otherwise, all such amounts shall nonetheless be payable by such Guarantor, jointly and severally, immediately upon demand by the Secured Parties.

**10.09 Condition of Borrowers.** Each Guarantor acknowledges and agrees that it has the sole responsibility for, and has adequate means of, obtaining from the Borrowers and any other guarantor such information concerning the financial condition, business and operations of the Borrowers and any such other guarantor as such Guarantor requires, and that none of the Secured Parties has any duty, and such Guarantor is not relying on the Secured Parties at any time, to disclose to such Guarantor any information relating to the business, operations or financial condition of the Borrowers or any other guarantor. Each Guarantor hereby waives any duty on the part of the Secured Parties to disclose such information and any defense relating to the failure to provide the same.

**10.10 Additional Guarantor Waivers and Agreements.** (a) Each Guarantor understands and acknowledges that if the Secured Parties foreclose judicially or nonjudicially against any real property security for the Obligations, that foreclosure could impair or destroy any ability that such Guarantor may have to seek reimbursement, contribution, or indemnification from the Borrowers or others based on any right such Guarantor may have of subrogation, reimbursement, contribution, or indemnification for any amounts paid by such Guarantor under this Guaranty. By executing this Guaranty, Each Guarantor freely, irrevocably, and unconditionally: (i) waives and

relinquishes that defense and agrees that such Guarantor will be fully liable under this Guaranty even though the Secured Parties may foreclose, either by judicial foreclosure or by exercise of power of sale, any deed of trust securing the Obligations; (ii) agrees that such Guarantor will not assert that defense in any action or proceeding which the Secured Parties may commence to enforce this Guaranty; and (iii) acknowledges and agrees that the Secured Parties are relying on this waiver in creating the Obligations, and that this waiver is a material part of the consideration which the Secured Parties are receiving for creating the Obligations.

(a) Each Guarantor waives all rights and defenses that such Guarantor may have because any of the Obligations is secured by real property. This means, among other things: (i) the Secured Parties may collect from such Guarantor without first foreclosing on any real or personal property collateral pledged by the other Loan Parties; and (ii) if the Secured Parties foreclose on any real property collateral pledged by the other Loan Parties: (A) the amount of the Obligations may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price, and (B) the Secured Parties may collect from such Guarantor even if the Secured Parties, by foreclosing on the real property collateral, have destroyed any right such Guarantor may have to collect from the Borrowers. This is an unconditional and irrevocable waiver of any rights and defenses any Guarantor may have because any of the Obligations is secured by real property.

**11.11** *Keepwell.* Each Loan Party that is a Qualified ECP Guarantor at the time the Guaranty or the grant of the security interest under the Loan Documents, in each case, by any Specified Loan Party, becomes effective with respect to any Swap Obligation, hereby jointly and severally, absolutely, unconditionally and irrevocably undertakes to provide such funds or other support to each Specified Loan Party with respect to such Swap Obligation as may be needed by such Specified Loan Party from time to time to honor all of its obligations under its Guaranty and the other Loan Documents in respect of such Swap Obligation (but, in each case, only up to the maximum amount of such liability that can be hereby incurred without rendering such Qualified ECP Guarantor's obligations and undertakings under this Article X voidable under applicable law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations and undertakings of each Qualified ECP Guarantor under this Section shall remain in full force and effect until the Obligations have been indefeasibly paid and performed in full. Each Qualified ECP Guarantor intends this Section to constitute, and this Section shall be deemed to constitute, a guarantee of the obligations of, and a "keepwell, support, or other agreement" for the benefit of, each Specified Loan Party for all purposes of the Commodity Exchange Act.

## **ARTICLE XI MISCELLANEOUS**

**11.01** *Amendments, Etc.* Subject to Section 3.03, no amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by the Borrowers or any other Loan Party therefrom, shall be effective unless in writing signed by the Required Lenders and the Borrowers or the applicable Loan Party, as the case may be, and acknowledged by the Administrative Agent, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that no such amendment, waiver or consent shall:

- (a) [intentionally omitted];
- (b) waive any condition set forth in Section 4.02 as to any Credit Extension under a particular Facility without the written consent of the Required Revolving Lenders or the Required Term A Lenders, as the case may be;
- (c) extend or increase the Commitment of any Lender (or reinstate any Commitment terminated pursuant to Section 8.02) without the written consent of such Lender;
- (d) postpone any date fixed by this Agreement or any other Loan Document for (i) any payment (excluding mandatory prepayments) of principal, interest, fees or other amounts due to the Lenders (or any of them) hereunder or under such other Loan Document without the written consent of each Lender entitled to such payment or (ii) any scheduled reduction of any Facility hereunder or under any other Loan Document without the written consent of each Appropriate Lender;
- (e) reduce the principal of, or the rate of interest specified herein on, any Loan or L/C Borrowing, or (subject to clause (iv) of the second proviso to this Section 11.01) any fees or other amounts payable hereunder or under any other Loan Document, without the written consent of each Lender entitled to such amount; provided, however, that only the consent of the Required Lenders shall be necessary to amend the definition of “Default Rate” or to waive any obligation of the Borrowers to pay interest or Letter of Credit Fees at the Default Rate;
- (f) change (i) Section 8.03 or (ii) the order of application of any reduction in the Commitments or any prepayment of Loans among the Facilities from the application thereof set forth in the applicable provisions of Section 2.05(b) or 2.06(b), respectively, in any manner that materially and adversely affects the Lenders under a Facility without the written consent of (i) if such Facility is the Term A Facility, the Required Term A Lenders, and (ii) if such Facility is the Revolving Credit Facility, the Required Revolving Lenders;
- (g) change (i) any provision of Section 2.13, this Section 11.01 or the definition of “Required Lenders” or any other provision hereof specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder (other than the definitions specified in clause (ii) of this Section 11.01(g)), without the written consent of each Lender or (ii) the definition of “Required Revolving Lenders,” or “Required Term A Lenders,” without the written consent of each Lender under the applicable Facility;
- (h) (i) release all or substantially all of the Collateral in any transaction or series of related transactions, without the written consent of each Lender or (ii) subordinate all or substantially all of the Collateral or subordinate, or have the effect of subordinating, the Obligations hereunder to any other Indebtedness or other obligation (any such other Indebtedness or other obligations, “Specified Indebtedness”) in any transaction or series of related transactions unless, in the case of this subclause (ii), each directly and adversely affected Lender has been offered a bona fide opportunity to fund or otherwise provide its pro rata share (based on the amount of Obligations that are adversely affected thereby held by each such Lender) of the Specified Indebtedness on the same terms (other than bona fide backstop fees and reimbursement of counsel

fees and other expenses in connection with the negotiation of the terms of such transaction; such fees and expenses, “Ancillary Fees”) as offered to all other providers (or their Affiliates) of the Specified Indebtedness and to the extent such directly and adversely affected Lender decides to participate in the Specified Indebtedness, receive its pro rata share of the fees and any other similar benefit (other than Ancillary Fees) of the Specified Indebtedness afforded to the providers of the Specified Indebtedness (or any of their Affiliates) in connection with providing the Specified Indebtedness pursuant to a written offer made to each such directly and adversely affected Lender describing the material terms of the arrangements pursuant to which the Specified Indebtedness is to be provided, which offer shall remain open to each adversely affected Lender for a period of not less than five (5) Business Days; provided that, notwithstanding the foregoing, this clause (h) shall not (A) apply in connection with a debtor-in-possession financing or use of cash collateral in any proceeding under any Debtor Relief Law permitted under any permitted intercreditor agreement, a “credit bid” undertaken by the Administrative Agent at the direction of the Required Lenders pursuant to section 363(k), section 1129(b)(2)(a)(ii) or any other section of the Bankruptcy Code or any other sale or other disposition of assets in connection with other Debtor Relief Laws or an enforcement action with respect to the Collateral permitted pursuant to the Loan Documents (in which case only the consent of the Required Lenders will be required for any such release or subordination) or (B) apply to Indebtedness permitted pursuant to Section 7.02(f) that is expressly permitted by this Agreement as in effect as of the Effective Date to be senior to the Obligations and/or be secured by a Lien that is senior to the Lien securing the Obligations;

