

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

FORM 8-K

CURRENT REPORT

PURSUANT TO SECTION 13 OR 15(D)
OF THE SECURITIES EXCHANGE ACT OF 1934

Date of report (date of earliest event reported): May 4, 2026

ProPetro Holding Corp.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation)

001-38035
(Commission
File Number)

26-3685382
(I.R.S. Employer
Identification No.)

One Marienfeld Place
110 N. Marienfeld Street, Suite 300
Midland, Texas
(Address of principal executive offices)

79701
(Zip Code)

Registrant's telephone number, including area code: (432) 688-0012

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

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

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, par value \$0.001 per share	PUMP	New York Stock Exchange

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (17 CFR §230.405) or Rule 12b-2 of the Securities Exchange Act of 1934 (17 CFR §240.12b-2).

Emerging growth company

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

Item 1.01 Entry Into or Amendment of a Material Definitive Agreement

Indenture

On May 7, 2026, ProPetro Holding Corp. (the “**Company**”), issued \$690 million aggregate principal amount of its 0.00% Convertible Senior Notes due 2031 (the “**Notes**”), which included the exercise in full of the Initial Purchasers’ (as defined below) option to purchase up to an additional \$90 million principal amount of Notes. The Notes were issued pursuant to, and are governed by, an indenture (the “**Indenture**”), dated as of May 7, 2026, between the Company and U.S. Bank Trust Company, National Association, as trustee (the “**Trustee**”).

The Notes are the Company’s senior, unsecured obligations and are (i) senior in right of payment to the Company’s indebtedness that is expressly subordinated in right of payment to the Notes; (ii) equal in right of payment to any of the Company’s unsecured indebtedness that is not so subordinated; (iii) effectively junior to the Company’s secured indebtedness, to the extent of the value of the assets securing that indebtedness; and (iv) structurally junior to all indebtedness and other liabilities (including trade payables) of the Company’s subsidiaries.

The Notes will not bear regular interest, and the principal amount of the Notes will not accrete. The Notes will mature on November 15, 2031, unless earlier converted, redeemed or repurchased. Before August 15, 2031, noteholders will have the right to convert their Notes only in certain circumstances and during specified periods. From and after August 15, 2031, noteholders may convert their Notes at any time at their election until the close of business on the second scheduled trading day immediately before the maturity date. The Company will settle conversions by paying or delivering, as applicable, cash, shares of the Company’s common stock, par value \$0.001 (the “**Common Stock**”), or a combination of cash and the Company’s Common Stock, at its election. The initial conversion rate is 43.1616 shares of Common Stock per \$1,000 principal amount of Notes, which represents an initial conversion price of approximately \$23.17 per share of Common Stock and a premium of approximately 37.5% over the last reported sale price of \$16.85 per share of the Company’s Common Stock on the New York Stock Exchange on May 4, 2026. The conversion rate and conversion price will be subject to adjustment upon the occurrence of certain events.

The Notes are redeemable, in whole or in part (subject to certain limitations), at the Company’s option at any time, and from time to time, on or after May 15, 2029 and prior to the 45th scheduled trading day immediately before the maturity date, at a cash redemption price equal to the principal amount of the Notes to be redeemed, plus accrued and unpaid special interest and additional interest, if any, to, but excluding, the redemption date, but only if the last reported sale price per share of the Common Stock has been at least 130% of the conversion price then in effect for at least 20 trading days (whether or not consecutive), including the trading day immediately preceding the date on which the Company provides notice of redemption, during any 30 consecutive trading day period ending on, and including, the trading day immediately preceding the date on which the Company provides notice of redemption. However, the Company may not redeem less than all of the outstanding Notes unless at least \$150.0 million aggregate principal amount of Notes are outstanding and not subject to redemption as of, and after giving effect to, delivery of the relevant notice of redemption. If a fundamental change (as defined in the Indenture) occurs, then, subject to limited exceptions, noteholders may require the Company to repurchase the Notes at a cash repurchase price equal to the principal amount of the Notes to be repurchased, plus accrued and unpaid special interest and additional interest, if any, to, but excluding any repurchase date. In addition, if the effective date of a “make-whole fundamental change” (as defined in the Indenture) occurs prior to the maturity date of the Notes or if the Company gives a notice of redemption with respect to any or all of the Notes, the Company will, in certain circumstances, increase the conversion rate for a holder who elects to convert its Notes in connection with such make-whole fundamental change or convert its Notes called for redemption (or deemed called for redemption) in connection with such notice of redemption, as the case may be.

The Notes have customary provisions relating to the occurrence of “Events of Default” (as defined in the Indenture), which include the following: (i) a default in any payment of interest on, or payment of principal of, the Notes when due and payable (which, in the case of a default in the payment of special interest or additional interest on the Notes, will be subject to a 30-day cure period); (ii) a default in the Company’s obligation to convert a Note upon the exercise of the conversion right with respect thereto, if such default continues for five business days; (iii) the Company’s failure to send certain notices under the Indenture within specified periods of time; (iv) the Company’s failure to comply with certain covenants in the Indenture relating to the Company’s ability to consolidate with or merge with or into, or sell, convey, transfer or lease all or substantially all of the assets of the Company and its subsidiaries, taken as a whole, to another person (other than to one or more of the Company’s direct or indirect wholly owned subsidiaries); (v) a default by the Company in its other obligations or agreements under the Indenture or the Notes if such default is not cured or waived within 60 days after notice is given in accordance with the Indenture; (vi) certain defaults by the Company or any of its significant subsidiaries with respect to indebtedness for borrowed money of at least \$50 million; and (vii) certain events of bankruptcy, insolvency and reorganization with respect to the Company or any of its significant subsidiaries.

If an Event of Default involving bankruptcy, insolvency and reorganization with respect to the Company occurs, then the principal amount of, and all accrued and unpaid interest, if any, on, all of the Notes then outstanding will immediately become due and payable without any further action or notice by any person. If any other Event of Default occurs and is continuing, then the Trustee, by notice to the Company, or noteholders of at least 25% of the aggregate principal amount of Notes then outstanding, by notice to the Company and the Trustee, may declare the principal amount of, and all accrued and unpaid interest, if any, on, all of the Notes then outstanding to become due and payable immediately. Notwithstanding anything to the contrary described above, the Company may elect that the sole remedy for any Event of Default relating to certain failures by the Company to comply with certain reporting covenants in the Indenture consists, for the first 365 days after the occurrence of such Event of Default, exclusively of the right of the noteholders to receive special interest on the Notes. If the Company has made such an election, then on the 366th day after such Event of Default (if such Event of Default is not cured or validly waived in accordance with the Indenture prior to such 366th day), such special interest will cease to accrue and the Notes will be subject to acceleration. In the event the Company does not make such an election, or the Company has made such election but does not pay the additional interest when due, the Notes will be immediately subject to acceleration.

The above description of the Indenture and the Notes is a summary and is not complete. A copy of the Indenture and the form of the certificate representing the Notes are filed as Exhibits 4.1 and 4.2, respectively, to this Current Report on Form 8-K, and the above summary is qualified in its entirety by reference to the terms of the Indenture and the Note set forth in such exhibits.

Capped Call Transactions

On May 4, 2026, concurrently with the pricing of the Notes, and on May 5, 2026, in connection with the exercise in full by the Initial Purchasers of their option to purchase additional Notes, the Company entered into privately negotiated capped call transactions (the “***Capped Call Transactions***”) with an affiliate of one of the Initial Purchasers and certain other financial institutions (the “***Option Counterparties***”). The Capped Call Transactions initially cover, subject to anti-dilution adjustments substantially similar to those applicable to the Notes, the number of shares of the Company’s Common Stock that initially underlie the Notes, and are expected generally to reduce potential dilution to the Company’s Common Stock upon any conversion of Notes and/or offset any potential cash payments the Company is required to make in excess of the principal amount of converted Notes, as the case may be, with such reduction and/or offset subject to a cap. The cap price of the Capped Call Transactions will initially be approximately \$29.49 per share (subject to adjustment under the terms of the Capped Call Transactions), which represents a premium of approximately 75.0% over the last reported sale price of \$16.85 per share of the Company’s Common Stock on May 4, 2026. The cost of the Capped Call Transactions was approximately \$36.8 million.

The Capped Call Transactions are separate transactions, each entered into between the Company and the applicable Option Counterparty, and are not part of the terms of the Notes and will not change any holder's rights under the Notes or the Indenture. Holders of the Notes will not have any rights with respect to the Capped Call Transactions.

The above description of the Capped Call Transactions is a summary and is not complete. A copy of the form of confirmation for the Capped Call Transactions is filed as Exhibit 10.1 to this Current Report on Form 8-K, and the above summary is qualified in its entirety by reference to the terms of the form of confirmation set forth in such exhibit.

Amended and Restated Credit Agreement

On May 4, 2026, the Company entered into a fourth amendment (the "***Amendment***") to its amended and restated credit agreement (the "***ABL Credit Facility***"). The Amendment extends the stated maturity date of the revolving credit commitments to May 4, 2031, subject to a springing maturity date ninety-one (91) days before the maturity date of certain long-term indebtedness (if applicable). The Amendment increases the aggregate revolving credit commitments (and the maximum revolver amount) to \$350 million, with an uncommitted accordion in an aggregate amount not to exceed the greater of (a) \$150 million and (b) the amount, if any, by which the borrowing base exceeds the commitments outstanding under the ABL Credit Facility, subject to usual and customary terms and conditions.

The Amendment adds certain power generation equipment as a new component of the borrowing base under the ABL Credit Facility. Subject to additional limitations set forth in the ABL Credit Facility, the portion of the borrowing base attributable to such equipment shall not exceed 35% of the borrowing base in the aggregate. The advance rates for such equipment are equal to the lesser of (i) 90% of the book value of such equipment and (ii) 80% of the net orderly liquidation value of such equipment. The Amendment also increases the amount of leverage-ratio-based indebtedness that can be incurred, increases the amount of capital lease and purchase money debt that can be incurred, and includes a new \$690 million basket for the incurrence of convertible indebtedness. The applicable interest rate margins for borrowings under the ABL Credit Facility range from 1.50% to 2.00% per annum for term SOFR borrowings, based on average historic availability under the ABL Credit Facility. The applicable unused line fee on the unutilized portion of the commitments in respect of the ABL Credit Facility shall accrue at either 0.375% or 0.25% per annum, based on average historic revolver outstandings.

The above description of the Amendment is a summary and is not complete. A copy of the Amendment is filed as Exhibit 10.2 to this Current Report on Form 8-K, and the above summary is qualified in its entirety by reference to the terms of the Amendment set forth in such exhibit.

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

The information contained in Item 1.01 of this Current Report on Form 8-K relating to the Indenture under the heading “Indenture” and the Amendment under the heading “Amended and Restated Credit Agreement” is incorporated into this Item 2.03 by reference.

Item 3.02 Unregistered Sales of Equity Securities.

The disclosure set forth in Item 1.01 above under the caption “Indenture” is incorporated by reference into this Item 3.02. The Notes were issued to the Initial Purchasers in reliance upon Section 4(a)(2) of the Securities Act of 1933, as amended (the “*Securities Act*”), in transactions not involving any public offering. The Notes were resold by the Initial Purchasers to persons whom the Initial Purchasers reasonably believe are qualified institutional buyers pursuant to Rule 144A under the Securities Act. Any shares of the Company’s Common Stock that may be issued upon conversion of the Notes will be issued in reliance upon Section 3(a)(9) of the Securities Act as involving an exchange by the Company exclusively with its security holders. Initially, a maximum of 40,949,499 shares of the Company’s Common Stock may be issued upon conversion of the Notes, based on the initial maximum conversion rate of 59.3471 shares of Common Stock per \$1,000 principal amount of Notes, which is subject to customary anti-dilution adjustment provisions.

Item 8.01 Other Events

On May 4, 2026, the Company issued a press release announcing the pricing of the Notes. A copy of the press release is attached hereto as Exhibit 99.1 and is incorporated herein by reference.

Purchase Agreement

On May 4, 2026, the Company entered into a purchase agreement (the “*Purchase Agreement*”) with Goldman Sachs & Co. LLC and Barclays Capital Inc., as representatives of the several initial purchasers named therein (the “*Initial Purchasers*”), in connection with the offering of the Notes (the “*Notes Offering*”).

The Notes were issued and sold to the Initial Purchasers pursuant to an exemption from the registration requirements of the Securities Act in reliance upon Section 4(a)(2) of the Securities Act. The Initial Purchasers resold the Notes only to persons reasonably believed to be qualified institutional buyers in accordance with Rule 144A under the Securities Act. The Notes have not been, and will not be, registered under the Securities Act, or any state securities laws, and, unless so registered, may not be offered or sold in the United States except pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act and applicable state securities laws. The Notes Offering closed on May 7, 2026.

The Purchase Agreement contains customary representations, warranties and agreements by the Company and customary conditions to closing, obligations of the parties and termination provisions. Additionally, the Company has agreed to indemnify the Initial Purchasers against certain liabilities, including liabilities under the Securities Act, or to contribute to payments the Initial Purchasers may be required to make because of any of those liabilities.

Item 9.01. Financial Statements and Exhibits

(d) Exhibits

EXHIBIT	DESCRIPTION
<u>4.1</u>	<u>Indenture, dated as of May 7, 2026, between ProPetro Holding Corp. and U.S. Bank Trust Company, National Association, as trustee.</u>
<u>4.2</u>	<u>Form of 0.00% Convertible Senior Note due 2031 (included in Exhibit A to Exhibit 4.1).</u>
<u>10.1</u>	<u>Form of Capped Call Confirmation.</u>
<u>10.2*</u>	<u>Amendment No. 4 to Amended and Restated Credit Agreement, dated May 4, 2026.</u>
<u>99.1</u>	<u>Press Release, dated May 4, 2026.</u>
104	Cover Page Interactive Data File (embedded within the Inline XBRL document).

* Certain annexes, schedules, and exhibits have been omitted pursuant to Item 601(a)(5) of Regulation S-K. The Company agrees to furnish a supplemental copy of any omitted schedule or attachment to the Securities and Exchange Commission upon request.

SIGNATURES

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

PROPETRO HOLDING CORP.

Date: May 7, 2026

By: /s/ John J. Mitchell

John J. Mitchell

General Counsel and Corporate Secretary

PROPETRO HOLDING CORP.

and

U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION

as Trustee

INDENTURE

Dated as of May 7, 2026

0.00% Convertible Senior Notes due 2031

TABLE OF CONTENTS

	<u>Page</u>
Article 1. Definitions; Rules of Construction	1
Section 1.01. Definitions.	1
Section 1.02. Other Definitions.	13
Section 1.03. Rules of Construction.	13
Article 2. The Notes	14
Section 2.01. Form, Dating and Denominations.	14
Section 2.02. Execution, Authentication and Delivery.	15
Section 2.03. Initial Notes and Additional Notes.	15
Section 2.04. Method of Payment.	16
Section 2.05. No Regular Interest; Accrual and Payment of Special Interest and Additional Interest; Defaulted Amounts; When Payment Date is Not a Business Day.	16
Section 2.06. Registrar, Paying Agent and Conversion Agent.	18
Section 2.07. Paying Agent and Conversion Agent to Hold Property in Trust.	19
Section 2.08. Holder Lists.	19
Section 2.09. Legends.	19
Section 2.10. Transfers and Exchanges; Certain Transfer Restrictions.	20
Section 2.11. Exchange and Cancellation of Notes to Be Converted or to Be Repurchased Pursuant to a Repurchase Upon Fundamental Change or Redemption.	25
Section 2.12. Removal of Transfer Restrictions.	26
Section 2.13. Replacement Notes.	26
Section 2.14. Registered Holders; Certain Rights with Respect to Global Notes.	27
Section 2.15. Cancellation.	27
Section 2.16. Notes Held by the Company or its Affiliates.	27
Section 2.17. Temporary Notes.	27
Section 2.18. Outstanding Notes.	28
Section 2.19. Repurchases by the Company.	28
Section 2.20. CUSIP and ISIN Numbers.	29
Article 3. Covenants	29
Section 3.01. Payment on Notes.	29
Section 3.02. Exchange Act Reports.	29
Section 3.03. Rule 144A Information.	30
Section 3.04. Additional Interest.	30
Section 3.05. Compliance and Default Certificates.	32
Section 3.06. Stay, Extension and Usury Laws.	33
Section 3.07. Acquisition of Notes by the Company and its Affiliates.	33
Article 4. Repurchase and Redemption	33
Section 4.01. No Sinking Fund.	33