(i) release all or substantially all of the value of the Guaranty, without the written consent of each Lender, except to the extent the release of any Subsidiary from the Guaranty is permitted pursuant to Section 9.10 (in which case such release may be made by the Administrative Agent acting alone); or

(j) impose any greater restriction on the ability of any Lender under a Facility to assign any of its rights or obligations hereunder without the written consent of (i) if such Facility is the Term A Facility, the Required Term A Lenders and (ii) if such Facility is the Revolving Credit Facility, the Required Revolving Lenders; and provided, further, that (i) no amendment, waiver or consent shall, unless in writing and signed by the L/C Issuer in addition to the Lenders required above, affect the rights or duties of the L/C Issuer under this Agreement or any Issuer Document relating to any Letter of Credit issued or to be issued by it; (ii) no amendment, waiver or consent shall, unless in writing and signed by the Swing Line Lender in addition to the Lenders required above, affect the rights or duties of the Swing Line Lender under this Agreement; (iii) no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the Lenders required above, affect the rights or duties of the Administrative Agent under this Agreement or any other Loan Document; and (iv) the Agent Fee Letter may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto. Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that (x) the Commitment of any Defaulting Lender may not be increased or extended without the consent of such Lender and (y) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that by its terms affects any Defaulting Lender disproportionately adversely relative to other affected Lenders shall require the consent of such Defaulting Lender.

Notwithstanding any provision herein to the contrary, this Agreement may be amended with the written consent of the Required Lenders, the Administrative Agent and the Borrowers (i) to add one (1) or more additional revolving credit or term loan facilities to this Agreement and to permit the extensions of credit and all related obligations and liabilities arising in connection therewith from time to time outstanding to share ratably (or on a basis subordinated to the existing facilities hereunder) in the benefits of this Agreement and the other Loan Documents with the obligations and liabilities from time to time outstanding in respect of the existing facilities hereunder, and (ii) in connection with the foregoing, to permit, as deemed appropriate by the Administrative Agent and approved by the Required Lenders, the Lenders providing such additional credit facilities to participate in any required vote or action required to be approved by the Required Lenders or by any other number, percentage or class of Lenders hereunder.

Notwithstanding anything to the contrary contained in this Section 11.01, (x) Collateral Documents and related documents executed by Subsidiaries in connection with this Agreement may be in a form reasonably determined by the Administrative Agent and may be amended, supplemented and waived with the consent of the Administrative Agent and the Borrowers without the need to obtain the consent of any other Person if such amendment, supplement or waiver is delivered in order (i) to comply with local law or advice of local counsel, (ii) to cure ambiguities, omissions, mistakes or defects or (iii) to cause such Collateral Document or other document to be consistent with this Agreement and the other Loan Documents and (y) if following the Restatement Date, the Administrative Agent and any Loan Party shall have jointly identified an ambiguity, inconsistency, obvious error or any error or omission of a technical or immaterial nature, in each case, in any provision of the Loan Documents, then the Administrative Agent and the Loan Parties shall be permitted to amend such provision and such amendment shall become effective without any further action or consent of any other party to any Loan Documents if the same is not objected to in writing by the Required Lenders within five (5) Business Days following receipt of notice thereof.

If any Lender does not consent to a proposed amendment, waiver, consent or release with respect to any Loan Document that requires the consent of each Lender and that has been approved by the Required Lenders, the Borrowers may replace such non-consenting Lender in accordance with Section 11.13; provided that such amendment, waiver, consent or release can be effected as a result of the assignment contemplated by such Section (together with all other such assignments required by the Borrowers to be made pursuant to this paragraph).

Notwithstanding anything to the contrary herein, this Agreement may be amended and restated without the consent of any Lender (but with the consent of the Borrowers and the Administrative Agent) if, upon giving effect to such amendment and restatement, such Lender shall no longer be a party to this Agreement (as so amended and restated), the Commitments of such Lender shall have terminated, such Lender shall have no other commitment or other obligation hereunder and shall have been paid in full all principal, interest and other amounts owing to it or accrued for its account under this Agreement.

**11.02        *Notices; Effectiveness; Electronic Communications.***

(a)        Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in subsection (b) below), all

notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile or electronic mail as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to any Loan Party, the Administrative Agent, the L/C Issuer or the Swing Line Lender, to the address, facsimile number, electronic mail address or telephone number specified for such Person on Schedule 11.02; and

(ii) if to any other Lender, to the address, facsimile number, electronic mail address or telephone number specified in its Administrative Questionnaire (including, as appropriate, notices delivered solely to the Person designated by a Lender on its Administrative Questionnaire then in effect for the delivery of notices that may contain material non-public information relating to the Loan Parties).

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices and other communications delivered through electronic communications to the extent provided in subsection (b) below shall be effective as provided in such subsection (b).

(b) Electronic Communications. Notices and other communications to the Lenders and the L/C Issuer hereunder may be delivered or furnished by electronic communication (including e-mail, FPML messaging, and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent, provided that the foregoing shall not apply to notices to any Lender or the L/C Issuer pursuant to Article II if such Lender or the L/C Issuer, as applicable, has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent, the Swing Line Lender, the L/C Issuer or the Borrowers may each, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications.

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor; provided that, for both clauses (i) and (ii), if such notice, email or other communication is not sent during the normal business hours of the recipient, such notice, email or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient.



(c) The Platform. THE PLATFORM IS PROVIDED “AS IS” AND “AS AVAILABLE.” THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Administrative Agent or any of its Related Parties (collectively, the “Agent Parties”) have any liability to any Loan Party, any Lender, the L/C Issuer or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of the Borrowers’, any Loan Party’s or the Administrative Agent’s transmission of Borrower Materials or notices through the Platform, any other electronic platform or electronic messaging service, or through the Internet.

(d) Change of Address, Etc. Each of the Loan Parties, the Administrative Agent, the L/C Issuer and the Swing Line Lender may change its address, facsimile, telephone number or e-mail address for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, facsimile, telephone number or e-mail address for notices and other communications hereunder by notice to the Borrowers, the Administrative Agent, the L/C Issuer and the Swing Line Lender. In addition, each Lender agrees to notify the Administrative Agent from time to time to ensure that the Administrative Agent has on record (i) an effective address, contact name, telephone number, facsimile number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender. Furthermore, each Public Lender agrees to cause at least one (1) individual at or on behalf of such Public Lender to at all times have selected the “Private Side Information” or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender’s compliance procedures and applicable Law, including United States Federal and state securities Laws, to make reference to Borrower Materials that are not made available through the “Public Side Information” portion of the Platform and that may contain material non-public information with respect to the Borrowers or its securities for purposes of United States Federal or state securities Laws.