Section 4.02.	Right of Holders to Require the Company to Repurchase Notes Upon a Fundamental Change.	33
Section 4.03.	Right of the Company to Redeem the Notes.	38
Article 5.	The Conversion of Notes	41
Section 5.01.	Right to Convert.	41
Section 5.02.	Conversion Procedures.	45
Section 5.03.	Settlement Upon Conversion.	46
Section 5.04.	Reserve and Status of Common Stock Issued Upon Conversion.	49
Section 5.05.	Adjustments to the Conversion Rate.	49
Section 5.06.	Voluntary Adjustments.	59
Section 5.07.	Adjustments to the Conversion Rate in Connection with a Make-Whole Fundamental Change.	59
Section 5.08.	Exchange in Lieu of Conversion.	60
Section 5.09.	Effect of Common Stock Change Event.	61
Article 6.	Successors	63
Section 6.01.	When the Company May Merge, Etc.	63
Section 6.02.	Successor Entity Substituted.	64
Article 7.	Defaults and Remedies	64
Section 7.01.	Events of Default.	64
Section 7.02.	Acceleration.	66
Section 7.03.	Sole Remedy for a Failure to Report.	66
Section 7.04.	Other Remedies.	67
Section 7.05.	Waiver of Past Defaults.	68
Section 7.06.	Cure of Defaults; Ability to Cure or Waive Before Event of Default Occurs.	68
Section 7.07.	Control by Majority.	68
Section 7.08.	Limitation on Suits.	68
Section 7.09.	Absolute Right of Holders to Institute Suit for the Enforcement of the Right to Receive Payment and Conversion Consideration.	69
Section 7.10.	Collection Suit by Trustee.	69
Section 7.11.	Trustee May File Proofs of Claim.	70
Section 7.12.	Priorities.	70
Section 7.13.	Undertaking for Costs.	71
Article 8.	Amendments, Supplements and Waivers	71
Section 8.01.	Without the Consent of Holders.	71
Section 8.02.	With the Consent of Holders.	72
Section 8.03.	Notice of Amendments, Supplements and Waivers.	73
Section 8.04.	Revocation, Effect and Solicitation of Consents; Special Record Dates; Etc.	73
Section 8.05.	Notations and Exchanges.	73
Section 8.06.	Trustee to Execute Supplemental Indentures.	74

Article 9. Satisfaction and Discharge	74
Section 9.01. Termination of Company’s Obligations.	74
Section 9.02. Repayment to Company.	75
Section 9.03. Reinstatement.	75
Article 10. Trustee	75
Section 10.01. Duties of the Trustee.	75
Section 10.02. Rights of the Trustee.	76
Section 10.03. Individual Rights of the Trustee.	77
Section 10.04. Trustee’s Disclaimer.	78
Section 10.05. Notice of Defaults.	78
Section 10.06. Compensation and Indemnity.	78
Section 10.07. Replacement of the Trustee.	79
Section 10.08. Successor Trustee by Merger, Etc.	80
Section 10.09. Eligibility; Disqualification.	80
Article 11. Miscellaneous	80
Section 11.01. Notices.	80
Section 11.02. Delivery of Officer’s Certificate and Opinion of Counsel as to Conditions Precedent.	82
Section 11.03. Statements Required in Officer’s Certificate and Opinion of Counsel.	83
Section 11.04. Rules by the Trustee, the Registrar, the Paying Agent and the Conversion Agent.	83
Section 11.05. No Personal Liability of Directors, Officers, Employees and Stockholders.	83
Section 11.06. Governing Law; Waiver of Jury Trial.	83
Section 11.07. Submission to Jurisdiction.	83
Section 11.08. No Adverse Interpretation of Other Agreements.	84
Section 11.09. Successors.	84
Section 11.10. Force Majeure.	84
Section 11.11. U.S.A. PATRIOT Act.	84
Section 11.12. Calculations.	84
Section 11.13. Severability.	85
Section 11.14. Counterparts.	85
Section 11.15. Table of Contents, Headings, Etc.	85
Section 11.16. Withholding Taxes.	85
<u>Exhibits</u>	
Exhibit A: Form of Note	A-1
Exhibit B-1: Form of Restricted Note Legend	B1-1
Exhibit B-2: Form of Global Note Legend	B2-1
Exhibit B-3: Form of Non-Affiliate Legend	B3-1

INDENTURE, dated as of May 7, 2026, between ProPetro Holding Corp., a Delaware corporation, as issuer (the “**Company**”), and U.S. Bank Trust Company, National Association, as trustee (the “**Trustee**”).

Each party to this Indenture (as defined below) agrees as follows for the benefit of the other party and for the equal and ratable benefit of the Holders (as defined below) of the Company’s 0.00% Convertible Senior Notes due 2031 (the “**Notes**”).

Article 1. DEFINITIONS; RULES OF CONSTRUCTION

SECTION 1.01. DEFINITIONS.

“**Additional Interest**” means any interest that accrues on any Note pursuant to **Section 3.04**.

“**Affiliate**” has the meaning set forth in Rule 144 as in effect on the Issue Date.

“**Authorized Denomination**” means, with respect to a Note, a principal amount thereof equal to \$1,000 or any integral multiple of \$1,000 in excess thereof.

“**Bankruptcy Law**” means Title 11, United States Code, or any similar U.S. federal or state or non-U.S. law for the relief of debtors.

“**Bid Solicitation Agent**” means the Person who is required to obtain bids for the Trading Price in accordance with **Section 5.01(C)(i)(2)** and the definition of “Trading Price.” The initial Bid Solicitation Agent on the Issue Date will be the Company; *provided, however*, that the Company may appoint any other Person (including any of the Company’s Subsidiaries) to be the Bid Solicitation Agent at any time after the Issue Date without prior notice.

“**Board of Directors**” means the board of directors of the Company or a committee of such board duly authorized to act on behalf of such board.

“**Business Day**” means any day other than a Saturday, a Sunday or any day on which the Federal Reserve Bank of New York is authorized or required by law or executive order to close or be closed.

“**Capital Stock**” of any Person means any and all shares of, interests in, rights to purchase, warrants or options for, participations in, or other equivalents of, in each case however designated, the equity of such Person, but excluding any debt securities convertible into such equity.

“**Close of Business**” means 5:00 p.m., New York City time.

“**Common Stock**” means the common stock, \$0.001 par value per share, of the Company, subject to **Section 5.09**.

“**Company**” means the Person named as such in the first paragraph of this Indenture and, subject to **Article 6**, its successors and assigns.

“**Company Order**” means a written request or order signed on behalf of the Company by one (1) of its Officers and delivered to the Trustee.

“**Conversion**” means, with respect to any Note, the conversion of such note pursuant to **Article 5** into Conversion Consideration. The terms “Convert,” “Converted,” “Convertible,” “Converting” and similar capitalized terms have meanings correlative to the foregoing.

“**Conversion Date**” means, with respect to a Note, the first Business Day on which the requirements set forth in **Section 5.02(A)** to Convert such Note are satisfied, subject to **Section 5.03(C)**.

“**Conversion Price**” means, as of any time, an amount equal to (A) one thousand dollars (\$1,000) *divided by* (B) the Conversion Rate in effect at such time.

“**Conversion Rate**” initially means 43.1616 shares of Common Stock per \$1,000 principal amount of Notes; *provided, however*, that the Conversion Rate is subject to adjustment pursuant to **Article 5**; *provided, further*, that whenever this Indenture refers to the Conversion Rate as of a particular date without setting forth a particular time on such date, such reference will be deemed to be to the Conversion Rate immediately after the Close of Business on such date.

“**Conversion Share**” means any share of Common Stock issued or issuable upon Conversion of any Note.

“**Daily Cash Amount**” means, with respect to any VWAP Trading Day, the lesser of (A) the applicable Daily Maximum Cash Amount; and (B) the Daily Conversion Value for such VWAP Trading Day.

“**Daily Conversion Value**” means, with respect to any VWAP Trading Day, one-forty fifth (1/45th) of the product of (A) the Conversion Rate on such VWAP Trading Day; and (B) the Daily VWAP per share of Common Stock on such VWAP Trading Day.

“**Daily Maximum Cash Amount**” means, with respect to the Conversion of any Note, the quotient obtained by dividing (A) the Specified Dollar Amount applicable to such Conversion by (B) forty five (45).

“**Daily Share Amount**” means, with respect to any VWAP Trading Day, the quotient obtained by dividing (A) the excess, if any, of the Daily Conversion Value for such VWAP Trading Day over the applicable Daily Maximum Cash Amount by (B) the Daily VWAP for such VWAP Trading Day. For the avoidance of doubt, the Daily Share Amount will be zero for such VWAP Trading Day if such Daily Conversion Value does not exceed such Daily Maximum Cash Amount.

“**Daily VWAP**” means, for any VWAP Trading Day, the per share volume-weighted average price of the Common Stock as displayed under the heading “Bloomberg VWAP” on Bloomberg page “PUMP <EQUITY> AQR” (or, if such page is not available, its equivalent successor page) in respect of the period from the scheduled open of trading until the scheduled close of trading of the primary trading session on such VWAP Trading Day (or, if such volume-weighted average price is unavailable, the market value of one share of Common Stock on such VWAP Trading Day, determined, using a volume-weighted average price method, by a nationally recognized independent investment banking firm selected by the Company, which may include any of the Initial Purchasers). The Daily VWAP will be determined without regard to after-hours trading or any other trading outside of the regular trading session.

“**De-Legending Deadline Date**” means, with respect to any Note, the fifteenth (15th) day after the Free Trade Date of such Note; *provided, however*, that if the De-Legending Deadline Date determined as aforesaid would be after an Interest Record Date and before the fifth (5th) Business Day immediately after the next Interest Payment Date, then the De-Legending Deadline Date for such Note will instead be the fifth (5th) Business Day immediately after such Interest Payment Date.

“**Default**” means any event that is (or, after notice, passage of time or both, would be) an Event of Default.

“**Default Settlement Method**” means Combination Settlement with a Specified Dollar Amount of \$1,000 per \$1,000 principal amount of Notes; *provided, however*, that (x) the Company may, from time to time, change the Default Settlement Method by sending notice of the new Default Settlement Method to the Holders, the Trustee and the Conversion Agent; and (y) the Default Settlement Method will be subject to **Section 5.03(A)(ii)**.

“**Depository**” means The Depository Trust Company or its successor.

“**Depository Participant**” means any member of, or participant in, the Depository.

“**Depository Procedures**” means, with respect to any Conversion, transfer, exchange or other transaction involving a Global Note or any beneficial interest therein, the rules and procedures of the Depository applicable to such Conversion, transfer, exchange or transaction.

“**Ex-Dividend Date**” means, with respect to an issuance, dividend or distribution on the Common Stock, the first date on which shares of Common Stock trade on the applicable exchange or in the applicable market, regular way, without the right to receive such issuance, dividend or distribution (including pursuant to due bills or similar arrangements required by the relevant stock exchange). For the avoidance of doubt, any alternative trading convention on the applicable exchange or market in respect of the Common Stock under a separate ticker symbol or CUSIP number will not be considered “regular way” for this purpose.

“**Exchange Act**” means the U.S. Securities Exchange Act of 1934, as amended.

“**Exempted Fundamental Change**” means any Fundamental Change with respect to which, in accordance with **Section 4.02(I)**, the Company does not offer to repurchase any Notes.

“**Free Trade Date**” means, with respect to any Note, the date that is one (1) year after the Last Original Issue Date of such Note.

“**Freely Tradable**” means, with respect to any Note, that such Note would be eligible to be offered, sold or otherwise transferred pursuant to Rule 144 or otherwise if held by a Person that is not an Affiliate of the Company, and that has not been an Affiliate of the Company during the immediately preceding three (3) months, without any requirements as to volume, manner of sale, availability of current public information or notice under the Securities Act (except that, during the six (6) month period beginning on, and including, the date that is six (6) months after the Last Original Issue Date of such Note, any such requirement as to the availability of current public information will be disregarded if the same is satisfied at that time); *provided, however*, that from and after the De-Legending Deadline Date of such Note, such Note will not be “Freely Tradable” unless such Note (x) is not identified by a “restricted” CUSIP or ISIN number; and (y) is not represented by any certificate that bears the Restricted Note Legend. For the avoidance of doubt, whether a Note is deemed to be identified by a “restricted” CUSIP or ISIN number or to bear the Restricted Note Legend is subject to **Section 2.12**.

“**Fundamental Change**” means any of the following events:

(A) a “person” or “group” (within the meaning of Section 13(d)(3) of the Exchange Act), other than the Company or its Wholly Owned Subsidiaries, or their respective employee benefit plans, files any report with the SEC indicating that such person or group has become the direct or indirect “beneficial owner” (as defined below) of shares of the Common Stock representing more than fifty percent (50%) of the voting power of all of the Common Stock;

(B) the consummation of (i) any sale, lease or other transfer, in one transaction or a series of transactions, of all or substantially all of the assets of the Company and its Subsidiaries, taken as a whole, to any Person, other than solely to one or more of the Company’s Wholly Owned Subsidiaries; or (ii) any transaction or series of related transactions in connection with which (whether by means of merger, consolidation, share exchange, combination, reclassification, recapitalization, acquisition, liquidation or otherwise) all or substantially all of the Common Stock is exchanged for, converted into, acquired for, or constitutes solely the right to receive, other securities, cash or other property; *provided, however*, that any merger, consolidation, share exchange or combination of the Company pursuant to which the Persons that directly or indirectly “beneficially own” (as defined below) all classes of the Company’s common equity immediately before such transaction directly or indirectly “beneficially own,” immediately after such transaction, more than fifty percent (50%) of all classes of common equity of the surviving, continuing or acquiring company or other transferee, as applicable, or the parent thereof, in substantially the same proportions vis-à-vis each other as immediately before such transaction will be deemed not to be a Fundamental Change pursuant to this **clause (B)**;

(C) the Company’s stockholders approve any plan or proposal for the liquidation or dissolution of the Company; or

(D) the Common Stock ceases to be listed on any of The New York Stock Exchange, The NASDAQ Global Market or The NASDAQ Global Select Market (or any of their respective successors);

provided, however, that a transaction or event described in **clause (A)** or **(B)** above will not constitute a Fundamental Change if at least ninety percent (90%) of the consideration received or to be received by the holders of Common Stock (excluding cash payments for fractional shares or pursuant to dissenters rights), in connection with such transaction or event, consists of shares of common stock listed (or depositary receipts representing shares of common stock, which depositary receipts are listed) on any of The New York Stock Exchange, The NASDAQ Global Market or The NASDAQ Global Select Market (or any of their respective successors), or that will be so listed when issued or exchanged in connection with such transaction or event, and such transaction or event constitutes a Common Stock Change Event whose Reference Property consists of such consideration.

For the purposes of this definition, (x) any transaction or event described in both **clause (A)** and in **clause (B)(i) or (ii)** above (without regard to the proviso in **clause (B)**) will be deemed to occur solely pursuant to **clause (B)** above (subject to such proviso); and (y) whether a Person or group is a “**beneficial owner**,” whether shares are “**beneficially owned**,” and percentage beneficial ownership, will be determined in accordance with Rule 13d-3 under the Exchange Act, but without regard to paragraph (d) (1) of such Rule 13d-3; *provided* that a Person or group will not be deemed to be a beneficial owner of securities tendered pursuant to a tender or exchange offer until they are accepted for purchase pursuant to such offer, or of securities subject to a stock purchase agreement, merger agreement or similar agreement until consummation of the acquisition contemplated by such agreement.

“**Fundamental Change Repurchase Date**” means the date fixed for the repurchase of any Notes by the Company pursuant to a Repurchase Upon Fundamental Change.

“**Fundamental Change Repurchase Notice**” means a notice (including a notice substantially in the form of the “Fundamental Change Repurchase Notice” set forth in **Exhibit A**) containing the information, or otherwise complying with the requirements, set forth in **Section 4.02(F)(i)** and **Section 4.02(F)(ii)**.

“**Fundamental Change Repurchase Price**” means the cash price payable by the Company to repurchase any Note upon its Repurchase Upon Fundamental Change, calculated pursuant to **Section 4.02(D)**.

“**Global Note**” means a Note that is represented by a certificate substantially in the form set forth in **Exhibit A**, registered in the name of the Depositary or its nominee, duly executed by the Company and authenticated by the Trustee, and deposited with the Trustee, as custodian for the Depositary.

“**Global Note Legend**” means a legend substantially in the form set forth in **Exhibit B-2**.

“**Holder**” means a person in whose name a Note is registered on the Registrar’s books.

“**Indenture**” means this Indenture, as amended or supplemented from time to time.

“**Initial Purchasers**” means the several purchasers named in Schedule I to the Purchase Agreement.

“**Interest Payment Date**” means, with respect to a Note, each May 15 and November 15 of each year. For the avoidance of doubt, the Maturity Date is an Interest Payment Date.

“**Interest Record Date**” has the following meaning with respect to an Interest Payment Date: (A) if such Interest Payment Date occurs on May 15, the immediately preceding May 1; and (B) if such Interest Payment Date occurs on November 15, the immediately preceding November 1.

“**Issue Date**” means May 7, 2026.

“**Last Original Issue Date**” means (A) with respect to any Notes issued pursuant to the Purchase Agreement, and any Notes issued in exchange therefor or in substitution thereof, the Issue Date; and (B) with respect to any Notes issued pursuant to **Section 2.03(B)**, and any Notes issued in exchange therefor or in substitution thereof, either (i) the later of (x) the date such Notes are originally issued and (y) the last date any Notes are originally issued as part of the same offering pursuant to the exercise of an option granted to the initial purchaser(s) of such Notes to purchase additional Notes; or (ii) such other date as is specified in an Officer’s Certificate delivered to the Trustee before the original issuance of such Notes.

“**Last Reported Sale Price**” of the Common Stock for any Trading Day means the closing sale price per share (or, if no closing sale price is reported, the average of the last bid price and the last ask price per share or, if more than one in either case, the average of the average last bid prices and the average last ask prices per share) of Common Stock on such Trading Day as reported in composite transactions for the principal U.S. national or regional securities exchange on which the Common Stock is then listed. If the Common Stock is not listed on a U.S. national or regional securities exchange on such Trading Day, then the Last Reported Sale Price will be the last quoted bid price per share of Common Stock on such Trading Day in the over-the-counter market as reported by OTC Markets Group Inc. or a similar organization. If the Common Stock is not so quoted on such Trading Day, then the Last Reported Sale Price will be the average of the mid-point of the last bid price and the last ask price per share of Common Stock on such Trading Day from a nationally recognized independent investment banking firm selected by the Company, which may include any of the Initial Purchasers. Neither the Trustee nor the Conversion Agent will have any duty to determine the Last Reported Sale Price.

“**Make-Whole Fundamental Change**” means (A) a Fundamental Change (determined after giving effect to the proviso immediately after **clause (D)** of the definition thereof, but without regard to the proviso to **clause (B)(ii)** of such definition); or (B) the sending of a Redemption Notice pursuant to **Section 4.03(F)**; *provided, however*, that, subject to **Section 4.03(I)**, the sending of a Redemption Notice will constitute a Make-Whole Fundamental Change only with respect to the Notes called (or deemed to be called pursuant to **Section 4.03(I)**) for Redemption pursuant to such Redemption Notice and not with respect to any other Notes.

“**Make-Whole Fundamental Change Conversion Period**” has the following meaning:

(A) in the case of a Make-Whole Fundamental Change pursuant to **clause (A)** of the definition thereof, the period from, and including, the Make-Whole Fundamental Change Effective Date of such Make-Whole Fundamental Change to, and including, the thirty fifth (35th) Trading Day after such Make-Whole Fundamental Change Effective Date (or, if such Make-Whole Fundamental Change also constitutes a Fundamental Change (other than an Exempted Fundamental Change), to, but excluding, the related Fundamental Change Repurchase Date); and

(B) in the case of a Make-Whole Fundamental Change pursuant to **clause (B)** of the definition thereof, the period from, and including, the Redemption Notice Date for the related Redemption to, and including, the second (2nd) Business Day immediately before the related Redemption Date;

provided, however, that if the Conversion Date for the Conversion of a Note that has been called (or deemed to be called pursuant to **Section 4.03(I)**) for Redemption occurs during the Make-Whole Fundamental Change Conversion Period for both a Make-Whole Fundamental Change occurring pursuant to **clause (A)** of the definition of “Make-Whole Fundamental Change” and a Make-Whole Fundamental Change resulting from such Redemption pursuant to **clause (B)** of such definition, then, notwithstanding anything to the contrary in **Section 5.07**, solely for purposes of such Conversion, (x) such Conversion Date will be deemed to occur solely during the Make-Whole Fundamental Change Conversion Period for the Make-Whole Fundamental Change with the earlier Make-Whole Fundamental Change Effective Date; and (y) the Make-Whole Fundamental Change with the later Make-Whole Fundamental Change Effective Date will be deemed not to have occurred.

“**Make-Whole Fundamental Change Effective Date**” means (A) with respect to a Make-Whole Fundamental Change pursuant to **clause (A)** of the definition thereof, the date on which such Make-Whole Fundamental Change occurs or becomes effective; and (B) with respect to a Make-Whole Fundamental Change pursuant to **clause (B)** of the definition thereof, the applicable Redemption Notice Date.

“**Market Disruption Event**” means, with respect to any date, the occurrence or existence, during the one-half hour period ending at the scheduled close of trading on such date on the principal U.S. national or regional securities exchange or other market on which the Common Stock is listed for trading or trades, of any material suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the relevant exchange or otherwise) in the Common Stock or in any options contracts or futures contracts relating to the Common Stock.

“**Maturity Date**” means November 15, 2031.

“**Non-Affiliate Legend**” means a legend substantially in the form set forth in **Exhibit B-3**.

“**Note Agent**” means any Registrar, Paying Agent or Conversion Agent.

“**Notes**” means the 0.00% Convertible Senior Notes due 2031 issued by the Company pursuant to this Indenture.

“**Observation Period**” means, with respect to any Note to be Converted, (A) subject to **clause (B)** below, if the Conversion Date for such Note occurs before August 15, 2031, the forty five (45) consecutive VWAP Trading Days beginning on, and including, the second (2nd) VWAP Trading Day immediately after such Conversion Date; (B) if such Conversion Date occurs on or after the date the Company has sent a Redemption Notice calling such Note for Redemption pursuant to **Section 4.03(F)** on or before the second (2nd) Business Day before the related Redemption Date, the forty five (45) consecutive VWAP Trading Days beginning on, and including, the forty sixth (46th) Scheduled Trading Day immediately before such Redemption Date; and (C) subject to **clause (B)** above, if such Conversion Date occurs on or after August 15, 2031, the forty five (45) consecutive VWAP Trading Days beginning on, and including, the forty sixth (46th) Scheduled Trading Day immediately before the Maturity Date.

“**Officer**” means the Chairman of the Board of Directors, the Chief Executive Officer, the President, the Chief Operating Officer, the Chief Financial Officer, the Treasurer, any Assistant Treasurer, the Controller, the Secretary or any Vice-President of the Company.

“**Officer’s Certificate**” means a certificate that is signed on behalf of the Company by one (1) of its Officers and that meets the requirements of **Section 11.03**.

“**Open of Business**” means 9:00 a.m., New York City time.

“**Opinion of Counsel**” means an opinion, from legal counsel (including an employee of, or counsel to, the Company or any of its Subsidiaries) reasonably acceptable to the Trustee, that meets the requirements of **Section 11.03**, subject to customary qualifications and exclusions.

“**Person**” or “**person**” means any individual, corporation, partnership, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organization or government or other agency or political subdivision thereof. Any division or series of a limited liability company, limited partnership or trust will constitute a separate “person” under this Indenture.

“**Physical Note**” means a Note (other than a Global Note) that is represented by a certificate substantially in the form set forth in **Exhibit A**, registered in the name of the Holder of such Note and duly executed by the Company and authenticated by the Trustee.

“**Purchase Agreement**” means that certain Purchase Agreement, dated May 4, 2026, between the Company and the representatives of the Initial Purchasers.

“**Qualified Successor Entity**” means, with respect to a Business Combination Event, a corporation; *provided, however*, that a limited liability company, limited partnership or other similar entity will also constitute a Qualified Successor Entity with respect to such Business Combination Event if either (A) such Business Combination Event is an Exempted Fundamental Change; or (B) both of the following conditions are satisfied: (i) either (1) such limited liability company, limited partnership or other similar entity, as applicable, is treated as a corporation or is a direct or indirect, Wholly Owned Subsidiary of, and disregarded as an entity separate from, a corporation, in each case for U.S. federal income tax purposes; or (2) the Company has received an opinion of a nationally recognized tax counsel to the effect that such Business Combination Event will not be treated as an exchange of the Notes under Section 1001 of the Internal Revenue Code of 1986, as amended, for Holders or beneficial owners of the Notes; and (ii) such Business Combination Event constitutes a Common Stock Change Event whose Reference Property consists solely of any combination of cash in U.S. dollars and shares of common stock or other corporate common equity interests of an entity that (1) is treated as a corporation for U.S. federal income tax purposes; (2) is duly organized and existing under the laws of the United States of America, any State thereof or the District of Columbia; and (3) is the direct or indirect parent of such limited liability company, limited partnership or other similar entity (or is such limited liability company, limited partnership or similar entity if such entity is treated as a corporation for U.S. federal income tax purposes).

“**Redemption**” means the repurchase of any Note by the Company pursuant to **Section 4.03**.

“**Redemption Date**” means the date fixed, pursuant to **Section 4.03(D)**, for the settlement of the repurchase of any Notes by the Company pursuant to a Redemption.

“**Redemption Notice Date**” means, with respect to a Redemption, the date on which the Company sends the Redemption Notice for such Redemption pursuant to **Section 4.03(F)**.

“**Redemption Price**” means the cash price payable by the Company to redeem any Note upon its Redemption, calculated pursuant to **Section 4.03(E)**.

“**Repurchase Upon Fundamental Change**” means the repurchase of any Note by the Company pursuant to **Section 4.02**.

“**Responsible Officer**” means (A) any officer within the corporate trust group of the Trustee (or any successor group of the Trustee) or any other officer of the Trustee customarily performing functions similar to those performed by any of such officers; and (B) with respect to a particular corporate trust matter relating to this Indenture, any other officer to whom such matter is referred because of his or her knowledge of, and familiarity with, the particular subject, and who, in each case, has direct responsibility for the administration of this Indenture.

“**Restricted Note Legend**” means a legend substantially in the form set forth in **Exhibit B-1**.

“**Restricted Stock Legend**” means, with respect to any Conversion Share, a legend substantially to the effect that the offer and sale of such Conversion Share have not been registered under the Securities Act and that such Conversion Share cannot be sold or otherwise transferred except pursuant to a transaction that is registered under the Securities Act or that is exempt from, or not subject to, the registration requirements of the Securities Act.

“**Rule 144**” means Rule 144 under the Securities Act (or any successor rule thereto), as the same may be amended from time to time.

“**Rule 144A**” means Rule 144A under the Securities Act (or any successor rule thereto), as the same may be amended from time to time.

“**Scheduled Trading Day**” means any day that is scheduled to be a Trading Day on the principal U.S. national or regional securities exchange on which the Common Stock is then listed or, if the Common Stock is not then listed on a U.S. national or regional securities exchange, on the principal other market on which the Common Stock is then traded. If the Common Stock is not so listed or traded, then “Scheduled Trading Day” means a Business Day.

“**SEC**” means the U.S. Securities and Exchange Commission.

“**Securities Act**” means the U.S. Securities Act of 1933, as amended.

“**Security**” means any Note or Conversion Share.

“**Settlement Method**” means Cash Settlement, Physical Settlement or Combination Settlement.

“**Significant Subsidiary**” means, with respect to any Person, any Subsidiary of such Person that constitutes a “significant subsidiary” (as defined in Rule 1-02(w) of Regulation S-X under the Exchange Act) of such Person; *provided, however*, that, if a Subsidiary meets the criteria of clause (1)(iii), but not clause (1)(i) or (1)(ii), of the definition of “significant subsidiary” in Rule 1-02(w) (or, if applicable, the respective successor clauses to the aforementioned clauses), then such Subsidiary will be deemed not to be a Significant Subsidiary unless such Subsidiary’s income from continuing operations before income taxes, exclusive of amounts attributable to any non-controlling interests, for the last completed fiscal year before the date of determination exceeds twenty five million dollars (\$25,000,000).

“**Special Interest**” means any interest that accrues on any Note pursuant to **Section 7.03**.

“**Specified Dollar Amount**” means, with respect to the Conversion of a Note to which Combination Settlement applies, the maximum cash amount per \$1,000 principal amount of such Note deliverable upon such Conversion (excluding cash in lieu of any fractional share of Common Stock).

“**Stock Price**” has the following meaning for any Make-Whole Fundamental Change: (A) if the holders of Common Stock receive only cash in consideration for their shares of Common Stock in such Make-Whole Fundamental Change and such Make-Whole Fundamental Change is pursuant to **clause (B)** of the definition of “Fundamental Change,” then the Stock Price is the amount of cash paid per share of Common Stock in such Make-Whole Fundamental Change; and (B) in all other cases, the Stock Price is the average of the Last Reported Sale Prices per share of Common Stock for the five (5) consecutive Trading Days ending on, and including, the Trading Day immediately before the Make-Whole Fundamental Change Effective Date of such Make-Whole Fundamental Change.

“**Subsidiary**” means, with respect to any Person, any corporation, partnership association or other business entity of which more than fifty percent (50%) of the total voting power of Voting Stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by: (A) such Person; (B) such Person and one or more Subsidiaries of such Person; or (C) one or more Subsidiaries of such Person.

“**Trading Day**” means any day on which (A) trading in the Common Stock generally occurs on the principal U.S. national or regional securities exchange on which the Common Stock is then listed or, if the Common Stock is not then listed on a U.S. national or regional securities exchange, on the principal other market on which the Common Stock is then traded; and (B) there is no Market Disruption Event. If the Common Stock is not so listed or traded, then “Trading Day” means a Business Day.

“**Trading Price**” of the Notes on any Trading Day means the average of the secondary market bid quotations, expressed as a cash amount per \$1,000 principal amount of Notes, obtained by the Bid Solicitation Agent for one million dollars (\$1,000,000) (or such lesser amount as may then be outstanding) in principal amount of Notes at approximately 3:30 p.m., New York City time, on such Trading Day from three (3) nationally recognized independent securities dealers selected by the Company, which may include any of the Initial Purchasers; *provided, however*, that, if three (3) such bids cannot reasonably be obtained by the Bid Solicitation Agent but two (2) such bids are obtained, then the average of the two (2) bids will be used, and if only one (1) such bid can reasonably be obtained by the Bid Solicitation Agent, then that one (1) bid will be used. If, on any Trading Day, (A) the Bid Solicitation Agent cannot reasonably obtain at least one (1) bid for one million dollars (\$1,000,000) (or such lesser amount as may then be outstanding) in principal amount of Notes from a nationally recognized independent securities dealer; (B) the Company is not acting as the Bid Solicitation Agent and the Company fails to instruct the Bid Solicitation Agent to obtain bids when required; or (C) the Bid Solicitation Agent fails to solicit bids when required, then, in each case, the Trading Price per \$1,000 principal amount of Notes on such Trading Day will be deemed to be less than ninety eight percent (98%) of the product of the Last Reported Sale Price per share of Common Stock on such Trading Day and the Conversion Rate on such Trading Day.

“**Transfer-Restricted Security**” means any Security that constitutes a “restricted security” (as defined in Rule 144); *provided, however*, that such Security will cease to be a Transfer-Restricted Security upon the earliest to occur of the following events:

(A) such Security is sold or otherwise transferred to a Person (other than the Company or an Affiliate of the Company) pursuant to a registration statement that was effective under the Securities Act at the time of such sale or transfer;

(B) such Security is sold or otherwise transferred to a Person (other than the Company or an Affiliate of the Company) pursuant to an available exemption (including Rule 144) from the registration and prospectus-delivery requirements of, or in a transaction not subject to, the Securities Act and, immediately after such sale or transfer, such Security ceases to constitute a “restricted security” (as defined in Rule 144); and

(C) such Security is eligible for resale, by a Person that is not an Affiliate of the Company and that has not been an Affiliate of the Company during the immediately preceding three (3) months, pursuant to Rule 144 without any limitations thereunder as to volume, manner of sale, availability of current public information or notice.

The Trustee is under no obligation to determine whether any Security is a Transfer-Restricted Security and may conclusively rely on an Officer's Certificate with respect thereto.

"Trust Indenture Act" means the U.S. Trust Indenture Act of 1939, as amended.

"Trustee" means the Person named as such in the first paragraph of this Indenture until a successor replaces it in accordance with the provisions of this Indenture and, thereafter, means such successor.

"Voting Stock" of any Person means (i) in the case of a corporation, corporate stock; (ii) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock; (iii) in the case of a partnership or limited liability company, partnership interests (whether general or limited) or membership interests; and (iv) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person, but excluding from all of the foregoing any debt securities exercisable for, exchangeable for or convertible into Voting Stock, whether or not such debt securities include any right of participation with Voting Stock.

"VWAP Market Disruption Event" means, with respect to any date, (A) the failure by the principal U.S. national or regional securities exchange on which the Common Stock is then listed, or, if the Common Stock is not then listed on a U.S. national or regional securities exchange, the principal other market on which the Common Stock is then traded, to open for trading during its regular trading session on such date; or (B) the occurrence or existence, for more than one half hour period in the aggregate, of any suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the relevant exchange or otherwise) in the Common Stock or in any options contracts or futures contracts relating to the Common Stock, and such suspension or limitation occurs or exists at any time before 1:00 p.m., New York City time, on such date.