(e) Reliance by Administrative Agent, L/C Issuer and Lenders. The Administrative Agent, the L/C Issuer and the Lenders shall be entitled to rely and act upon any notices (including, without limitation, telephonic or electronic notices, Committed Loan Notices, Letter of Credit Applications, Notice of Loan Prepayment and Swing Line Loan Notices) purportedly given by or on behalf of the Borrowers even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Loan Parties shall indemnify the Administrative Agent, the L/C Issuer, each Lender and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the Borrowers. All telephonic notices to and other telephonic communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

**11.03** *No Waiver; Cumulative Remedies; Enforcement.* No failure by any Lender, the L/C Issuer or the Administrative Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder or under any other Loan Document shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder or under any other Loan Document 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, and provided under each other Loan Document, are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Loan Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent in accordance with Section 8.02 for the benefit of all the Lenders and the L/C Issuer; provided, however, that the foregoing shall not prohibit (a) the Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent) hereunder and under the other Loan Documents, (b) the L/C Issuer or the Swing Line Lender from exercising the rights and remedies that inure to its benefit (solely in its capacity as L/C Issuer or Swing Line Lender, as the case may be) hereunder and under the other Loan Documents, (c) any Lender from exercising setoff rights in accordance with Section 11.08 (subject to the terms of Section 2.13), or (d) any Lender 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 Law; and provided, further, that if at any time there is no Person acting as Administrative Agent hereunder and under the other Loan Documents, then (i) the Required Lenders shall have the rights otherwise ascribed to the Administrative Agent pursuant to Section 8.02 and (ii) in addition to the matters set forth in clauses (b), (c) and (d) of the preceding proviso and subject to Section 2.13, any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

**11.04** *Expenses; Indemnity; Damage Waiver.* (a) Costs and Expenses. The Borrowers shall pay (i) all reasonable and documented out-of-pocket expenses incurred by the Administrative Agent and the Arrangers and their Affiliates in connection with the syndication of the Facility, the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof whether or not the transactions contemplated hereby or thereby are consummated (but limited, in the case of legal fees and expenses, to the reasonable and invoiced fees, disbursements and other charges of one (1) counsel to the Administrative Agent, the Arrangers and their Affiliates taken as a whole and one (1) local counsel and one (1) regulatory counsel in any relevant material jurisdiction and one (1) additional counsel in the event of a conflict), (ii) all reasonable and documented out-of-pocket expenses incurred by the L/C Issuer in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder and (iii) all reasonable and documented out-of-pocket expenses incurred by the Administrative Agent, any Lender or the L/C Issuer (but limited, in the case of legal fees and expenses, to the reasonable and invoiced fees, disbursements and other charges of one (1) counsel to the Administrative Agent and the Lenders taken as a whole and one (1) local counsel and one (1) regulatory counsel in any relevant material jurisdiction and one (1) additional counsel in the event of a conflict), in connection with the enforcement or protection of its rights (A) in connection with

this Agreement and the other Loan Documents, including its rights under this Section, or (B) in connection with Loans made or Letters of Credit issued hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit.

(a) Indemnification by the Borrowers. The Borrowers shall indemnify the Administrative Agent (and any sub-agent thereof), each Arranger, each Lender and the L/C Issuer, and each Related Party of any of the foregoing Persons (each such Person being called an “Indemnitee”) against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses (including the fees, charges and disbursements of any counsel for any Indemnitee), and shall indemnify and hold harmless each Indemnitee from all fees and time charges and disbursements for attorneys who may be employees of any Indemnitee, incurred by any Indemnitee or asserted against any Indemnitee by any Person (including the Borrowers or any other Loan Party) other than such Indemnitee and its Related Parties arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby (including, without limitation, the Indemnitee’s reliance on any Communication executed using an Electronic Signature, or in the form of an Electronic Record), the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, or, in the case of the Administrative Agent (and any sub-agent thereof) and its Related Parties only, the administration of this Agreement and the other Loan Documents (including in respect of any matters addressed in Section 3.01), (ii) any Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by the L/C Issuer to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or Release of Hazardous Materials at, on, under or emanating from any property owned, leased or operated by Holdings or any of its Subsidiaries, or any Environmental Liability related in any way to Holdings or any of its Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Borrowers or any other Loan Party or any of the Borrowers’ or such Loan Party’s directors, shareholders or creditors, and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee, (y) result from a claim brought by the Borrowers or any other Loan Party against an Indemnitee for breach in bad faith of such Indemnitee’s obligations hereunder or under any other Loan Document, if the Borrowers or such Loan Party has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction, or (z) involve disputes among Indemnitees unrelated to any disputes involving, or claims against, the Borrowers and/or the Guarantors and other than disputes involving the Administrative Agent, the Swing Line Lender, the L/C Issuer, or any Arranger or similar Person in its capacity as such, as determined by a court of competent jurisdiction by final and nonappealable judgment. Without limiting the provisions of Section 3.01(c), this Section 11.04(b) shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

(b) Reimbursement by Lenders. To the extent that the Borrowers for any reason fail to indefeasibly pay any amount required under subsection (a) or (b) of this Section to be paid by it to the Administrative Agent (or any sub-agent thereof), the L/C Issuer, the Swing Line Lender or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent), the L/C Issuer, the Swing Line Lender or such Related Party, as the case may be, such Lender's *pro rata* share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought based on each Lender's share of the Total Credit Exposure at such time) of such unpaid amount (including any such unpaid amount in respect of a claim asserted by such Lender), such payment to be made severally among them based on such Lenders' Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought), provided, further that, the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such sub-agent), the L/C Issuer or the Swing Line Lender in its capacity as such, or against any Related Party of any of the foregoing acting for the Administrative Agent (or any such sub-agent), the L/C Issuer or the Swing Line Lender in connection with such capacity. The obligations of the Lenders under this subsection (c) are subject to the provisions of Section 2.12(d).

(c) Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable law, the Loan Parties shall not assert, and hereby waive, and acknowledge that no other Person shall have, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or Letter of Credit or the use of the proceeds thereof. No Indemnitee referred to in subsection (b) above shall be liable for any damages arising from the use by others of any information or other materials distributed to such party by such Indemnitee 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.

(d) Payments. All amounts due under this Section shall be payable not later than ten (10) Business Days after demand therefor.

(e) Survival. The agreements in this Section and the indemnity provision of Section 11.02(e) shall survive the resignation of the Administrative Agent, the L/C Issuer and the Swing Line Lender, the replacement of any Lender, the termination of the Aggregate Commitments and the repayment, satisfaction or discharge of all the other Obligations.

**11.05** Payments Set Aside. To the extent that any payment by or on behalf of the Loan Parties is made to the Administrative Agent, the L/C Issuer or any Lender, or the Administrative Agent, the L/C Issuer or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent, the L/C Issuer or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not

been made or such setoff had not occurred, and (b) each Lender and the L/C Issuer severally agrees to pay to the Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Rate from time to time in effect. The obligations of the Lenders and the L/C Issuer under clause (b) of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

**11.06**      ***Successors and Assigns.***

(a)      Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that neither the Borrowers nor any other Loan Party may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of Section 11.06(b), (ii) by way of participation in accordance with the provisions of Section 11.06(d), or (iii) by way of pledge or assignment of a security interest subject to the restrictions of Section 11.06(e) (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in subsection (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent, the L/C Issuer and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b)      Assignments by Lenders. Any Lender may at any time assign to one (1) or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment(s) and the Loans (including for purposes of this Section 11.06(b), participations in L/C Obligations and in Swing Line Loans) at the time owing to it); provided that (in each case with respect to any Facility) any such assignment shall be subject to the following conditions:

(i)      Minimum Amounts.

(A)      in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment under any Facility and/or the Loans at the time owing to it (in each case with respect to any Facility) or contemporaneous assignments, in each case, to related Approved Funds (determined after giving effect to such Assignments) that equal at least the amount specified in paragraph (b)(i)(B) of this Section in the aggregate or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and

(B)      in any case not described in subsection (b)(i)(A) of this Section, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) or, if the applicable Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each

such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if “Trade Date” is specified in the Assignment and Assumption, as of the Trade Date, shall not be less than \$5,000,000, in the case of any assignment in respect of the Revolving Credit Facility, or \$1,000,000, in the case of any assignment in respect of the Term A Facility, unless each of the Administrative Agent and, so long as no Event of Default has occurred and is continuing, the Borrowers otherwise consent (each such consent not to be unreasonably withheld or delayed).

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender’s rights and obligations under this Agreement with respect to the Loans or the Commitment assigned, except that this clause (ii) shall not apply to the Swing Line Lender’s rights and obligations in respect of Swing Line Loans;

(iii) Required Consents. No consent shall be required for any assignment except to the extent required by subsection (b)(i)(B) of this Section, Section 11.06(g) and, in addition:

(A) the consent of the Borrowers (such consent not to be unreasonably withheld or delayed) shall be required unless (1) an Event of Default has occurred and is continuing at the time of such assignment or (2) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund; provided that (a) the Borrowers’ refusal to accept (assuming such acceptance is required pursuant to Section 11.06(g)) any Disqualified Institution shall be deemed to be not unreasonable by the Borrowers, (b) the Borrowers shall be deemed to have consented to any such assignment unless they shall object thereto by written notice to the Administrative Agent within ten (10) Business Days after having received notice thereof, and (c) the Borrowers’ consent shall not be required during the primary syndication of the credit facility provided herein;

(B) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required for assignments in respect of (i) any Revolving Credit Commitment or Incremental Revolving Credit Commitment if such assignment is to a Person that is not a Lender with a Commitment in respect of the applicable Facility, an Affiliate of such Lender or an Approved Fund with respect to such Lender or (ii) any Term Loan to a Person that is not a Lender, an Affiliate of a Lender or an Approved Fund; and

(C) the consent of the L/C Issuer and the Swing Line Lender shall be required for any assignment in respect of the Revolving Credit Facility or any Incremental Revolving Credit Commitment.

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee in the amount of \$3,500; provided, however, that the Administrative Agent may, in its sole discretion, elect to waive such processing and

recording fee in the case of any assignment. The assignee, if it is not a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

(v) No Assignment to Certain Persons. No such assignment shall be made (A) to the Borrowers or any of the Borrowers' Affiliates or Subsidiaries, (B) to any Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (B) or (C) to a natural Person (or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of a natural person).

(vi) Certain Additional Payments. In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Borrowers and the Administrative Agent, the applicable *pro rata* share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent, the L/C Issuer or any Lender hereunder (and interest accrued thereon) and (y) acquire (and fund as appropriate) its full *pro rata* share of all Loans and participations in Letters of Credit and Swing Line Loans in accordance with its Applicable Percentage. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable Law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

(vii) Subject to acceptance and recording thereof by the Administrative Agent pursuant to subsection (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 3.01, 3.04, 3.05 and 11.04 with respect to facts and circumstances occurring prior to the effective date of such assignment; provided, that except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender. Upon request, the Borrowers (at their expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection 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 subsection (d) of this Section.

(c) Register. The Administrative Agent, acting solely for this purpose as a non-fiduciary agent of the Borrowers (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 Borrowers, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. The Register is intended to cause each Loan and other obligation hereunder to be in registered form within the meaning of Section 5f.103-1(c) of the United States Treasury Regulations and within the meaning of Sections 163(f), 871(h)(2) and 881(c)(2) of the Code. The Register shall be available for inspection by the Borrowers and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, the Borrowers or the Administrative Agent, sell participations to any Person (other than a natural Person, or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of a natural Person, a Defaulting Lender, the Borrowers or any of the Borrowers' Affiliates or Subsidiaries, or a Disqualified Institution (other than during the continuation of an Event of Default under Section 8.01(a), Section 8.01(f) or Section 8.01(g))) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans (including such Lender's participations in L/C Obligations and/or Swing Line Loans) owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrowers, the Administrative Agent, the Lenders and the L/C Issuer shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. For the avoidance of doubt, each Lender shall be responsible for the indemnity under Section 11.04(c) without regard to the existence of any participation.

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, waiver or other modification described in the first proviso to Section 11.01 that affects such Participant. The Borrowers agree that each Participant shall be entitled to the benefits, and subject to the terms and provisions, of Sections 3.01, 3.04 and 3.05 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to subsection (b) of this Section (it being understood that the documentation required under Section 3.01(e) shall be delivered to the Lender who sells the participation); provided that such Participant (A) agrees to be subject to the provisions of Sections 3.06 and 11.13 as if it were an assignee under paragraph (b) of this Section and (B) shall not be entitled to receive any greater payment under Sections 3.01 or 3.04, with respect to any participation, than the Lender from whom it acquired



the applicable participation would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation. Each Lender that sells a participation agrees, at the Borrowers' request and expense, to use reasonable efforts to cooperate with the Borrowers to effectuate the provisions of Section 3.06 with respect to any Participant. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 11.08 as though it were a Lender; provided that such Participant agrees to be subject to Section 2.13 as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a fiduciary agent of the Borrowers, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations and within the meaning of Section 163(f), 871(h)(2) and 881(c)(2) of the Code. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(e) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Note, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(f) Resignation as L/C Issuer or Swing Line Lender after Assignment. Notwithstanding anything to the contrary contained herein, if at any time Bank of America assigns all of its Revolving Credit Commitment and Revolving Credit Loans pursuant to Section 11.06(b), Bank of America may, (i) upon thirty (30) days' notice to the Borrowers and the Lenders, resign as L/C Issuer and/or (ii) upon thirty (30) days' notice to the Borrowers, resign as Swing Line Lender. In the event of any such resignation as L/C Issuer or Swing Line Lender, the Borrowers shall be entitled to appoint from among the Lenders a successor L/C Issuer or Swing Line Lender hereunder with the applicable Lender's consent; provided, however, that no failure by the Borrowers to appoint any such successor shall affect the resignation of Bank of America as L/C Issuer or Swing Line Lender, as the case may be. If Bank of America resigns as L/C Issuer, it shall retain all the rights, powers, privileges and duties of the L/C Issuer hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as L/C Issuer and all L/C Obligations with respect thereto (including the right to require the Lenders to make Base Rate Loans or fund risk participations in Unreimbursed Amounts pursuant to Section 2.03(c)). If Bank of America resigns as Swing Line Lender, it shall retain all the rights of the Swing Line Lender provided for hereunder with respect to Swing Line Loans made by it and outstanding as of the effective date of such resignation, including the right to require the Lenders to make Base Rate

Loans or fund risk participations in outstanding Swing Line Loans pursuant to Section 2.04(c). Upon the appointment of a successor L/C Issuer and/or Swing Line Lender, (a) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer or Swing Line Lender, as the case may be, and (b) the successor L/C Issuer shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to Bank of America to effectively assume the obligations of Bank of America with respect to such Letters of Credit.

(g) Disqualified Institutions.