"VWAP Trading Day" means a day on which (A) there is no VWAP Market Disruption Event; and (B) trading in the Common Stock generally occurs on the principal U.S. national or regional securities exchange on which the Common Stock is then listed or, if the Common Stock is not then listed on a U.S. national or regional securities exchange, on the principal other market on which the Common Stock is then traded. If the Common Stock is not so listed or traded, then "VWAP Trading Day" means a Business Day.

"Wholly Owned Subsidiary" means, with respect to any Person, any Subsidiary of such Person, except that, solely for purposes of this definition, the reference to "more than fifty percent (50%)" in the definition of "Subsidiary" will be deemed replaced by a reference to "one hundred percent (100%)," the calculation of which will exclude nominal amounts of the Voting Stock in the relevant Subsidiary not held by such Person to the extent required to satisfy local minority interest requirements.

SECTION 1.02. OTHER DEFINITIONS.

Term	Defined in Section
“Additional Shares”	5.07(A)
“Business Combination Event”	6.01(A)
“Cash Settlement”	5.03(A)
“Combination Settlement”	5.03(A)
“Common Stock Change Event”	5.09(A)
“Conversion Agent”	2.06(A)
“Conversion Consideration”	5.03(B)
“Default Interest”	2.05(B)
“Defaulted Amount”	2.05(B)
“Deferred Additional Interest”	3.04(C)(i)
“Deferred Additional Interest Demand Request”	3.04(C)(i)
“Event of Default”	7.01(A)
“Expiration Date”	5.05(A)(v)
“Expiration Time”	5.05(A)(v)
“Fundamental Change Notice”	4.02(E)
“Fundamental Change Repurchase Right”	4.02(A)
“Initial Notes”	2.03(A)
“Measurement Period”	5.01(C)(i)(2)
“Notice of Election to Pay Deferred Additional Interest”	3.04(C)(i)
“Paying Agent”	2.06(A)
“Physical Settlement”	5.03(A)
“Redemption Notice”	4.03(F)
“Reference Property”	5.09(A)
“Reference Property Unit”	5.09(A)
“Register”	2.06(B)
“Registrar”	2.06(A)
“Reporting Event of Default”	7.03(A)
“Specified Courts”	11.07
“Spin-Off”	5.05(A)(iii)(2)
“Spin-Off Valuation Period”	5.05(A)(iii)(2)
“Successor Entity”	6.01(A)
“Successor Person”	5.09(A)
“Tender/Exchange Offer Valuation Period”	5.05(A)(v)
“Trading Price Condition”	5.01(C)(i)(2)

SECTION 1.03. RULES OF CONSTRUCTION.

For purposes of this Indenture:

(A) “or” is not exclusive;

- (B) “including” means “including without limitation”;
- (C) “will” expresses a command;
- (D) the “average” of a set of numerical values refers to the arithmetic average of such numerical values;
- (E) a merger involving, or a transfer of assets by, a limited liability company, limited partnership or trust will be deemed to include any division of or by, or an allocation of assets to a series of, such limited liability company, limited partnership or trust, or any unwinding of any such division or allocation;
- (F) words in the singular include the plural and in the plural include the singular, unless the context requires otherwise;
- (G) “herein,” “hereof” and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision of this Indenture, unless the context requires otherwise;
- (H) references to currency mean the lawful currency of the United States of America, unless the context requires otherwise;
- (I) the exhibits, schedules and other attachments to this Indenture are deemed to form part of this Indenture; and
- (J) the term “**interest**,” when used with respect to a Note, means any Special Interest, Additional Interest or Default Interest, in each case to the extent the same is payable on such Note, unless the context requires otherwise.

Article 2. THE NOTES

SECTION 2.01. FORM, DATING AND DENOMINATIONS.

The Notes and the Trustee’s certificate of authentication will be substantially in the form set forth in **Exhibit A**. The Notes will bear the legends required by **Section 2.09** and may bear notations, legends or endorsements required by law, stock exchange rule or usage or the Depositary. Each Note will be dated as of the date of its authentication.

Except to the extent otherwise provided in a Company Order delivered to the Trustee in connection with the issuance and authentication thereof, the Notes will be issued initially in the form of one or more Global Notes. Global Notes may be exchanged for Physical Notes, and Physical Notes may be exchanged for Global Notes, only as provided in **Section 2.10**.

The Notes will be issuable only in registered form without interest coupons and only in Authorized Denominations.

Each certificate representing a Note will bear a unique registration number that is not affixed to any other certificate representing another outstanding Note.

The terms contained in the Notes constitute part of this Indenture, and, to the extent applicable, the Company and the Trustee, by their execution and delivery of this Indenture, agree to such terms and to be bound thereby; *provided, however*, that, to the extent that any provision of any Note conflicts with the provisions of this Indenture, the provisions of this Indenture will control for purposes of this Indenture and such Note.

SECTION 2.02. EXECUTION, AUTHENTICATION AND DELIVERY.

(A) *Due Execution by the Company.* At least one (1) duly authorized Officer will sign the Notes on behalf of the Company by manual, electronic or facsimile signature. A Note's validity will not be affected by the failure of any Officer whose signature is on any Note to hold, at the time such Note is authenticated, the same or any other office at the Company.

(B) *Authentication by the Trustee and Delivery.*

(i) No Note will be valid until it is authenticated by the Trustee. A Note will be deemed to be duly authenticated only when an authorized signatory of the Trustee (or a duly appointed authenticating agent) manually signs the certificate of authentication of such Note.

(ii) The Trustee will cause an authorized signatory of the Trustee (or a duly appointed authenticating agent) to manually sign the certificate of authentication of a Note only if (1) the Company delivers such Note to the Trustee; (2) such Note is executed by the Company in accordance with **Section 2.02(A)**; and (3) the Company delivers a Company Order to the Trustee that (a) requests the Trustee to authenticate such Note; and (b) sets forth the name of the Holder of such Note and the date as of which such Note is to be authenticated. If such Company Order also requests the Trustee to deliver such Note to any Holder or to the Depository, then the Trustee will promptly deliver such Note in accordance with such Company Order.

(iii) The Trustee may appoint an authenticating agent acceptable to the Company to authenticate Notes. A duly appointed authenticating agent may authenticate Notes whenever the Trustee may do so under this Indenture, and a Note authenticated as provided in this Indenture by such an agent will be deemed, for purposes of this Indenture, to be authenticated by the Trustee. Each duly appointed authenticating agent will have the same rights to deal with the Company as the Trustee would have if it were performing the duties that the authenticating agent was validly appointed to undertake.

SECTION 2.03. INITIAL NOTES AND ADDITIONAL NOTES.

(A) *Initial Notes.* On the Issue Date, there will be originally issued six hundred ninety million dollars (\$690,000,000) aggregate principal amount of Notes, subject to the provisions of this Indenture (including **Section 2.02**). Notes issued pursuant to this **Section 2.03(A)**, and any Notes issued in exchange therefor or in substitution thereof, are referred to in this Indenture as the "**Initial Notes**."

(B) *Additional Notes.* Without the consent of any Holder, the Company may, subject to the provisions of this Indenture (including **Section 2.02**), originally issue additional Notes with the same terms as the Initial Notes (except, to the extent applicable, with respect to the Last Original Issue Date of such additional Notes), which additional Notes will, subject to the foregoing, be considered to be part of the same series of, and rank equally and ratably with all other, Notes issued under this Indenture; *provided, however*, that such additional Notes must be identified by a separate CUSIP number or by no CUSIP number if they are not fungible, for U.S. federal income tax or federal securities laws purposes, with other Notes issued under this Indenture. Any resale of Notes that the Company repurchases as described and subject to the conditions set forth in this Indenture will be deemed to be an "issuance" of Notes for purposes of the foregoing.

SECTION 2.04. METHOD OF PAYMENT.

(A) *Global Notes.* The Company will pay, or cause the Paying Agent to pay, the principal (whether due upon maturity on the Maturity Date, Redemption on a Redemption Date or repurchase on a Fundamental Change Repurchase Date or otherwise) of, interest, if any, on, and any cash Conversion Consideration for, any Global Note to the Depositary by wire transfer of immediately available funds no later than the time the same is due as provided in this Indenture.

(B) *Physical Notes.* The Company will pay, or cause the Paying Agent to pay, the principal (whether due upon maturity on the Maturity Date, Redemption on a Redemption Date or repurchase on a Fundamental Change Repurchase Date or otherwise) of, interest, if any, on, and any cash Conversion Consideration for, any Physical Note no later than the time the same is due as provided in this Indenture as follows: (i) if the principal amount of such Physical Note is at least five million dollars (\$5,000,000) (or such lower amount as the Company may choose in its sole and absolute discretion) and the Holder of such Physical Note entitled to such payment has delivered to the Paying Agent or the Trustee, no later than the time set forth in the immediately following sentence, a written request that the Company make such payment by wire transfer to a U.S. dollar account of such Holder within the contiguous United States, by wire transfer of immediately available funds to such account; and (ii) in all other cases, by check mailed to the address of the Holder of such Physical Note entitled to such payment as set forth in the Register. To be timely, such written request must be so delivered no later than the Close of Business on the following date: (x) with respect to the payment of any Special Interest or Additional Interest, if any, due on an Interest Payment Date, the immediately preceding Interest Record Date; (y) with respect to any cash Conversion Consideration, the relevant Conversion Date; and (z) with respect to any other payment, the date that is fifteen (15) calendar days immediately before the date such payment is due.

SECTION 2.05. NO REGULAR INTEREST; ACCRUAL AND PAYMENT OF SPECIAL INTEREST AND ADDITIONAL INTEREST; DEFAULTED AMOUNTS; WHEN PAYMENT DATE IS NOT A BUSINESS DAY.

(A) *No Regular Interest; Accrual and Payment of Special Interest and Additional Interest.* The Notes will not bear regular interest, and the principal amount of the Notes will not accrete; *provided, however*, that Special Interest and Additional Interest will accrue on the Notes to the extent, and only to the extent, provided in **Sections 7.03** and **3.04**, respectively. The amount of any such Special Interest or Additional Interest that is payable on any applicable Interest Payment Date will be the amount of unpaid Special Interest or Additional Interest, as applicable, that has accrued from, and including, the last date as of which such interest has been paid or duly provided for (or if later, the date as of which such interest has begun to accrue, as provided in **Section 7.03** or **3.04**, as applicable) to, but excluding, such Interest Payment Date (or, if earlier, the date as of which such interest has ceased to accrue, as provided in **Section 7.03** or **3.04**, as applicable). Subject to **Section 2.05(D)**, if any Special Interest or Additional Interest has accrued on any Note, then such interest will be payable in arrears on the next Interest Payment Date to the Holder of such Note as of the Close of Business on the immediately preceding Interest Record Date. Special Interest and Additional Interest, if any, on the Notes will be computed on the basis of a 360-day year comprised of twelve 30-day months.

(B) *Defaulted Amounts.* If the Company fails to pay any cash amount (a “**Defaulted Amount**”) payable on a Note on or before the due date therefor as provided in this Indenture, then, regardless of whether such failure constitutes an Event of Default, (i) such Defaulted Amount will forthwith cease to be payable to the Holder of such Note otherwise entitled to such payment; (ii) to the extent lawful, interest (“**Default Interest**”) will accrue on such Defaulted Amount for each day, if any, during the period from, and including, such due date to, but excluding, the date of payment of such Defaulted Amount and Default Interest, which Default Interest will accrue on each such day at the combined rate at which Special Interest and Additional Interest accrues on such Note on such day (it being understood, for the avoidance of doubt, that no Default Interest will accrue on such Note on any day on which no Special Interest or Additional Interest accrues on such Note); and (iii) such Defaulted Amount and Default Interest will be paid, at the Company’s election, as provided in **clause (i)** or **(ii)** below.

(i) *Payment of Default Amounts on a Special Payment Date.* The Company will have the right to pay such Defaulted Amount and Default Interest on a payment date selected by the Company to the Holder of such Note as of the Close of Business on a special record date selected by the Company, *provided* that (1) such special record date is no more than fifteen (15), nor less than ten (10), calendar days before such payment date; and (2) at least fifteen (15) calendar days before such special record date, the Company sends notice to the Trustee and the Holders that states such special record date, such payment date and the amount of such Defaulted Amount and Default Interest to be paid on such payment date.

(ii) *Payment of Default Amount in Any Other Lawful Manner.* If not paid in accordance with **Section 2.05(B)(i)**, such Defaulted Amount and Default Interest will be paid by the Company in any other lawful manner.

Notwithstanding anything to the contrary in this **Section 2.05(B)**, a Default in the payment or delivery of any Conversion Consideration when due will be cured upon the payment or delivery of the same (together, if applicable in the case of any cash Conversion Consideration, with Default Interest thereon) to the Person to whom such Conversion Consideration is payable or deliverable (determined in accordance with **Article 5**). The Trustee will have no duty to determine if Default Interest is payable or the amount thereof.

(C) *Delay of Payment When Payment Date Is Not a Business Day.* If the due date for a payment on a Note as provided in this Indenture is not a Business Day, then, notwithstanding anything to the contrary in this Indenture or the Notes, such payment may be made on the immediately following Business Day (and, for the avoidance of doubt, no interest will accrue on such payment as a result of the related delay). Solely for purposes of the immediately preceding sentence, a day on which the applicable place of payment is authorized or required by law or executive order to close or be closed will be deemed not to be a “Business Day.”

(D) *Special Provision for Global Notes.* If the first date on which any Special Interest or Additional Interest begins to accrue on a Global Note is on or after the fifth (5th) Business Day before an Interest Record Date and before the next Interest Payment Date, then, notwithstanding anything to the contrary in this Indenture or the Notes, the amount thereof accruing in respect of the period from, and including, such first date to, but excluding, such Interest Payment Date will not be payable on such Interest Payment Date but will instead be deemed to accrue (without duplication) entirely on such Interest Payment Date (and, for the avoidance of doubt, no interest will accrue as a result of the related delay).

SECTION 2.06. REGISTRAR, PAYING AGENT AND CONVERSION AGENT.

(A) *Generally.* The Company will maintain (i) an office or agency in the continental United States where Notes may be presented for registration of transfer or for exchange (the “**Registrar**”); (ii) an office or agency in the continental United States where Notes may be presented for payment (the “**Paying Agent**”); and (iii) an office or agency in the continental United States where Notes may be presented for Conversion (the “**Conversion Agent**”). If the Company fails to maintain a Registrar, Paying Agent or Conversion Agent, then the Trustee will act as such and will receive compensation therefor in accordance with this Indenture and any other agreement between the Trustee and the Company. For the avoidance of doubt, the Company or any of its Subsidiaries may act as Registrar, Paying Agent or Conversion Agent.

(B) *Duties of the Registrar.* The Registrar will keep a record (the “**Register**”) of the names and addresses of the Holders, the Notes held by each Holder and the transfer, exchange, repurchase, Redemption and Conversion of Notes. Absent manifest error, the entries in the Register will be conclusive and the Company and the Trustee may treat each Person whose name is recorded as a Holder in the Register as a Holder for all purposes. The Register will be in written form or in any form capable of being converted into written form reasonably promptly.

(C) *Co-Agents; Company’s Right to Appoint Successor Registrars, Paying Agents and Conversion Agents.* The Company may appoint one or more co-Registrars, co-Paying Agents and co-Conversion Agents, each of whom will be deemed to be a Registrar, Paying Agent or Conversion Agent, as applicable, under this Indenture. Subject to **Section 2.06(A)**, the Company may change any Registrar, Paying Agent or Conversion Agent (including appointing itself or any of its Subsidiaries to act in such capacity) without notice to any Holder. The Company will notify the Trustee (and, upon request, any Holder) of the name and address of each Note Agent, if any, not a party to this Indenture and will enter into an appropriate agency agreement with each such Note Agent, which agreement will implement the provisions of this Indenture that relate to such Note Agent.

(D) *Initial Appointments.* The Company appoints the Trustee as, and designates its corporate trust office identified in **Section 11.01** (as the same exists on the Issue Date) in the continental United States as the office for, the initial Paying Agent, the initial Registrar and the initial Conversion Agent.

SECTION 2.07. PAYING AGENT AND CONVERSION AGENT TO HOLD PROPERTY IN TRUST.