(i) Other than in the event that an Event of Default under Section 8.01(a), Section 8.01(f) or Section 8.01(g) has occurred and is continuing, 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 Borrowers have consented to such assignment in writing in their 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, the delivery of a notice pursuant to, and the expiration of the notice period referred to in, the definition of “Disqualified Institution” after the Trade Date shall not retroactively disqualify a Person that was not a Disqualified Institution on the Trade Date from becoming a Lender. Any assignment in violation of this clause (g)(i) shall not be void, but the other provisions of this clause (g) shall apply.

(ii) If any assignment or participation is made to any Disqualified Institution without the Borrowers’ prior written consent in violation of clause (g)(i) above, or if any Person becomes a Disqualified Institution after the applicable Trade Date, the Borrowers may, at their sole expense and effort, upon notice to the applicable Disqualified Institution (other than with respect to a Disqualified Institution that becomes a Lender after an Event of Default under Section 8.01(a), Section 8.01(f) or Section 8.01(g) has occurred and is continuing) and the Administrative Agent, (A) terminate any Revolving Credit Commitment of such Disqualified Institution and repay all obligations of the Borrowers owing to such Disqualified Institution in connection with such Revolving Credit 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 11.06), all of its interest, rights and obligations under this Agreement to one (1) 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 (other than with respect to a Disqualified Institution that becomes

a Lender after an Event of Default under Section 8.01(a), Section 8.01(f) or Section 8.01(g) has occurred and is continuing) (A) will not (x) have the right to receive information, reports or other materials provided to Lenders by the Loan Parties, the Administrative Agent or any other Lender, (y) be permitted to attend or participate in meetings attended by the Lenders and the Administrative Agent, or (z) be permitted to 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) (x) 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 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, (y) for purposes of voting on any Plan, each Disqualified Institution party hereto hereby agrees (1) not to vote on such Plan, (2) if such Disqualified Institution does vote on such Plan notwithstanding the restriction in the foregoing clause (1), such vote will be deemed not to be in good faith and shall be “designated” pursuant to Section 1126(e) of the Bankruptcy Code (or any similar provision in any other Debtor Relief Laws), and such vote shall not be counted in determining whether the applicable class has accepted or rejected such Plan in accordance with Section 1126(c) of the Bankruptcy Code (or any similar provision in any other Debtor Relief Laws) and (3) not to contest any request by any party for a determination by the Bankruptcy Court (or other applicable court of competent jurisdiction) effectuating the foregoing clause (2), and (z) each Disqualified Institution party hereto hereby irrevocably appoints the Administrative Agent (such appointment being coupled with an interest) as such Disqualified Institution’s attorney-in-fact, with full authority in the place and stead of such Disqualified Institution and in the name of such Disqualified Institution (solely in respect of Loans therein and not in respect of any other claim or status such Disqualified Institution may otherwise have), from time to time in the Administrative Agent’s discretion to take any action and to execute any instrument that the Administrative Agent may deem reasonably necessary or appropriate to carry out the provisions of this clause (B), including to ensure that any vote of such Disqualified Institution on any Plan is withdrawn or otherwise not counted.

(iv) The Administrative Agent shall have the right, and the Borrowers hereby expressly authorize the Administrative Agent, to provide the Excluded Persons List to each Lender requesting the same.

(v) The foregoing provisions shall not constitute a waiver or release of any claim of any party hereunder against a Disqualified Institution arising from that Person having become a Disqualified Institution hereunder in violation of this Agreement.

#### **11.07 *Treatment of Certain Information; Confidentiality.***

(a) Treatment of Certain Information. Each of the Administrative Agent, the Lenders and the L/C Issuer agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates and to its Related Parties (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent

required or requested by any regulatory authority purporting to have jurisdiction over such Person or its Related Parties (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by applicable Laws or regulations or by any subpoena or similar legal process, (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights and obligations under this Agreement or any Eligible Assignee invited to be a Lender pursuant to Section 2.15 or (ii) any actual or prospective party (or its Related Parties) to any swap, derivative or other transaction under which payments are to be made by reference to the Borrowers and their obligations, this Agreement or payments hereunder (it being understood that the Excluded Persons List may be disclosed to any assignee or Participant, or prospective assignee or Participant, in reliance on this clause (f)), (g) on a confidential basis to (i) any rating agency in connection with rating the Borrowers or their Subsidiaries or the credit facilities provided hereunder 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 credit facilities provided hereunder, (h) with the consent of the Borrowers, (i) to any person who is a person, or who belongs to a class of person, specified in the second column of the Third Schedule to the Banking Act, Chapter 19 of Singapore or (j) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section or (ii) becomes available to the Administrative Agent, any Lender, the L/C Issuer or any of their respective Affiliates on a nonconfidential basis from a source other than the Borrowers. For purposes of this Section, “Information” means all information received from any Borrower or any Subsidiary relating to any Borrower or any Subsidiary or any of their respective businesses, other than any such information that is available to the Administrative Agent, any Lender or the L/C Issuer on a nonconfidential basis prior to disclosure by Holdings or any Subsidiary, provided that, in the case of information received from Holdings or any Subsidiary after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information. 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 Agents and the Lenders in connection with the administration of this Agreement, the other Loan Documents and the Commitments.

(b) Non-Public Information. Each of the Administrative Agent, the Lenders and the L/C Issuer acknowledges that (a) the Information may include material non-public information concerning the Borrowers or a Subsidiary, as the case may be, (b) it has developed compliance procedures regarding the use of material non-public information and (c) it will handle such material non-public information in accordance with applicable Law, including United States Federal and state securities Laws.

(c) Press Releases. The Loan Parties and their Affiliates agree that they will not in the future issue any press releases or other public disclosure using the name of the Administrative Agent or any Lender or their respective Affiliates or referring to this Agreement or any of the Loan

Documents without the prior written consent of the Administrative Agent, unless (and only to the extent that) the Loan Parties or such Affiliate is required to do so under law and then, in any event the Loan Parties or such Affiliate will consult with such Person before issuing such press release or other public disclosure.

(d) Customary Advertising Material. The Loan Parties consent to the publication by the Administrative Agent or any Lender of customary advertising material relating to the transactions contemplated hereby using the name, product photographs, logo or trademark of the Loan Parties.

**11.08** *Right of Setoff*. If an Event of Default shall have occurred and be continuing, each Lender, the L/C Issuer and each of their respective Affiliates is hereby authorized at any time and from time to time, after obtaining the prior written consent of the Administrative Agent, to the fullest extent permitted by applicable law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender, the L/C Issuer or any such Affiliate to or for the credit or the account of the Borrowers or any other Loan Party against any and all of the obligations of the Borrowers or such Loan Party now or hereafter existing under this Agreement or any other Loan Document to such Lender or the L/C Issuer, irrespective of whether or not such Lender or the L/C Issuer shall have made any demand under this Agreement or any other Loan Document and although such obligations of the Borrowers or such Loan Party may be contingent or unmaturing or are owed to a branch or office or Affiliate of such Lender or the L/C Issuer different from the branch, office or Affiliate holding such deposit or obligated on such indebtedness; provided, that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.17 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender, the L/C Issuer and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender, the L/C Issuer or their respective Affiliates may have. Each Lender and the L/C Issuer agrees to notify the Borrowers and the Administrative Agent promptly after any such setoff and application, provided that the failure to give such notice shall not affect the validity of such setoff and application.

**11.09** *Interest Rate Limitation*. Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the "Maximum Rate"). If the Administrative Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrowers. In determining whether the interest contracted for, charged, or received by the Administrative Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or

unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

**11.10** *Integration; Effectiveness.* This Agreement, the other Loan Documents, and any separate letter agreements with respect to fees payable to the Administrative Agent or any L/C Issuer, constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successor and assigns.

**11.11** *Survival of Representations and Warranties.* All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Administrative Agent and each Lender, regardless of any investigation made by the Administrative Agent or any Lender or on their behalf and notwithstanding that the Administrative Agent or any Lender may have had notice or knowledge of any Default at the time of any Credit Extension, 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.

**11.12** *Severability.* If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Without limiting the foregoing provisions of this Section 11.12, if and to the extent that the enforceability of any provisions in this Agreement relating to Defaulting Lenders shall be limited by Debtor Relief Laws, as determined in good faith by the Administrative Agent, the L/C Issuer or the Swing Line Lender, as applicable, then such provisions shall be deemed to be in effect only to the extent not so limited.

**11.13** *Replacement of Lenders.* If the Borrowers are entitled to replace a Lender pursuant to the provisions of Section 3.06, or if any Lender is a Defaulting Lender or a Non-Consenting Lender or if any other circumstance exists hereunder that gives the Borrowers the right to replace a Lender as a party hereto, then the Borrowers may, at their 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 11.06), all of its interests, rights (other than its existing rights to payments pursuant to Sections 3.01 and 3.04) 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:

(a) the Borrowers shall have paid to the Administrative Agent the assignment fee (if any) specified in Section 11.06(b);

(b) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and L/C Advances, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 3.05) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrowers (in the case of all other amounts);

(c) in the case of any such assignment resulting from a claim for compensation under Section 3.04 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments thereafter;

(d) such assignment does not conflict with applicable Laws; and

(e) in the case of an 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 Borrowers to require such assignment and delegation cease to apply.

**11.14 *Governing Law; Jurisdiction; Etc.*** THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS AND ANY CLAIMS, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT (EXCEPT, AS TO ANY OTHER LOAN DOCUMENT, AS EXPRESSLY SET FORTH THEREIN) AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

(a) SUBMISSION TO JURISDICTION. EACH BORROWER AND EACH OTHER LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY AGREES THAT IT WILL NOT COMMENCE ANY ACTION, LITIGATION OR PROCEEDING OF ANY KIND OR DESCRIPTION, WHETHER IN LAW OR EQUITY, WHETHER IN CONTRACT OR IN TORT OR OTHERWISE, AGAINST THE ADMINISTRATIVE AGENT, ANY LENDER, THE L/C ISSUER, OR ANY RELATED PARTY OF THE FOREGOING IN ANY WAY RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS RELATING HERETO OR THERETO, IN ANY FORUM OTHER THAN THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE JURISDICTION OF SUCH COURTS AND AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION, LITIGATION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE

LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION, LITIGATION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT THE ADMINISTRATIVE AGENT, ANY LENDER OR THE L/C ISSUER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST THE BORROWERS OR ANY OTHER LOAN PARTY OR THEIR PROPERTIES IN THE COURTS OF ANY JURISDICTION TO ENFORCE ITS OBLIGATIONS UNDER ANY LOAN DOCUMENTS.

(b) WAIVER OF VENUE. EACH BORROWER AND EACH OTHER LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (a) OF THIS SECTION. THE BORROWER AND EACH OTHER LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(c) SERVICE OF PROCESS. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 11.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

(d) Notwithstanding paragraph (a) above, with respect to any action or proceeding arising out of or relating to this Agreement or the other Loan Documents involving any Loan Party that is not a U.S. Loan Party, each of the parties hereto (i) irrevocably agrees to submit to the jurisdiction of any court sitting or with jurisdiction over the State of New York; (ii) waives any other jurisdiction to which it may be entitled by reason of its present or future domicile or otherwise; and (iii) waives any objection to those courts on the ground of venue or *forum non conveniens*.

(e) Each Loan Party hereby irrevocably designates, appoints and empowers Ichor Systems (the "Process Agent") as its designee, appointee and agent to receive, accept and acknowledge for and on its behalf, and in respect of its property, service of any and all legal process, summons, notices and documents that may be served in any such action or proceeding arising out of or relating to this Agreement or any other Loan Document, and the Process Agent hereby consents to and accepts such appointment on behalf of each Loan Party and hereby notifies Administrative Agent of such consent and acceptance. Such service may be made by mailing or delivering a copy of such process to such Loan Party in care of the Process Agent (or any successor thereto, as the case may be) at such Process Agent's address as set forth in this Agreement and each such Loan Party hereby irrevocably authorizes and directs the Process Agent (and any successor thereto) to accept such service on its behalf. If for any reason such designee, appointee



and agent shall cease to be available to act as such, each Loan Party that is not a U.S. Loan Party agrees to designate a new designee, appointee and agent in the United States of America on the terms and for the purposes of this provision reasonably satisfactory to the Administrative Agent, and further shall at all times maintain an agent for service of process in the United States of America, so long as there shall be outstanding any Obligations. Each such Loan Party shall give notice to Administrative Agent of any such appointment of successor agents for service of process, and shall obtain from each successor agent a letter of acceptance of appointment and promptly deliver the same to Administrative Agent.

**11.15** *Waiver of Jury Trial.* EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER 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.

**11.16** *No Advisory or Fiduciary Responsibility.* In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), each of the Loan Parties acknowledges and agrees, and acknowledges its Affiliates' understanding, that: (i) (A) the arranging and other services regarding this Agreement provided by the Administrative Agent, the Arrangers and the Lenders and their respective Affiliates are arm's-length commercial transactions between the Loan Parties and their respective Affiliates, on the one hand, and the Administrative Agent, the Arrangers and the Lenders and their respective Affiliates, on the other hand, (B) each of the Loan Parties has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) each of the Loan Parties is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii) (A) the Administrative Agent, the Arrangers and each Lender and each of their respective Affiliates each is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Loan Parties or any of their respective Affiliates, or any other Person and (B) neither the Administrative Agent, the Arrangers nor any Lender nor any of their respective Affiliates has any obligation to the Loan Parties or any of their respective Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the Administrative Agent, the Arrangers, the Lenders and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Loan Parties and their respective Affiliates, and neither the Administrative Agent, the Arrangers nor any Lender nor any of their respective Affiliates has any obligation to disclose any of such interests to the Loan Parties or any of their respective Affiliates. To the fullest extent permitted by law, each of the Loan Parties hereby waives and releases any

claims that it may have against the Administrative Agent, the Arrangers and the Lenders and their respective Affiliates with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