The Company will require each Paying Agent or Conversion Agent that is not the Trustee to agree in writing that such Note Agent will (A) hold in trust for the benefit of Holders or the Trustee all money and other property held by such Note Agent for payment or delivery due on the Notes; and (B) notify the Trustee of any default by the Company in making any such payment or delivery. The Company, at any time, may, and the Trustee, while any Default continues, may, require a Paying Agent or Conversion Agent to pay or deliver, as applicable, all money and other property held by it to the Trustee, after which payment or delivery, as applicable, such Note Agent (if not the Company or any of its Subsidiaries) will have no further liability for such money or property. If the Company or any of its Subsidiaries acts as Paying Agent or Conversion Agent, then (A) it will segregate and hold in a separate trust fund for the benefit of the Holders or the Trustee all money and other property held by it as Paying Agent or Conversion Agent; and (B) references in this Indenture or the Notes to the Paying Agent or Conversion Agent holding cash or other property, or to the delivery of cash or other property to the Paying Agent or Conversion Agent, in each case for payment or delivery to any Holders or the Trustee or with respect to the Notes, will be deemed to refer to cash or other property so segregated and held separately, or to the segregation and separate holding of such cash or other property, respectively. Upon the occurrence of any event pursuant to **clause (viii) or (ix) of Section 7.01(A)** with respect to the Company (or with respect to any Subsidiary of the Company acting as Paying Agent or Conversion Agent), the Trustee will serve as the Paying Agent or Conversion Agent, as applicable, for the Notes.

SECTION 2.08. HOLDER LISTS.

If the Trustee is not the Registrar, the Company will furnish to the Trustee, no later than seven (7) Business Days before each Interest Payment Date in respect of which any Special Interest or Additional Interest is payable, and at such other times as the Trustee may request, a list, in such form and as of such date or time as the Trustee may reasonably require, of the names and addresses of the Holders.

SECTION 2.09. LEGENDS.

(A) *Global Note Legend.* Each Global Note will bear the Global Note Legend (or any similar legend, not inconsistent with this Indenture, required by the Depository for such Global Note).

(B) *Non-Affiliate Legend.* Each Note will bear the Non-Affiliate Legend.

(C) *Restricted Note Legend.* Subject to **Section 2.12**,

(i) each Note that is a Transfer-Restricted Security will bear the Restricted Note Legend; and

(ii) if a Note is issued in exchange for, in substitution of, or to effect a partial Conversion of, another Note (such other Note being referred to as the “old Note” for purposes of this **Section 2.09(C)(ii)**), including pursuant to **Section 2.10(B), 2.10(C), 2.11 or 2.13**, then such Note will bear the Restricted Note Legend if such old Note bore the Restricted Note Legend at the time of such exchange or substitution, or on the related Conversion Date with respect to such Conversion, as applicable; *provided, however*, that such Note need not bear the Restricted Note Legend if such Note does not constitute a Transfer-Restricted Security immediately after such exchange or substitution, or as of such Conversion Date, as applicable.

(D) *Other Legends.* A Note may bear any other legend or text, not inconsistent with this Indenture, as may be required by applicable law or by any securities exchange or automated quotation system on which such Note is traded or quoted.

(E) *Acknowledgment and Agreement by the Holders.* A Holder's acceptance of any Note bearing any legend required by this **Section 2.09** will constitute such Holder's acknowledgment of, and agreement to comply with, the restrictions set forth in such legend.

(F) *Restricted Stock Legend.*

(i) Each Conversion Share will bear the Restricted Stock Legend if the Note upon the Conversion of which such Conversion Share was issued was (or would have been had it not been Converted) a Transfer-Restricted Security at the time such Conversion Share was issued; *provided, however*, that such Conversion Share need not bear the Restricted Stock Legend if the Company determines, in its reasonable discretion, that such Conversion Share need not bear the Restricted Stock Legend.

(ii) Notwithstanding anything to the contrary in this **Section 2.09(F)**, a Conversion Share need not bear a Restricted Stock Legend if such Conversion Share is issued in an uncertificated form that does not permit affixing legends thereto, *provided* the Company takes measures (including the assignment thereto of a "restricted" CUSIP number) that it reasonably deems appropriate to enforce the transfer restrictions referred to in the Restricted Stock Legend.

SECTION 2.10. TRANSFERS AND EXCHANGES; CERTAIN TRANSFER RESTRICTIONS.

(A) *Provisions Applicable to All Transfers and Exchanges.*

(i) *Generally.* Subject to this **Section 2.10**, Physical Notes and beneficial interests in Global Notes may be transferred or exchanged from time to time and the Registrar will record each such transfer or exchange in the Register.

(ii) *Transferred and Exchanged Notes Remain Valid Obligations of the Company.* Each Note issued upon transfer or exchange of any other Note (such other Note being referred to as the "old Note" for purposes of this **Section 2.10(A)(ii)**) or portion thereof in accordance with this Indenture will be the valid obligation of the Company, evidencing the same indebtedness, and entitled to the same benefits under this Indenture, as such old Note or portion thereof, as applicable.

(iii) *No Services Charge; Transfer Taxes.* The Company, the Trustee and the Note Agents will not impose any service charge on any Holder for any transfer, exchange or Conversion of Notes, but the Company, the Trustee, the Registrar and the Conversion Agent may require payment of a sum sufficient to cover any documentary, stamp or similar issue or transfer tax or duty or similar governmental charge that may be imposed in connection with any transfer, exchange or Conversion of Notes, other than exchanges pursuant to **Section 2.11**, **2.17** or **8.05** not involving any transfer.

(iv) *Transfers and Exchanges Must Be in Authorized Denominations.* Notwithstanding anything to the contrary in this Indenture or the Notes, a Note may not be transferred or exchanged in part unless the portion to be so transferred or exchanged is in an Authorized Denomination.

(v) *Trustee's Disclaimer.* The Trustee will have no obligation or duty to monitor, determine or inquire as to compliance with any transfer restrictions imposed under this Indenture or applicable law with respect to any Security, other than to require the delivery of such certificates or other documentation or evidence as expressly required by this Indenture and to examine the same to determine substantial compliance as to form with the requirements of this Indenture.

(vi) *Legends.* Each Note issued upon transfer of, or in exchange for, another Note will bear each legend, if any, required by **Section 2.09**.

(vii) *Settlement of Transfers and Exchanges.* Upon satisfaction of the requirements of this Indenture to effect a transfer or exchange of any Note, the Company will cause such transfer or exchange to be effected as soon as reasonably practicable but in no event later than the second (2nd) Business Day after the date of such satisfaction.

(viii) *Interpretation.* For the avoidance of doubt, and subject to the terms of this Indenture, as used in this **Section 2.10**, an “exchange” of a Global Note or a Physical Note includes (x) an exchange effected for the sole purpose of removing any Restricted Note Legend affixed to such Global Note or Physical Note; and (y) if such Global Note or Physical Note is identified by a “restricted” CUSIP number, an exchange effected for the sole purpose of causing such Global Note or Physical Note to be identified by an “unrestricted” CUSIP number.

(B) *Transfers and Exchanges of Global Notes.*

(i) *Certain Restrictions.* Subject to the immediately following sentence, no Global Note may be transferred or exchanged in whole except (x) by the Depositary to a nominee of the Depositary; (y) by a nominee of the Depositary to the Depositary or to another nominee of the Depositary; or (z) by the Depositary or any such nominee to a successor Depositary or a nominee of such successor Depositary. No Global Note (or any portion thereof) may be transferred to, or exchanged for, a Physical Note; *provided, however*, that a Global Note will be exchanged, pursuant to customary procedures, for one or more Physical Notes if:

(1) (x) the Depositary notifies the Company or the Trustee that the Depositary is unwilling or unable to continue as depositary for such Global Note or (y) the Depositary ceases to be a “clearing agency” registered under Section 17A of the Exchange Act and, in each case, the Company fails to appoint a successor Depositary within ninety (90) days of such notice or cessation;

(2) an Event of Default has occurred and is continuing and the Company, the Trustee or the Registrar has received a written request from the Depositary, or, subject to the Depositary's procedures, from a holder of a beneficial interest in such Global Note, to exchange such Global Note or beneficial interest, as applicable, for one or more Physical Notes; or

(3) the Company, in its sole discretion, permits the exchange of any beneficial interest in such Global Note for one or more Physical Notes at the request of the owner of such beneficial interest.

(ii) *Effecting Transfers and Exchanges.* Upon satisfaction of the requirements of this Indenture to effect a transfer or exchange of any Global Note (or any portion thereof):

(1) the Trustee will reflect any resulting decrease of the principal amount of such Global Note by notation on the "Schedule of Exchanges of Interests in the Global Note" forming part of such Global Note (and, if such notation results in such Global Note having a principal amount of zero, then the Company may (but is not required to) instruct the Trustee to cancel such Global Note pursuant to **Section 2.15**);

(2) if required to effect such transfer or exchange, then the Trustee will reflect any resulting increase of the principal amount of any other Global Note by notation on the "Schedule of Exchanges of Interests in the Global Note" forming part of such other Global Note;

(3) if required to effect such transfer or exchange, then the Company will issue, execute and deliver, and the Trustee will authenticate, in each case in accordance with **Section 2.02**, a new Global Note bearing each legend, if any, required by **Section 2.09**; and

(4) if such Global Note (or such portion thereof), or any beneficial interest therein, is to be exchanged for one or more Physical Notes, then the Company will issue, execute and deliver, and the Trustee will authenticate, in each case in accordance with **Section 2.02**, one or more Physical Notes that (x) are in Authorized Denominations and have an aggregate principal amount equal to the principal amount of such Global Note to be so exchanged; (y) are registered in such name(s) as the Depositary specifies (or as otherwise determined pursuant to customary procedures); and (z) bear each legend, if any, required by **Section 2.09**.

(iii) *Compliance with Depositary Procedures.* Each transfer or exchange of a beneficial interest in any Global Note will be made in accordance with the Depositary Procedures.

(C) *Transfers and Exchanges of Physical Notes.*

(i) *Requirements for Transfers and Exchanges.* Subject to this **Section 2.10**, a Holder of a Physical Note may (x) transfer such Physical Note (or any portion thereof in an Authorized Denomination) to one or more other Person(s); (y) exchange such Physical Note (or any portion thereof in an Authorized Denomination) for one or more other Physical Notes in Authorized Denominations having an aggregate principal amount equal to the aggregate principal amount of the Physical Note (or portion thereof) to be so exchanged; and (z) if then permitted by the Depositary Procedures, transfer such Physical Note (or any portion thereof in an Authorized Denomination) in exchange for a beneficial interest in one or more Global Notes; *provided, however*, that, to effect any such transfer or exchange, such Holder must:

- (1) surrender such Physical Note to be transferred or exchanged to the office of the Registrar, together with any endorsements or transfer instruments reasonably required by the Company, the Trustee or the Registrar; and
- (2) deliver such certificates, documentation or evidence as may be required pursuant to **Section 2.10(D)**.

(ii) *Effecting Transfers and Exchanges.* Upon the satisfaction of the requirements of this Indenture to effect a transfer or exchange of any Physical Note (such Physical Note being referred to as the “old Physical Note” for purposes of this **Section 2.10(C)(ii)**) of a Holder (or any portion of such old Physical Note in an Authorized Denomination):

- (1) such old Physical Note will be promptly cancelled pursuant to **Section 2.15**;
- (2) if such old Physical Note is to be so transferred or exchanged only in part, then the Company will issue, execute and deliver, and the Trustee will authenticate, in each case in accordance with **Section 2.02**, one or more Physical Notes that (x) are in Authorized Denominations and have an aggregate principal amount equal to the principal amount of such old Physical Note not to be so transferred or exchanged; (y) are registered in the name of such Holder; and (z) bear each legend, if any, required by **Section 2.09**;

- (3) in the case of a transfer:

- (a) to the Depositary or a nominee thereof that will hold its interest in such old Physical Note (or such portion thereof) to be so transferred in the form of one or more Global Notes, the Trustee will reflect an increase of the principal amount of one or more existing Global Notes by notation on the “Schedule of Exchanges of Interests in the Global Note” forming part of such Global Note(s), which increase(s) are in Authorized Denominations and aggregate to the principal amount to be so transferred, and which Global Note(s) bear each legend, if any, required by **Section 2.09**; *provided, however*, that if such transfer cannot be so effected by notation on one or more existing Global Notes (whether because no Global Notes bearing each legend, if any, required by **Section 2.09** then exist, because any such increase will result in any Global Note having an aggregate principal amount exceeding the maximum aggregate principal amount permitted by the Depositary or otherwise), then the Company will issue, execute and deliver, and the Trustee will authenticate, in each case in accordance with **Section 2.02**, one or more Global Notes that (x) are in Authorized Denominations and have an aggregate principal amount equal to the principal amount that is to be so transferred but that is not effected by notation as provided above; and (y) bear each legend, if any, required by **Section 2.09**; and

(b) to a transferee that will hold its interest in such old Physical Note (or such portion thereof) to be so transferred in the form of one or more Physical Notes, the Company will issue, execute and deliver, and the Trustee will authenticate, in each case in accordance with **Section 2.02**, one or more Physical Notes that (x) are in Authorized Denominations and have an aggregate principal amount equal to the principal amount to be so transferred; (y) are registered in the name of such transferee; and (z) bear each legend, if any, required by **Section 2.09**; and

(4) in the case of an exchange, the Company will issue, execute and deliver, and the Trustee will authenticate, in each case in accordance with **Section 2.02**, one or more Physical Notes that (x) are in Authorized Denominations and have an aggregate principal amount equal to the principal amount to be so exchanged; (y) are registered in the name of the Person to whom such old Physical Note was registered; and (z) bear each legend, if any, required by **Section 2.09**.

(D) *Requirement to Deliver Documentation and Other Evidence.* If a Holder of any Note that is identified by a “restricted” CUSIP number or that bears a Restricted Note Legend or is a Transfer-Restricted Security requests to:

- (i) cause such Note to be identified by an “unrestricted” CUSIP number;
- (ii) remove such Restricted Note Legend; or
- (iii) register the transfer of such Note to the name of another Person,

then the Company, the Trustee and the Registrar may refuse to effect such identification, removal or transfer, as applicable, unless there is delivered to the Company, the Trustee and the Registrar such certificates or other documentation or evidence as the Company, the Trustee and the Registrar may reasonably require for the Company to determine that such identification, removal or transfer, as applicable, complies with the Securities Act and other applicable securities laws; *provided, however*, that no such certificates, documentation or evidence need be so delivered on or after the Free Trade Date with respect to such Note unless the Company determines, in its reasonable discretion, that such Note is not eligible to be offered, sold or otherwise transferred pursuant to Rule 144 or otherwise without any requirements as to volume, manner of sale, availability of current public information or notice under the Securities Act.

(E) *Transfers of Notes Subject to Redemption, Repurchase or Conversion.* Notwithstanding anything to the contrary in this Indenture or the Notes, the Company, the Trustee and the Registrar will not be required to register the transfer of or exchange any Note that (i) has been surrendered for Conversion, except to the extent that any portion of such Note is not subject to Conversion; (ii) is subject to a Fundamental Change Repurchase Notice validly delivered, and not withdrawn, pursuant to **Section 4.02(F)**, except to the extent that any portion of such Note is not subject to such notice or the Company fails to pay the applicable Fundamental Change Repurchase Price when due; or (iii) has been selected for Redemption pursuant to a Redemption Notice, except to the extent that any portion of such Note is not subject to Redemption or the Company fails to pay the applicable Redemption Price when due.

SECTION 2.11. EXCHANGE AND CANCELLATION OF NOTES TO BE CONVERTED OR TO BE REPURCHASED PURSUANT TO A REPURCHASE UPON FUNDAMENTAL CHANGE OR REDEMPTION.

(A) *Partial Conversions of Physical Notes and Partial Repurchases of Physical Notes Pursuant to a Repurchase Upon Fundamental Change or Redemption.* If only a portion of a Physical Note of a Holder is to be Converted pursuant to **Article 5** or repurchased pursuant to a Repurchase Upon Fundamental Change or Redemption, then, as soon as reasonably practicable after such Physical Note is surrendered for such Conversion or repurchase, as applicable, the Company will cause such Physical Note to be exchanged, pursuant and subject to **Section 2.10(C)**, for (i) one or more Physical Notes that are in Authorized Denominations and have an aggregate principal amount equal to the principal amount of such Physical Note that is not to be so Converted or repurchased, as applicable, and deliver such Physical Note(s) to such Holder; and (ii) a Physical Note having a principal amount equal to the principal amount to be so Converted or repurchased, as applicable, which Physical Note will be Converted or repurchased, as applicable, pursuant to the terms of this Indenture; *provided, however*, that the Physical Note referred to in this **clause (ii)** need not be issued at any time after which such principal amount subject to such Conversion or repurchase, as applicable, is deemed to cease to be outstanding pursuant to **Section 2.18**.