**11.17 Electronic Execution; Electronic Records; Counterparts.** This Agreement, any Loan Document (other than the Singapore Collateral Documents) and any other Communication, including Communications required to be in writing, may be in the form of an Electronic Record and may be executed using Electronic Signatures. Each of the Loan Parties and each of the Administrative Agent, the Issuing Bank, the Swingline Lender, and each Lender (collectively, each a “Credit Party”) agrees that any Electronic Signature on or associated with any Communication shall be valid and binding on such Person to the same extent as a manual, original signature, and that any Communication entered into by Electronic Signature, will constitute the legal, valid and binding obligation of such Person enforceable against such Person in accordance with the terms thereof to the same extent as if a manually executed original signature was delivered. Any Communication may be executed in as many counterparts as necessary or convenient, including both paper and electronic counterparts, but all such counterparts are one and the same Communication. For the avoidance of doubt, the authorization under this paragraph may include, without limitation, use or acceptance of a manually signed paper Communication which has been converted into electronic form (such as scanned into PDF format), or an electronically signed Communication converted into another format, for transmission, delivery and/or retention. The Administrative Agent and each of the Credit Parties may, at its option, create one or more copies of any Communication in the form of an imaged Electronic Record (“Electronic Copy”), which shall be deemed created in the ordinary course of such Person’s business, and destroy the original paper document. All Communications in the form of an Electronic Record, including an Electronic Copy, shall be considered an original for all purposes, and shall have the same legal effect, validity and enforceability as a paper record. Notwithstanding anything contained herein to the contrary, neither the Administrative Agent, Issuing Bank nor Swingline Lender is under any obligation to accept an Electronic Signature in any form or in any format unless expressly agreed to by such Person pursuant to procedures approved by it; provided, further, without limiting the foregoing, (a) to the extent the Administrative Agent, Issuing Bank and/or Swingline Lender has agreed to accept such Electronic Signature, the Administrative Agent and each of the Credit Parties shall be entitled to rely on any such Electronic Signature purportedly given by or on behalf of any Loan Party and/or any Credit Party without further verification and (b) upon the request of the Administrative Agent or any Credit Party, any Electronic Signature shall be promptly followed by such manually executed counterpart. For purposes hereof, “Electronic Record” and “Electronic Signature” shall have the meanings assigned to them, respectively, by 15 USC §7006, as it may be amended from time to time.

Neither the Administrative Agent, Issuing Bank nor Swingline Lender shall be responsible for or have any duty to ascertain or inquire into the sufficiency, validity, enforceability, effectiveness or genuineness of any Loan Document or any other agreement, instrument or document (including, for the avoidance of doubt, in connection with the Administrative Agent’s, Issuing Bank’s or Swingline Lender’s reliance on any Electronic Signature transmitted by telecopy, emailed .pdf or any other electronic means). The Administrative Agent, Issuing Bank and Swingline Lender shall be entitled to rely on, and shall incur no liability under or in respect of this Agreement or any other Loan Document by acting upon, any Communication (which writing may be a fax, any electronic message, Internet or intranet website posting or other distribution or

signed using an Electronic Signature) or any statement made to it orally or by telephone and believed by it to be genuine and signed or sent or otherwise authenticated (whether or not such Person in fact meets the requirements set forth in the Loan Documents for being the maker thereof).

Each of the Loan Parties and each Credit Party hereby waives (i) any argument, defense or right to contest the legal effect, validity or enforceability of this Agreement, any other Loan Document based solely on the lack of paper original copies of this Agreement, such other Loan Document and (ii) waives any claim against the Administrative Agent, each Credit Party and each Related Party for any liabilities arising solely from the Administrative Agent's and/or any Credit Party's reliance on or use of Electronic Signatures, including any liabilities arising as a result of the failure of the Loan Parties to use any available security measures in connection with the execution, delivery or transmission of any Electronic Signature.

**11.18 USA PATRIOT Act.** Each Lender that is subject to the Act (as hereinafter defined) and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrowers that pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "Act"), it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of each Loan Party and other information that will allow such Lender or the Administrative Agent, as applicable, to identify each Loan Party in accordance with the Act. The Borrowers shall, promptly following a request by the Administrative Agent or any Lender, provide all documentation and other information that the Administrative Agent or such Lender requests in order to comply with its ongoing obligations under applicable "know your customer" an anti-money laundering rules and regulations, including the Act.

**11.19 Dutch Loan Party Representation.** If Holdings is represented by an attorney in connection with the signing and/or execution of this Agreement or any other agreement, deed or document referred to in or made pursuant to this Agreement, it is hereby expressly acknowledged and accepted by the other parties to this Agreement that the existence and extent of the attorney's authority and the effects of the attorney's exercise or purported exercise of his or her authority shall be governed by the laws of the Netherlands.

**11.20 Judgment Currency.** If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due hereunder or any other Loan Document in one currency into another currency, the rate of exchange used shall be that at which in accordance with normal banking procedures the Administrative Agent could purchase the first currency with such other currency on the Business Day preceding that on which final judgment is given. The obligation of each Borrower in respect of any such sum due from it to the Administrative Agent or any Lender 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 or such Lender, as the case may be, of any sum adjudged to be so due in the Judgment Currency, the Administrative Agent or such Lender, as the case may be, may in accordance with normal banking procedures purchase the Agreement Currency with the Judgment Currency. If the amount of the Agreement Currency so purchased is less than the sum originally due to the Administrative Agent or any Lender from any Borrower in the Agreement Currency, such Borrower agrees, as a separate

obligation and notwithstanding any such judgment, to indemnify the Administrative Agent or such Lender, as the case may be, against such loss. If the amount of the Agreement Currency so purchased is greater than the sum originally due to the Administrative Agent or any Lender in such currency, the Administrative Agent or such Lender, as the case may be, agrees to return the amount of any excess to such Borrower (or to any other Person who may be entitled thereto under applicable law).

**11.21 *Entire Agreement.*** The Agreement and the other Loan Documents represent the final agreement among the parties and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements among the parties.

**11.22 *Acknowledgement and Consent to Bail-In of Affected Financial Institutions.*** Solely to the extent any Lender or L/C Issuer that is an Affected Financial Institution is a party to this Agreement and 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 Lender or L/C Issuer that is an 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 Lender or L/C Issuer 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.

**11.23 *[Intentionally Omitted].***

**11.24 *Amendment and Restatement.*** This Agreement amends, restates and replaces in its entirety the Existing Credit Agreement. All rights, benefits, indebtedness, interest, liabilities and obligations of the parties to the Existing Credit Agreement are hereby amended, restated, replaced and superseded in their entirety according to the terms and provisions set forth herein. The parties hereto acknowledge and agree that (a) this Agreement, any promissory notes delivered pursuant hereto and the other Loan Documents executed and delivered in connection herewith do not constitute a novation or termination of the "Obligations" (as defined in the Existing Credit Agreement) under the Existing Credit Agreement as in effect prior to the Restatement Date and

(b) such “Obligations” are in all respects continuing with only the terms thereof being modified as provided in this Agreement.

**11.25 Acknowledgement Regarding Any Supported QFCs.** To the extent that the Loan Documents provide support, through a guarantee or otherwise, for any Swap Contract 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 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.

*[signature pages follow]*

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

Borrowers:

ICHOR HOLDINGS, LLC.

By: /s/ Larry Sparks

Name: Larry Sparks

Title: Chief Financial Officer and Secretary

ICHOR SYSTEMS, INC.

By: /s/ Larry Sparks

Name: Larry Sparks

Title: Chief Financial Officer

As a Guarantor and with respect to Section 7.17

ICICLE ACQUISITION HOLDING B.V.

By: /s/ Jeffrey Andreson  
Name: Jeffrey Andreson  
Title: Chief Executive Officer

ICHOR SYSTEMS SINGAPORE PTE. LTD.

By: /s/ Jeffrey Andreson  
Name: Jeffrey Andreson  
Title: Chief Executive Officer

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*Ichor - Credit Agreement*

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BANK OF AMERICA, N.A., as  
Administrative Agent

By: /s/ Christine Trotter  
Name: Christine Trotter  
Title: Vice President

BANK OF AMERICA, N.A., as a Lender,  
L/C Issuer and Swing Line Lender

By: /s/ Lawrence Chao  
Name: Lawrence Chao  
Title: Vice President

*Ichor - Credit Agreement*



JPMORGAN CHASE BANK, N.A., as a Lender

By: /s/ Alexander Freedman

Name: Alexander Freedman

Title: Vice President

*Ichor - Credit Agreement*

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Regions Bank, as a Lender

By: /s/ Kyle Hene

Name: Kyle Hene

Title: Vice President

*Ichor - Credit Agreement*

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TRUIST BANK, as a Lender

By: /s/ Carlos Cruz

Name: Carlos Cruz

Title: Director

*Ichor - Credit Agreement*

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U.S. BANK NATIONAL ASSOCIATION, as a Lender

By: /s/ Bradley Edwards  
Name: Bradley Edwards  
Title: Senior Vice President

***Ichor - Credit Agreement***

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December 23, 2021

Mr. Tom Rohrs  
[XXXXX]  
[XXXXX]

Dear Tom:

On behalf of Ichor Holdings, Ltd. (the “Company”), we would like to formally confirm our offer to extend your position to serve as chairman (“Executive Chairman”) of the board of directors of the Company (the “Board”).