(B) *Cancellation of Notes that Are Converted and Notes that Are Repurchased Pursuant to a Repurchase Upon Fundamental Change or Redemption.*

(i) *Physical Notes.* If a Physical Note (or any portion thereof that has not theretofore been exchanged pursuant to **Section 2.11(A)**) of a Holder is to be Converted pursuant to **Article 5** or repurchased pursuant to a Repurchase Upon Fundamental Change or Redemption, then, promptly after the later of the time such Physical Note (or such portion) is deemed to cease to be outstanding pursuant to **Section 2.18** and the time such Physical Note is surrendered for such Conversion or repurchase, as applicable, (1) such Physical Note will be cancelled pursuant to **Section 2.15**; and (2) in the case of a partial Conversion or repurchase, as applicable, the Company will issue, execute and deliver to such Holder, and the Trustee will authenticate, in each case in accordance with **Section 2.02**, one or more Physical Notes that (x) are in Authorized Denominations and have an aggregate principal amount equal to the principal amount of such Physical Note that is not to be so Converted or repurchased, as applicable; (y) are registered in the name of such Holder; and (z) bear each legend, if any, required by **Section 2.09**.

(ii) *Global Notes*. If a Global Note (or any portion thereof) is to be Converted pursuant to **Article 5** or repurchased pursuant to a Repurchase Upon Fundamental Change or Redemption, then, promptly after the time such Note (or such portion) is deemed to cease to be outstanding pursuant to **Section 2.18**, the Trustee will reflect a decrease of the principal amount of such Global Note in an amount equal to the principal amount of such Global Note to be so Converted or repurchased, as applicable, by notation on the “Schedule of Exchanges of Interests in the Global Note” forming part of such Global Note (and, if the principal amount of such Global Note is zero following such notation, cancel such Global Note pursuant to **Section 2.15**).

SECTION 2.12. REMOVAL OF TRANSFER RESTRICTIONS.

Without limiting the generality of any other provision of this Indenture (including **Section 3.04**), the Restricted Note Legend affixed to any Note will be deemed, pursuant to this **Section 2.12** and the footnote to such Restricted Note Legend, to be removed therefrom upon the Company’s delivery to the Trustee of notice, signed on behalf of the Company by one (1) of its Officers, to such effect (and, for the avoidance of doubt, such notice need not be accompanied by an Officer’s Certificate or an Opinion of Counsel in order to be effective to cause such Restricted Note Legend to be deemed to be removed from such Note). If such Note bears a “restricted” CUSIP or ISIN number at the time of such delivery, then, upon such delivery, such Note will be deemed, pursuant to this **Section 2.12** and the footnotes to the CUSIP and ISIN numbers set forth on the face of the certificate representing such Note, to thereafter bear the “unrestricted” CUSIP and ISIN numbers identified in such footnotes; *provided, however*, that if such Note is a Global Note and the Depositary thereof requires a mandatory exchange or other procedure to cause such Global Note to be identified by “unrestricted” CUSIP and ISIN numbers in the facilities of such Depositary, then, (x) the Company will effect such exchange or procedure as soon as reasonably practicable; and (y) for purposes of **Section 3.04** and the definition of Freely Tradable, such Global Note will not be deemed to be identified by “unrestricted” CUSIP and ISIN numbers until such time as such exchange or procedure is effected.

SECTION 2.13. REPLACEMENT NOTES.

If a Holder of any Note claims that such Note has been mutilated, lost, destroyed or wrongfully taken, then the Company will issue, execute and deliver, and the Trustee will authenticate, in each case in accordance with **Section 2.02**, a replacement Note upon surrender to the Trustee of such mutilated Note, or upon delivery to the Trustee of evidence of such loss, destruction or wrongful taking reasonably satisfactory to the Trustee and the Company. The Company may charge the Holder of a Note for the Company’s and the Trustee’s expenses in replacing such Note pursuant to this **Section 2.13**. In addition, in the case of a lost, destroyed or wrongfully taken Note, the Company and the Trustee may require the Holder thereof to provide such security or indemnity that is satisfactory to the Company and the Trustee to protect the Company and the Trustee from any loss that any of them may suffer if such Note is replaced.

Every replacement Note issued pursuant to this **Section 2.13** will be an additional obligation of the Company and will be entitled to all of the benefits of this Indenture equally and ratably with all other Notes issued under this Indenture, regardless of whether the related lost, destroyed or wrongfully taken Note is at any time enforceable by any Person.

SECTION 2.14. REGISTERED HOLDERS; CERTAIN RIGHTS WITH RESPECT TO GLOBAL NOTES.

Only the Holder of a Note will have rights under this Indenture as the owner of such Note. Without limiting the generality of the foregoing, Depositary Participants will have no rights as such under this Indenture with respect to any Global Note held on their behalf by the Depositary or its nominee, or by the Trustee as its custodian, and the Company, the Trustee and the Note Agents, and their respective agents, may treat the Depositary as the absolute owner of such Global Note for all purposes whatsoever; *provided, however*, that (A) the Holder of any Global Note may grant proxies and otherwise authorize any Person, including Depositary Participants and Persons that hold interests in Notes through Depositary Participants, to take any action that such Holder is entitled to take with respect to such Global Note under this Indenture or the Notes; and (B) the Company and the Trustee, and their respective agents, may give effect to any written certification, proxy or other authorization furnished by the Depositary.

SECTION 2.15. CANCELLATION.

The Company may at any time deliver Notes to the Trustee for cancellation. The Registrar, the Paying Agent and the Conversion Agent will forward to the Trustee each Note duly surrendered to them for transfer, exchange, payment or Conversion. The Trustee will promptly cancel all Notes so surrendered to it in accordance with its customary procedures. Without limiting the generality of **Section 2.03(B)**, the Company may not originally issue new Notes to replace Notes that it has paid or that have been cancelled upon transfer, exchange, payment or Conversion.

SECTION 2.16. NOTES HELD BY THE COMPANY OR ITS AFFILIATES.

Without limiting the generality of **Section 2.18**, in determining whether the Holders of the requisite aggregate principal amount of Notes have concurred in any direction, consent, waiver or other action under this Indenture, Notes owned by the Company, any of its Subsidiaries or any of its Affiliates or any Subsidiary of any of the Company's Affiliates will be deemed not to be outstanding; *provided, however*, that, for purposes of determining whether the Trustee is protected in relying on any such direction, consent, waiver or other action, only Notes that a Responsible Officer of the Trustee actually knows are so owned will be so disregarded.

SECTION 2.17. TEMPORARY NOTES.

Until definitive Notes are ready for delivery, the Company may issue, execute and deliver, and the Trustee will authenticate, in each case in accordance with **Section 2.02**, temporary Notes. Temporary Notes will be substantially in the form of definitive Notes but may have variations that the Company considers appropriate for temporary Notes. The Company will promptly prepare, issue, execute and deliver, and the Trustee will authenticate, in each case in accordance with **Section 2.02**, definitive Notes in exchange for temporary Notes. Until so exchanged, each temporary Note will in all respects be entitled to the same benefits under this Indenture as definitive Notes.

SECTION 2.18. OUTSTANDING NOTES.

(A) *Generally.* The Notes that are outstanding at any time will be deemed to be those Notes that, at such time, have been duly executed and authenticated, excluding those Notes (or portions thereof) that have theretofore been (i) cancelled by the Trustee or delivered to the Trustee for cancellation in accordance with **Section 2.15**; (ii) assigned a principal amount of zero by notation on the “Schedule of Exchanges of Interests in the Global Note” forming part of a Global Note representing such Note; (iii) paid in full (including upon Conversion) in accordance with this Indenture; or (iv) deemed to cease to be outstanding to the extent provided in, and subject to, **clause (B), (C) or (D)** of this **Section 2.18**.

(B) *Replaced Notes.* If a Note is replaced pursuant to **Section 2.13**, then such Note will cease to be outstanding at the time of its replacement, unless the Trustee and the Company receive proof reasonably satisfactory to them that such Note is held by a “*bona fide* purchaser” under applicable law.

(C) *Maturing Notes and Notes Called for Redemption or Subject to Repurchase.* If, on a Redemption Date, a Fundamental Change Repurchase Date or the Maturity Date, the Paying Agent holds money sufficient to pay the aggregate Redemption Price, Fundamental Change Repurchase Price or principal amount, respectively, together, in each case, with the aggregate interest (if any), in each case due on such date, then (unless there occurs a Default in the payment of any such amount) (i) the Notes (or portions thereof) to be redeemed or repurchased, or that mature, on such date will be deemed, as of such date, to cease to be outstanding, except to the extent provided in **Section 4.02(D), 4.03(E) or 5.02(D)**; and (ii) the rights of the Holders of such Notes (or such portions thereof), as such, will terminate with respect to such Notes (or such portions thereof), other than the right to receive the Redemption Price, Fundamental Change Repurchase Price or principal amount, as applicable, of, and accrued and unpaid interest, if any, on, such Notes (or such portions thereof), in each case as provided in this Indenture.

(D) *Notes to Be Converted.* At the Close of Business on the Conversion Date for any Note (or any portion thereof) to be Converted, such Note (or such portion) will (unless there occurs a Default in the delivery of the Conversion Consideration or any interest due, pursuant to **Section 5.03(B) or Section 5.02(D)**, upon such Conversion) be deemed to cease to be outstanding, except to the extent provided in **Section 5.02(D) or Section 5.08**.

(E) *Cessation of Accrual of Interest.* Except as provided in **Section 4.02(D), 4.03(E) or 5.02(D)**, no Special Interest or Additional Interest will accrue on any Note from and after the date that such Note is deemed, pursuant to this **Section 2.18**, to cease to be outstanding, unless there occurs a Default in the payment or delivery of any cash or other property due on such Note.

SECTION 2.19. REPURCHASES BY THE COMPANY.

Without limiting the generality of **Section 2.15**, the Company may, from time to time, repurchase Notes in open market purchases or in negotiated transactions without delivering prior notice to Holders.

SECTION 2.20. CUSIP AND ISIN NUMBERS.

Subject to **Section 2.12**, the Company may use one or more CUSIP or ISIN numbers to identify any of the Notes, and, if so, the Company and the Trustee will use such CUSIP or ISIN number(s) in notices to Holders; *provided, however*, that (i) the Trustee makes no representation as to the correctness or accuracy of any such CUSIP or ISIN number; and (ii) the effectiveness of any such notice will not be affected by any defect in, or omission of, any such CUSIP or ISIN number. The Company will promptly notify the Trustee of any change in the CUSIP or ISIN number(s) identifying any Notes.

Article 3. COVENANTS

SECTION 3.01. PAYMENT ON NOTES.

(A) *Generally*. The Company will pay or cause to be paid all the principal of, the Fundamental Change Repurchase Price and Redemption Price for, interest, if any, on, and other amounts due with respect to, the Notes on the dates and in the manner set forth in this Indenture.

(B) *Deposit of Funds*. Before 11:00 A.M., New York City time, on each Redemption Date, each Fundamental Change Repurchase Date and on each Interest Payment Date in respect of which any Special Interest or Additional Interest is payable, and on the Maturity Date and each other date on which any cash amount is due on the Notes, the Company will deposit, or will cause there to be deposited, with the Paying Agent cash, in funds immediately available on such date, sufficient to pay the cash amount due on the applicable Notes on such date. The Paying Agent will return to the Company, as soon as practicable, any money not required for such purpose.

SECTION 3.02. EXCHANGE ACT REPORTS.

(A) *Generally*. The Company will send to the Trustee copies of all reports that the Company is required to file with the SEC pursuant to Section 13(a) or 15(d) of the Exchange Act (other than Form 8-K reports) within fifteen (15) calendar days after the date that the Company is required to file the same (after giving effect to all applicable grace periods under the Exchange Act); *provided, however*, that the Company need not send to the Trustee any material for which the Company has received, or is seeking in good faith and has not been denied, confidential treatment by the SEC. Any report that the Company files with the SEC through the EDGAR system (or any successor thereto) will be deemed to be sent to the Trustee at the time such report is so filed via the EDGAR system (or such successor). Upon the request of any Holder, the Trustee will provide to such Holder a copy of any report that the Company has sent the Trustee pursuant to this **Section 3.02(A)**, other than a report that is deemed to be sent to the Trustee pursuant to the preceding sentence.

The “grace periods” referred to in the preceding paragraph with respect to any report will include the maximum period afforded by Rule 12b-25 (or any successor rule thereto) under the Exchange Act regardless of whether the Company files, or indicates in the related Form 12b-25 (or any successor form thereto) that the Company expects to or will file, such report before the expiration of such maximum period. For the avoidance of doubt, if the Company fails to file with the SEC any report pursuant to Section 13(a) or 15(d) of the Exchange Act (other than Form 8-K reports) on or before the date that the Company is required to file the same (after giving effect to all applicable grace periods under the Exchange Act), then such failure will not constitute a Default with respect to the covenant set forth in this **Section 3.02(A)** at any time before the lapsing of the fifteen (15) calendar days referred to in the first sentence of this **Section 3.02(A)**.

(B) *Trustee's Disclaimer.* The Trustee need not determine whether the Company has filed any material via the EDGAR system (or such successor). The sending or filing of reports pursuant to **Section 3.02(A)** will not be deemed to constitute actual or constructive notice to the Trustee of any information contained, or determinable from information contained, therein, including the Company's compliance with any of its covenants under this Indenture.

SECTION 3.03. RULE 144A INFORMATION.

If the Company is not subject to Section 13 or 15(d) of the Exchange Act at any time when any Notes or shares of Common Stock issuable upon Conversion of the Notes are outstanding and constitute "restricted securities" (as defined in Rule 144), then the Company (or its successor) will promptly provide, to the Trustee and, upon written request, to any Holder, beneficial owner or prospective purchaser of such Notes or shares, the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act to facilitate the resale of such Notes or shares pursuant to Rule 144A; *provided, however*, that, from and after the De-Legending Deadline Date of any Note, such information need not be provided with respect to such Note, or any share of Common Stock issued upon Conversion of such Note, if such Note or share, as applicable, is Freely Tradable (determined, with respect to any share of Common Stock, as each reference to any Note in the definition of "Freely Tradable" were instead a reference to shares of Common Stock).

SECTION 3.04. ADDITIONAL INTEREST.

(A) *Accrual of Additional Interest.*

(i) If, at any time during the six (6) month period beginning on, and including, the date that is six (6) months after the Last Original Issue Date of any Note,

(1) the Company fails to timely file any report (other than Form 8-K reports) that the Company is required to file with the SEC pursuant to Section 13 or 15(d) of the Exchange Act (after giving effect to all applicable grace periods thereunder); or

(2) such Note is not otherwise Freely Tradable,

then Additional Interest will accrue on such Note for each day during such period on which such failure is continuing or such Note is not Freely Tradable. The "grace periods" referred to in the preceding sentence with respect to any report will include the maximum period afforded by Rule 12b-25 (or any successor rule thereto) under the Exchange Act regardless of whether the Company files, or indicates in the related Form 12b-25 (or any successor form thereto) that the Company expects to or will file, such report before the expiration of such maximum period.

(ii) In addition, Additional Interest will accrue on a Note on each day on which such Note is not Freely Tradable on or after the De-Legending Deadline Date for such Note.

(B) *Amount and Payment of Additional Interest.* Subject to **Section 3.04(C)**, any Additional Interest that accrues on a Note pursuant to **Section 3.04(A)** will accrue at a rate per annum equal to one quarter of one percent (0.25%) of the principal amount thereof for the first ninety (90) days on which Additional Interest accrues and, thereafter, at a rate per annum equal to one half of one percent (0.50%) of the principal amount thereof; *provided, however*, that in no event will Additional Interest, together with any Special Interest, accrue on any day on a Note at a combined rate per annum that exceeds one half of one percent (0.50%). For the avoidance of doubt, any Additional Interest that accrues on a Note will, subject to the proviso of the immediately preceding sentence, be in addition to any Special Interest that accrues on such Note.

(C) *Deferral of Additional Interest.*

(i) *Generally.* Notwithstanding anything to the contrary in this **Section 3.04**, but subject to **Section 3.04(C)(iii)**, Additional Interest that accrues on any Note for any period on or after the De-Legending Deadline Date of such Note will not be payable on any Interest Payment Date occurring on or after such De-Legending Deadline Date unless (1) a Holder (or an owner of a beneficial interest in a Global Note) has delivered to the Company and the Trustee, no later than the fifth (5th) Business Day before the Interest Record Date immediately before such Interest Payment Date, a written notice (a “**Deferred Additional Interest Demand Request**”) demanding payment of Additional Interest; or (2) the Company, in its sole and absolute discretion, elects, by sending notice of such election (a “**Notice of Election to Pay Deferred Additional Interest**”) to Holders and the Trustee, before such Interest Record Date, to pay such Additional Interest on such Interest Payment Date (any accrued and unpaid Additional Interest that, in accordance with this sentence, is not paid on such Interest Payment Date, “**Deferred Additional Interest**”). Once any accrued and unpaid Additional Interest becomes payable on an Interest Payment Date (whether as a result of the delivery of a written notice pursuant to **clause (1)** above or, if earlier, the Company’s election to pay the same pursuant to **clause (2)** above), Additional Interest will thereafter not be subject to deferral pursuant to this **Section 3.04(C)**.

(ii) *Interpretive Provisions.* Each reference in this Indenture or the Notes to any accrued interest (including in the definitions of the Redemption Price and the Fundamental Change Repurchase Price for any Note) or to any accrued Additional Interest includes, to the extent applicable, and without duplication, any Deferred Additional Interest. For the avoidance of doubt, the failure to pay any accrued and unpaid Additional Interest on an Interest Payment Date will not constitute a Default or an Event of Default under this Indenture or the Notes if such payment is deferred in accordance with **Section 3.04(C)(i)**. Otherwise, such a failure to pay will be subject to **Section 7.01(A)(ii)**.

(iii) *Payment or Extinguishment Upon Maturity.* Notwithstanding anything to the contrary in this Indenture or the Notes, if (1) any unpaid Deferred Additional Interest exists on any Notes as of the Close of Business on the Interest Record Date immediately preceding the Maturity Date; (2) no Holder (or owner of a beneficial interest in a Global Note) has delivered a Deferred Additional Interest Demand Request in the manner set forth in **Section 3.04(C)(i)** on or before the fifth (5th) Business Day before such Interest Record Date; and (3) the Company has not sent a Notice of Election to Pay Deferred Additional Interest in the manner set forth in **Section 3.04(C)(i)** before such Interest Record Date, then Deferred Additional Interest on each Note then outstanding will cease to accrue, and all Deferred Additional Interest on such Note will be deemed to be extinguished on the following date: (a) if such Note is to be Converted, the Conversion Date for such Conversion (it being understood, for the avoidance of doubt, that the Conversion Consideration therefor need not include the payment of any such Deferred Additional Interest); and (b) in all other cases, the later of (x) the Maturity Date; and (y) the first date on which the Company has repaid the principal of, and accrued and unpaid interest (other than such Deferred Additional Interest) on, such Note in full.

(D) *Notice of Accrual of Additional Interest; Trustee's Disclaimer.* The Company will send notice to the Holder of each Note, and to the Trustee, of the commencement and termination of any period in which Additional Interest accrues on such Note, except that no such notice is required in respect of any Additional Interest that is deferred in accordance with **Section 3.04(C)**. In addition, if Additional Interest accrues on any Note, then, no later than five (5) Business Days before each date on which such Additional Interest is to be paid, the Company will deliver an Officer's Certificate to the Trustee and the Paying Agent stating (i) that the Company is obligated to pay Additional Interest on such Note on such date of payment; and (ii) the amount of such Additional Interest that is payable on such date of payment. The Trustee (x) will have no duty to determine whether any Additional Interest is payable (or whether the same is deferred or is accruing interest) or the amount thereof; and (y) may assume (without inquiry) that no Additional Interest is payable or has been deferred unless and until the Company delivers such Officer's Certificate.

(E) *Exclusive Remedy.* The accrual of Additional Interest will be the exclusive remedy available to Holders for the failure of their Notes to become Freely Tradable.

SECTION 3.05. COMPLIANCE AND DEFAULT CERTIFICATES.

(A) *Annual Compliance Certificate.* Within ninety (90) days after the last day of each fiscal year of the Company, beginning with the first such fiscal year ending after the date of this Indenture, the Company will deliver an Officer's Certificate to the Trustee stating (i) that the signatory thereto has supervised a review of the activities of the Company and its Subsidiaries during such fiscal year with a view towards determining whether any Default has occurred; and (ii) whether, to such signatory's knowledge, a Default has occurred or is continuing (and, if so, describing all such Defaults and what action the Company is taking or proposes to take with respect thereto).

(B) *Default Certificate.* If a Default occurs, then the Company will, within thirty (30) days after its first occurrence, deliver an Officer's Certificate to the Trustee describing the same and what action the Company is taking or proposes to take with respect thereto; *provided, however*, that the Company will not be required to deliver such Officer's Certificate at any time after such Default is cured or waived.

SECTION 3.06. STAY, EXTENSION AND USURY LAWS.

To the extent that it may lawfully do so, the Company (A) agrees that it will not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law (wherever or whenever enacted or in force) that may affect the covenants or the performance of this Indenture; and (B) expressly waives all benefits or advantages of any such law and agrees that it will not, by resort to any such law, hinder, delay or impede the execution of any power granted to the Trustee by this Indenture, but will suffer and permit the execution of every such power as though no such law has been enacted.

SECTION 3.07. ACQUISITION OF NOTES BY THE COMPANY AND ITS AFFILIATES.

Without limiting the generality of **Section 2.18**, Notes that the Company or any of its Subsidiaries may repurchase will be considered outstanding for all purposes under this Indenture (except to the extent provided in **Section 2.16**) unless and until such time the Company surrenders the Notes to the Trustee for cancellation and, upon receipt of a written order from the Company, the Trustee will cancel all notes so surrendered. The Company will use commercially reasonable efforts to prevent any of its controlled Affiliates from acquiring any Note (or any beneficial interest therein).

Article 4. REPURCHASE AND REDEMPTION

SECTION 4.01. NO SINKING FUND.

No sinking fund is required to be provided for the Notes.

SECTION 4.02. RIGHT OF HOLDERS TO REQUIRE THE COMPANY TO REPURCHASE NOTES UPON A FUNDAMENTAL CHANGE.

(A) *Right of Holders to Require the Company to Repurchase Notes Upon a Fundamental Change.* Subject to the other terms of this **Section 4.02**, if a Fundamental Change occurs, then each Holder will have the right (the “**Fundamental Change Repurchase Right**”) to require the Company to repurchase such Holder’s Notes (or any portion thereof in an Authorized Denomination) on the Fundamental Change Repurchase Date for such Fundamental Change for a cash purchase price equal to the Fundamental Change Repurchase Price.

(B) *Repurchase Prohibited in Certain Circumstances.* If the principal amount of the Notes has been accelerated and such acceleration has not been rescinded on or before the Fundamental Change Repurchase Date for a Repurchase Upon Fundamental Change (including a rescission as a result of the payment of the related Fundamental Change Repurchase Price, and any related interest pursuant to the proviso to the first sentence of **Section 4.02(D)**, on such Fundamental Change Repurchase Date), then (i) the Company may not repurchase any Notes pursuant to this **Section 4.02**; and (ii) the Company will cause any Notes theretofore surrendered for such Repurchase Upon Fundamental Change to be returned to the Holders thereof (or, if applicable with respect to Global Notes, cancel any instructions for book-entry transfer to the Company, the Trustee or the Paying Agent of the applicable beneficial interest in such Notes in accordance with the Depositary Procedures).

(C) *Fundamental Change Repurchase Date.* The Fundamental Change Repurchase Date for any Fundamental Change will be a Business Day of the Company's choosing that is no more than thirty five (35), nor less than twenty (20), Business Days after the date the Company sends the related Fundamental Change Notice pursuant to **Section 4.02(E)**.

(D) *Fundamental Change Repurchase Price.* The Fundamental Change Repurchase Price for any Note to be repurchased upon a Repurchase Upon Fundamental Change following a Fundamental Change is an amount in cash equal to the principal amount of such Note plus accrued and unpaid Special Interest and Additional Interest, if any, on such Note to, but excluding, the Fundamental Change Repurchase Date for such Fundamental Change; *provided, however,* that if any payment of Special Interest or Additional Interest is due in respect of any Interest Payment Date and such Fundamental Change Repurchase Date is after the related Interest Record Date and on or before such Interest Payment Date, then (i) the Holder of such Note at the Close of Business on such Interest Record Date will be entitled, notwithstanding such Repurchase Upon Fundamental Change, to receive, on or, at the Company's election, before such Interest Payment Date, such payment of Special Interest or Additional Interest, as applicable (assuming, solely for these purposes, that such Note remained outstanding through such Interest Payment Date, if such Fundamental Change Repurchase Date is before such Interest Payment Date); and (ii) the Fundamental Change Repurchase Price will not include accrued and unpaid Special Interest or Additional Interest on such Note to, but excluding, such Fundamental Change Repurchase Date. For the avoidance of doubt, if such Interest Payment Date is not a Business Day within the meaning of **Section 2.05(C)** and such Fundamental Change Repurchase Date occurs on the Business Day immediately after such Interest Payment Date, then (x) accrued and unpaid Special Interest or Additional Interest, as applicable, to, but excluding, such Interest Payment Date will be paid, in accordance with **Section 2.05(C)**, on the next Business Day to Holders as of the Close of Business on the immediately preceding Interest Record Date; and (y) the Fundamental Change Repurchase Price will include Special Interest and Additional Interest, if any, on the Notes to be repurchased from, and including, such Interest Payment Date.

(E) *Fundamental Change Notice.* On or before the twentieth (20th) calendar day after the effective date of a Fundamental Change, the Company will send to each Holder, the Trustee, the Conversion Agent and the Paying Agent a notice of such Fundamental Change (a "**Fundamental Change Notice**").

Such Fundamental Change Notice must state:

- (i) briefly, the events causing such Fundamental Change;
- (ii) the effective date of such Fundamental Change;
- (iii) the procedures that a Holder must follow to require the Company to repurchase its Notes pursuant to this **Section 4.02**, including the deadline for exercising the Fundamental Change Repurchase Right and the procedures for submitting and withdrawing a Fundamental Change Repurchase Notice;
- (iv) the Fundamental Change Repurchase Date for such Fundamental Change;
- (v) the Fundamental Change Repurchase Price per \$1,000 principal amount of Notes for such Fundamental Change (and, if any Special Interest or Additional Interest is payable in respect of an Interest Payment Date and such Fundamental Change Repurchase Date is after the related Interest Record Date and on or before such Interest Payment Date, the amount, manner and timing of the interest payment payable pursuant to the proviso to **Section 4.02(D)**);

(vi) the name and address of the Paying Agent and the Conversion Agent;

(vii) the Conversion Rate in effect on the date of such Fundamental Change Notice and a description and quantification of any adjustments to the Conversion Rate that may result from such Fundamental Change (including pursuant to **Section 5.07**);

(viii) that Notes for which a Fundamental Change Repurchase Notice has been duly tendered and not duly withdrawn must be delivered to the Paying Agent for the Holder thereof to be entitled to receive the Fundamental Change Repurchase Price;

(ix) that Notes (or any portion thereof) that are subject to a Fundamental Change Repurchase Notice that has been duly tendered may be Converted only if such Fundamental Change Repurchase Notice is withdrawn in accordance with this Indenture; and

(x) the CUSIP and ISIN numbers, if any, of the Notes and that no representation is made as to the correctness or accuracy of any such CUSIP and ISIN numbers that are listed in such notice or printed on the Notes.

Neither the failure to deliver a Fundamental Change Notice nor any defect in a Fundamental Change Notice will limit the Fundamental Change Repurchase Right of any Holder or otherwise affect the validity of any proceedings relating to any Repurchase Upon Fundamental Change.

(F) *Procedures to Exercise the Fundamental Change Repurchase Right.*

(i) *Delivery of Fundamental Change Repurchase Notice and Notes to Be Repurchased.* To exercise its Fundamental Change Repurchase Right for a Note following a Fundamental Change, a Holder must deliver to the Paying Agent:

(1) before the Close of Business on the Business Day immediately before the related Fundamental Change Repurchase Date (or such later time as may be required by law), a duly completed, written Fundamental Change Repurchase Notice with respect to such Note; and

(2) such Note, duly endorsed for transfer (if such Note is a Physical Note) or by book-entry transfer (if such Note is a Global Note).

The Paying Agent will promptly deliver to the Company a copy of each Fundamental Change Repurchase Notice that it receives.

(ii) *Contents of Fundamental Change Repurchase Notices.* Each Fundamental Change Repurchase Notice with respect to a Note must state:

(1) if such Note is a Physical Note, the certificate number of such Note;

- (2) the principal amount of such Note to be repurchased, which must be an Authorized Denomination; and
- (3) that such Holder is exercising its Fundamental Change Repurchase Right with respect to such principal amount of such Note;

provided, however, that if such Note is a Global Note, then such Fundamental Change Repurchase Notice must comply with the Depositary Procedures (and any such Fundamental Change Repurchase Notice delivered in compliance with the Depositary Procedures will be deemed to satisfy the requirements of this **Section 4.02(F)**).

(iii) *Withdrawal of Fundamental Change Repurchase Notice.* A Holder that has delivered a Fundamental Change Repurchase Notice with respect to a Note may withdraw such Fundamental Change Repurchase Notice by delivering a written notice of withdrawal to the Paying Agent at any time before the Close of Business on the Business Day immediately before the related Fundamental Change Repurchase Date. Such withdrawal notice must state:

- (1) if such Note is a Physical Note, the certificate number of such Note;
- (2) the principal amount of such Note to be withdrawn, which must be an Authorized Denomination; and
- (3) the principal amount of such Note, if any, that remains subject to such Fundamental Change Repurchase Notice, which must be an Authorized Denomination;

provided, however, that if such Note is a Global Note, then such withdrawal notice must comply with the Depositary Procedures (and any such withdrawal notice delivered in compliance with the Depositary Procedures will be deemed to satisfy the requirements of this **Section 4.02(F)**).

Upon receipt of any such withdrawal notice with respect to a Note (or any portion thereof), the Paying Agent will (x) promptly deliver a copy of such withdrawal notice to the Company; and (y) if such Note is surrendered to the Paying Agent, cause such Note (or such portion thereof in accordance with **Section 2.11**, treating such Note as having been then surrendered for partial repurchase in the amount set forth in such withdrawal notice as remaining subject to repurchase) to be returned to the Holder thereof (or, if applicable with respect to any Global Note, cancel any instructions for book-entry transfer to the Company, the Trustee or the Paying Agent of the applicable beneficial interest in such Note in accordance with the Depositary Procedures).

(G) *Payment of the Fundamental Change Repurchase Price.* Without limiting the Company's obligation to deposit the Fundamental Change Repurchase Price within the time proscribed by **Section 3.01(B)**, the Company will cause the Fundamental Change Repurchase Price for a Note (or portion thereof) to be repurchased pursuant to a Repurchase Upon Fundamental Change to be paid to the Holder thereof on or before the later of (i) the applicable Fundamental Change Repurchase Date; and (ii) the date (x) such Note is delivered to the Paying Agent (in the case of a Physical Note) or (y) the Depositary Procedures relating to the repurchase, and the delivery to the Paying Agent, of such Holder's beneficial interest in such Note to be repurchased are complied with (in the case of a Global Note). For the avoidance of doubt, interest payable pursuant to the proviso to the first sentence of **Section 4.02(D)** on any Note to be repurchased pursuant to a Repurchase Upon Fundamental Change must be paid pursuant to such proviso regardless of whether such Note is delivered or such Depositary Procedures are complied with pursuant to the first sentence of this **Section 4.02(G)**.

(H) *Third Party May Conduct Repurchase Offer In Lieu of the Company.* Notwithstanding anything to the contrary in this **Section 4.02**, the Company will be deemed to satisfy its obligations under this **Section 4.02** if (i) one or more third parties conduct any Repurchase Upon Fundamental Change and related offer to repurchase Notes otherwise required by this **Section 4.02** in a manner that would have satisfied the requirements of this **Section 4.02** if conducted directly by the Company and (ii) an owner of a beneficial interest in any Note repurchased by such third party or parties will not receive a lesser amount (as a result of withholding or similar taxes) than such owner would have received had the Company repurchased such Note.

(I) *No Requirement to Conduct an Offer to Repurchase Notes if the Fundamental Change Results in the Notes Becoming Convertible into an Amount of Cash Exceeding the Fundamental Change Repurchase Price.* Notwithstanding anything to the contrary in this **Section 4.02**, the Company will not be required to send a Fundamental Change Notice pursuant to **Section 4.02(E)**, or offer to repurchase or repurchase any Notes pursuant to this **Section 4.02**, in connection with a Fundamental Change occurring pursuant to **clause (B)(ii)** (or pursuant to **clause (A)** that also constitutes a Fundamental Change occurring pursuant to **clause (B)(ii)**) of the definition thereof, if (i) such Fundamental Change constitutes a Common Stock Change Event whose Reference Property consists entirely of cash in U.S. dollars; (ii) immediately after such Fundamental Change, the Notes become Convertible, pursuant to **Section 5.09(A)** and, if applicable, **Section 5.07**, into consideration that consists solely of U.S. dollars in an amount per \$1,000 aggregate principal amount of Notes that equals or exceeds the Fundamental Change Repurchase Price per \$1,000 aggregate principal amount of Notes (which Fundamental Change Repurchase Price will, if any Special Interest or Additional Interest is accruing on the Notes as of the effective date of such Fundamental Change, be calculated assuming that such Fundamental Change Repurchase Price includes accrued and unpaid Special Interest or Additional Interest, as applicable, to, but excluding, the latest possible Fundamental Change Repurchase Date for such Fundamental Change); and (iii) the Company timely sends the notice relating to such Fundamental Change required pursuant to **Section 5.01(C)(i)(3)(b)** and includes, in such notice, a statement that the Company is relying on this **Section 4.02(I)**.