As a member of the Board, you will be involved in the oversight of the Company and its subsidiaries. We strongly believe that the Company will benefit from your involvement and are looking forward to working with you in the future. This letter will provide you with information relating to your service as Executive Chairman of the Board, the compensation associated with such service, conditions applicable to our offer, and the other terms of your Board membership.

**Duties:** It is our experience that you are familiar with the duties and obligations associated with board membership at public companies, and we will not attempt to review those responsibilities in this letter. However, as a practical matter, the Executive Chairman is generally responsible for oversight of the Board on a day-to-day basis.

**Conflicts of Interest:** You shall immediately disclose to the Company any conflict of interest that arises in relation to your service as Executive Chairman as a result of any present or future appointment, employment or other engagement.

**Start Date:** Your new term will renew as Executive Chairman on January 7, 2022, or such other date as mutually agreed between you and the Company (the “Start Date”).

**Term:** You agree to serve as Executive Chairman through the May 2023 Annual Shareholder Meeting.

**Cash Compensation for Board Service:** You will be entitled to the following compensation in connection with your acceptance of the position as Executive Chairman, commencing as of the Start Date:

1. An annual cash retainer of \$150,000, which will be paid every two weeks and prorated for any partial years of service (the “Cash Retainer”). The Cash Retainer may be changed from time to time, at the discretion of the Board.

2. An annual bonus opportunity equal to 100% of the Cash Retainer (the “Bonus”). The Bonus will be calculated based on mutually agreed upon performance objectives established between you and the Company, and will be payable when bonuses for similarly situated individuals are paid their bonuses.
3. Coincident with the contract renewal date or as soon as practicable thereafter, a one-time grant of incentive equity consisting of restricted stock units in the Company pursuant to the Company’s 2016 Omnibus Incentive Plan with a grant value equal to \$250,000, measured as of the date of Grant (the “RSU Grant”). The RSU Grant will be delivered to you for signature under separate cover.

The Company may withhold from any amounts otherwise due or payable under or pursuant to this agreement such federal, state and local income, employment, or other taxes or other amounts as may be required to be withheld pursuant to any applicable law or regulation.

**Termination.** Upon your separation from service with the Company for any reason, all compensation and benefits due to you shall be governed by the Company’s Select Severance Plan, in which you will participate as an Eligible Employee.

**D&O Insurance.** As a director of the Company, you will be covered by the Directors & Officers Liability insurance policy of the Company. This policy protects directors and officers of the Company from liability in the event of a claim or lawsuit against them alleging wrongdoing in connection with the Company’s business. This policy does not cover fines and penalties once a verdict of dishonesty or fraud by a court of law or other regulatory body has been made against the director.

**Confidentiality.** You hereby agree that, notwithstanding anything contained herein to the contrary, the restrictions, commitments and covenants set forth in Section 6 of the Prior Agreement continue to survive the termination thereof and shall be incorporated into this Agreement by reference.

**General:** This Agreement supersedes any conversations we may have had about your service as Executive Chairman or compensation as a Board member, or any written materials previously provided to you relating to this subject. Further, this letter, if accepted by you, will represent our entire agreement relating to your service on the Board, subject only to written amendment. This Agreement resulting from its acceptance shall be governed by United States Law and any disputes arising or relating to the same shall be heard and determined only by a court sitting in Delaware.

We are delighted to be able to extend you this offer on behalf of the Board and the Company, and look forward to having the pleasure of working with you in the future. To indicate your acceptance of the Company's offer, please sign and date this letter in the space provided below and return it to Diana Finucane.

Sincerely,

Accepted by,

/s/ Diana Finucane

/s/ Thomas M. Rohrs

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Diana Finucane

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Thomas M. Rohrs

Date: December 23, 2021

Date: December 31, 2021

| Name of Subsidiary                | Jurisdiction of Incorporation,<br>Organization, or Formation |
|-----------------------------------|--|
| Ichor Intermediate Holdings, Ltd. | Cayman Islands   |
| Icicle Acquisition Holding Co-op  | Netherlands  |
| Icicle Acquisition Holding B.V.   | Netherlands  |
| Ichor Holdings Ltd.               | Scotland   |
| Ichor Systems Ltd.                | Scotland   |
| Ichor Holdings, LLC               | Delaware   |
| Ichor Systems, Inc.               | Delaware   |
| IMG Companies, LLC                | Delaware   |
| IMG, LLC                          | Delaware   |
| IMG Altair, LLC                   | Delaware   |
| IMG INTA, LLC                     | Delaware   |
| IMG Larkin, LLC                   | Delaware   |
| Applied Fusion, LLC               | Delaware   |
| Ichor Systems Korea Ltd.          | Korea  |
| Ichor Systems Malaysia Sdn Bhd    | Malaysia   |
| Ichor Systems Singapore, PTE Ltd. | Singapore  |



**Consent of Independent Registered Public Accounting Firm**

We consent to the incorporation by reference in the registration statements (No. 333-215984 and No. 333-219846) on Form S-8 and (No. 333-240294) on Form S-3 of our reports dated February 28, 2022, with respect to the consolidated financial statements of Ichor Holdings, Ltd. and subsidiaries and the effectiveness of internal control over financial reporting.

/s/ KPMG LLP

Portland, Oregon

February 28, 2022

## CEO CERTIFICATION PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Jeffrey S. Andreson, certify that:

1. I have reviewed this annual report on Form 10-K of Ichor Holdings, Ltd.;
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: February 28, 2022

By: \_\_\_\_\_ /s/ Jeffrey S. Andreson

Jeffrey S. Andreson  
Chief Executive Officer

**CFO CERTIFICATION PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Larry J. Sparks, certify that:

1. I have reviewed this annual report on Form 10-K of Ichor Holdings, Ltd.;
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: February 28, 2022

By: \_\_\_\_\_  
/s/ Larry J. Sparks  
Larry J. Sparks  
Chief Financial Officer

**CERTIFICATION PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Annual Report of Ichor Holdings, Ltd. (the "Company") on Form 10-K for the period ending December 31, 2021 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I certify, to my knowledge, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of section 13(a) or 15(d), as applicable, of the Securities Exchange Act of 1934, as amended; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and result of operations of the Company.

Date: February 28, 2022

By: \_\_\_\_\_ /s/ Jeffrey S. Andreson  
Jeffrey S. Andreson  
Chief Executive Officer

**CERTIFICATION PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Annual Report of Ichor Holdings, Ltd. (the "Company") on Form 10-K for the period ending December 31, 2021 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I certify, to my knowledge, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of section 13(a) or 15(d), as applicable, of the Securities Exchange Act of 1934, as amended; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and result of operations of the Company.

Date: February 28, 2022

By: \_\_\_\_\_  
/s/ Larry J. Sparks  
Larry J. Sparks  
Chief Financial Officer