(J) *Compliance with Applicable Securities Laws.* To the extent applicable, the Company will comply, in all material respects, with all federal and state securities laws in connection with a Repurchase Upon Fundamental Change (including complying with Rules 13e-4 and 14e-1 under the Exchange Act and filing any required Schedule TO, to the extent applicable) so as to permit effecting such Repurchase Upon Fundamental Change in the manner set forth in this Indenture; *provided, however*, that, to the extent that the Company's obligations pursuant to this **Section 4.02** conflict with any law or regulation that is applicable to the Company and enacted after the Issue Date, the Company's compliance with such law or regulation will not be considered to be a Default of such obligations.

(K) *Repurchase in Part.* Subject to the terms of this **Section 4.02**, Notes may be repurchased pursuant to a Repurchase Upon Fundamental Change in part, but only in Authorized Denominations. Provisions of this **Section 4.02** applying to the repurchase of a Note in whole will equally apply to the repurchase of a permitted portion of a Note.

SECTION 4.03. RIGHT OF THE COMPANY TO REDEEM THE NOTES.

(A) *No Right to Redeem Before May 15, 2029.* The Company may not redeem the Notes at its option pursuant to this **Section 4.03** at any time before May 15, 2029.

(B) *Right to Redeem the Notes on or After May 15, 2029.* Subject to the terms of this **Section 4.03**, the Company has the right, at its election, to redeem all, or any portion in an Authorized Denomination, of the Notes, at any time, and from time to time, on a Redemption Date on or after May 15, 2029 and on or before the forty fifth (45th) Scheduled Trading Day immediately before the Maturity Date, for a cash purchase price equal to the Redemption Price, but only if (i) the Notes are Freely Tradable as of the Redemption Notice Date for such Redemption and all accrued and unpaid Additional Interest, if any, has been paid in full, as of the first Interest Payment Date occurring on or before such Redemption Notice Date; and (ii) the Last Reported Sale Price per share of Common Stock exceeds one hundred and thirty percent (130%) of the Conversion Price on (x) each of at least twenty (20) Trading Days (whether or not consecutive) during the thirty (30) consecutive Trading Days ending on, and including, the Trading Day immediately before such Redemption Notice Date; and (y) the Trading Day immediately before such Redemption Notice Date; *provided, however*, that the Company will not call less than all of the outstanding Notes for Redemption unless the excess of the principal amount of Notes outstanding as of the time the Company sends the related Redemption Notice over the aggregate principal amount of Notes set forth in such Redemption Notice as being subject to such Redemption is at least one hundred fifty million dollars (\$150,000,000). For the avoidance of doubt, the calling of any Notes for Redemption will constitute a Make-Whole Fundamental Change with respect to such Notes pursuant to **clause (B)** of the definition thereof.

(C) *Redemption Prohibited in Certain Circumstances.* If the principal amount of the Notes has been accelerated and such acceleration has not been rescinded on or before the Redemption Date (including a rescission as a result of the payment of the related Redemption Price, and any related interest pursuant to the proviso to the first sentence of **Section 4.03(E)**, on such Redemption Date), then (i) the Company may not call for Redemption or otherwise redeem any Notes pursuant to this **Section 4.03**; and (ii) the Company will cause any Notes theretofore surrendered for such Redemption to be returned to the Holders thereof (or, if applicable with respect to Global Notes, cancel any instructions for book-entry transfer to the Company, the Trustee or the Paying Agent of the applicable beneficial interests in such Notes in accordance with the Depositary Procedures).

(D) *Redemption Date.* The Redemption Date for any Redemption will be a Business Day of the Company's choosing that is no more than seventy (70), nor less than fifty (50), Scheduled Trading Days after the Redemption Notice Date for such Redemption; *provided, however*, that if, in accordance with **Section 5.03(A)(i)(3)**, the Company has elected to settle all Conversions of Notes with a Conversion Date that occurs on or after such Redemption Notice Date and on or before the second (2nd) Business Day immediately before the Redemption Date by Physical Settlement, then the Company may instead elect to choose a Redemption Date that is a Business Day no more than sixty (60), nor less than fifteen (15), calendar days after such Redemption Notice Date.

(E) *Redemption Price.* The Redemption Price for any Note called for Redemption is an amount in cash equal to the principal amount of such Note plus accrued and unpaid Special Interest and Additional Interest, if any, on such Note to, but excluding, the Redemption Date for such Redemption; *provided, however*, that if any payment of Special Interest or Additional Interest is due in respect of any Interest Payment Date and such Redemption Date is after the related Interest Record Date and on or before such Interest Payment Date, then (i) the Holder of such Note at the Close of Business on such Interest Record Date will be entitled, notwithstanding such Redemption, to receive, on or, at the Company's election, before such Interest Payment Date, such payment of Special Interest or Additional Interest, as applicable (assuming, solely for these purposes, that such Note remained outstanding through such Interest Payment Date, if such Redemption Date is before such Interest Payment Date); and (ii) the Redemption Price will not include accrued and unpaid Special Interest or Additional Interest on such Note to, but excluding, such Redemption Date. For the avoidance of doubt, if such Interest Payment Date is not a Business Day within the meaning of **Section 2.05(C)** and such Redemption Date occurs on the Business Day immediately after such Interest Payment Date, then (x) accrued and unpaid Special Interest or Additional Interest, as applicable, to, but excluding, such Interest Payment Date will be paid, in accordance with **Section 2.05(C)**, on the next Business Day to Holders as of the Close of Business on the immediately preceding Interest Record Date; and (y) the Redemption Price will include Special Interest and Additional Interest, if any, on Notes to be redeemed from, and including, such Interest Payment Date.

(F) *Redemption Notice.* To call any Notes for Redemption, the Company must send to each Holder of such Notes a written notice of such Redemption (a "**Redemption Notice**").

Such Redemption Notice must state:

- (i) that such Notes have been called for Redemption, briefly describing the Company's Redemption right under this Indenture;
- (ii) the Redemption Date for such Redemption;
- (iii) the Redemption Price per \$1,000 principal amount of Notes for such Redemption (and, if any Special Interest or Additional Interest is payable in respect of an Interest Payment Date and the Redemption Date is after the related Interest Record Date and on or before such Interest Payment Date, the amount, manner and timing of the interest payment payable pursuant to the proviso to **Section 4.03(E)**);

(iv) the name and address of the Paying Agent and the Conversion Agent;

(v) that Notes called for Redemption may be Converted at any time before the Close of Business on the second (2nd) Business Day immediately before the Redemption Date (or, if the Company fails to pay the Redemption Price due on such Redemption Date in full, at any time until such time as the Company pays such Redemption Price in full);

(vi) the Conversion Rate in effect on the Redemption Notice Date for such Redemption and a description and quantification of any adjustments to the Conversion Rate that may result from such Redemption (including pursuant to **Section 5.07**);

(vii) the Settlement Method that will apply to all Conversions of Notes with a Conversion Date that occurs on or after such Redemption Notice Date and on or before the second Business Day before such Redemption Date; and

(viii) the CUSIP and ISIN numbers, if any, of the Notes being redeemed and that no representation is made as to the correctness or accuracy of any such CUSIP and ISIN numbers that are listed in such notice or printed on the Notes.

On or before the Redemption Notice Date, the Company will send a copy of such Redemption Notice to the Trustee, the Conversion Agent and the Paying Agent. Substantially contemporaneously, the Company will issue a press release through such national newswire service as the Company then uses (or publish the same through such other widely disseminated public medium as the Company then uses, including its website) containing the information set forth in such Redemption Notice.

(G) Selection and Conversion of Notes to Be Redeemed in Part.

(i) If less than all Notes then outstanding are called for Redemption, then the Notes to be redeemed will be selected by the Company as follows: (1) in the case of Global Notes, in accordance with the Depositary Procedures; and (2) in the case of Physical Notes, pro rata, by lot or by such other method the Company considers fair and appropriate.

(ii) If only a portion of a Note is subject to Redemption and such Note is Converted in part, then the Converted portion of such Note will be deemed to be from the portion of such Note that was subject to Redemption.

(H) Payment of the Redemption Price. Without limiting the Company's obligation to deposit the Redemption Price by the time proscribed by **Section 3.01(B)**, the Company will cause the Redemption Price for a Note (or portion thereof) subject to Redemption to be paid to the Holder thereof on or before the applicable Redemption Date. For the avoidance of doubt, interest payable pursuant to the proviso to the first sentence of **Section 4.03(E)** on any Note (or portion thereof) subject to Redemption must be paid pursuant to such proviso.

(I) Special Provisions for Partial Calls. If the Company elects to redeem less than all of the outstanding Notes pursuant to this **Section 4.03**, and the Holder of any Note, or any owner of a beneficial interest in any Global Note, is reasonably not able to determine, before the Close of Business on the forty seventh (47th) Scheduled Trading Day (or, if, in accordance with **Section 5.03(A)(i)(3)**, the Company has elected to settle all Conversions of Notes with a Conversion Date that occurs on or after the Redemption Notice Date for such Redemption and on or before the second (2nd) Business Day immediately before the Redemption Date by Physical Settlement, the tenth (10th) calendar day) immediately before the Redemption Date for such Redemption, whether such Note or beneficial interest, as applicable, is to be redeemed pursuant to such Redemption, then such Holder or owner, as applicable, will be entitled to Convert such Note or beneficial interest, as applicable, at any time before the Close of Business on the second (2nd) Business Day immediately before such Redemption Date, and each such Conversion will be deemed to be of a Note called for Redemption for purposes of **Sections 5.01(C)(i)(4)** and **5.07**.

(J) *Repurchases or Other Acquisitions Other Than by Redemption Not Affected.* For the avoidance of doubt, nothing in this **Section 4.03** will limit or otherwise apply to any repurchase or other acquisition, by the Company or its Affiliates, or any other Person, of any Notes not by Redemption (including in open market transactions, private or public tender or exchange offers or otherwise).

Article 5. THE CONVERSION OF NOTES

SECTION 5.01. RIGHT TO CONVERT.

(A) *Generally.* Subject to the provisions of this **Article 5**, each Holder may, at its option, Convert such Holder's Notes into Conversion Consideration.

(B) *Conversions in Part.* Subject to the terms of this Indenture, Notes may be Converted in part, but only in Authorized Denominations. Provisions of this **Article 5** applying to the Conversion of a Note in whole will equally apply to Conversions of a permitted portion of a Note.

(C) *When Notes May Be Converted.*

(i) *Generally.* Subject to **Section 5.01(C)(ii)**, a Note may be Converted only in the following circumstances:

(1) *Conversion Upon Satisfaction of Common Stock Sale Price Condition.* Prior to August 15, 2031, a Holder may Convert its Notes during any calendar quarter (and only during such calendar quarter) commencing after the calendar quarter ending on June 30, 2026, if the Last Reported Sale Price per share of Common Stock exceeds one hundred and thirty percent (130%) of the Conversion Price for each of at least twenty (20) Trading Days (whether or not consecutive) during the thirty (30) consecutive Trading Days ending on, and including, the last Trading Day of the immediately preceding calendar quarter.

(2) *Conversion Upon Satisfaction of Note Trading Price Condition.* Prior to August 15, 2031, a Holder may Convert its Notes during the five (5) consecutive Business Days immediately after any ten (10) consecutive Trading Day period (such ten (10) consecutive Trading Day period, the "**Measurement Period**") if the Trading Price per \$1,000 principal amount of Notes, as determined following a request by a Holder in accordance with the procedures set forth below, for each Trading Day of the Measurement Period was less than ninety eight percent (98%) of the product of the Last Reported Sale Price per share of Common Stock on such Trading Day and the Conversion Rate on such Trading Day. The condition set forth in the preceding sentence is referred to in this Indenture as the "**Trading Price Condition**."

The Trading Price will be determined by the Bid Solicitation Agent pursuant to this **Section 5.01(C)(i)(2)** and the definition of “Trading Price.” The Bid Solicitation Agent (if not the Company) will have no obligation to determine the Trading Price of the Notes unless the Company has requested such determination in writing, and the Company will have no obligation to make such request (or seek bids itself) unless a Holder provides the Company with reasonable evidence that the Trading Price per \$1,000 principal amount of Notes would be less than ninety eight percent (98%) of the product of the Last Reported Sale Price per share of Common Stock and the Conversion Rate. If a Holder provides such evidence, then the Company will (if acting as Bid Solicitation Agent), or will instruct the Bid Solicitation Agent to, determine the Trading Price of the Notes beginning on the next Trading Day and on each successive Trading Day until the Trading Price per \$1,000 principal amount of Notes is greater than or equal to ninety eight percent (98%) of the product of the Last Reported Sale Price per share of Common Stock on such Trading Day and the Conversion Rate on such Trading Day. If the Trading Price Condition has been met as set forth above, then the Company will notify the Holders, the Trustee and the Conversion Agent of the same. If, on any Trading Day after the Trading Price Condition has been met as set forth above, the Trading Price per \$1,000 principal amount of Notes is greater than or equal to ninety eight percent (98%) of the product of the Last Reported Sale Price per share of Common Stock on such Trading Day and the Conversion Rate on such Trading Day, then the Company will notify the Holders, the Trustee and the Conversion Agent of the same.

(3) *Conversion Upon Specified Corporate Events.*

(a) *Certain Distributions.* If, before August 15, 2031, the Company elects to:

(I) distribute, to all or substantially all holders of Common Stock, any rights, options or warrants (other than rights issued pursuant to a stockholder rights plan, so long as such rights have not separated from the Common Stock and are not exercisable until the occurrence of a triggering event, except that such rights will be deemed to be distributed under this **clause (I)** upon their separation from the Common Stock or upon the occurrence of such triggering event) entitling them, for a period of not more than sixty (60) calendar days after the record date of such distribution, to subscribe for or purchase shares of Common Stock at a price per share that is less than the average of the Last Reported Sale Prices per share of Common Stock for the ten (10) consecutive Trading Days ending on, and including, the Trading Day immediately before the date such distribution is announced (determined in the manner set forth in the third paragraph of **Section 5.05(A)(ii)**); or

(II) distribute, to all or substantially all holders of Common Stock, assets or securities of the Company or rights to purchase the Company's securities, which distribution per share of Common Stock has a value, as reasonably determined by the Company in good faith and in a commercially reasonable manner, exceeding fifteen percent (15%) of the Last Reported Sale Price per share of Common Stock on the Trading Day immediately before the date such distribution is announced,

then, in either case, (x) the Company will send notice of such distribution, and of the related right to Convert Notes, to Holders, the Trustee and the Conversion Agent at least fifty (50) Scheduled Trading Days before the Ex-Dividend Date for such distribution (or, if later in the case of any such separation of rights issued pursuant to a stockholder rights plan or the occurrence of any such triggering event under a stockholder rights plan, as soon as reasonably practicable after the Company becomes aware that such separation or triggering event has occurred or will occur); and (y) once the Company has sent such notice, Holders may Convert their Notes at any time until the earlier of the Close of Business on the Business Day immediately before such Ex-Dividend Date and the Company's announcement that such distribution will not take place; *provided, however*, that the Notes will not become Convertible pursuant to **clause (y)** above (but the Company will be required to send notice of such distribution pursuant to **clause (x)** above) on account of such distribution if each Holder participates, at the same time and on the same terms as holders of Common Stock, and solely by virtue of being a Holder, in such distribution without having to Convert such Holder's Notes and as if such Holder held a number of shares of Common Stock equal to the product of (i) the Conversion Rate in effect on the record date for such distribution; and (ii) the aggregate principal amount (expressed in thousands) of Notes held by such Holder on such record date; *provided, further*, that if the Company is then otherwise permitted to settle Conversions of Notes by Physical Settlement (and, for the avoidance of doubt, the Company has not elected another Settlement Method to apply, including pursuant to **Section 5.03(A)(i)(1)**), then the Company may instead elect to provide such notice at least ten (10) Scheduled Trading Days before such Ex-Dividend Date, in which case (x) the Company must settle all Conversions of Notes with a Conversion Date occurring on or after the date the Company provides such notice and on or before the Business Day immediately before the Ex-Dividend Date for such distribution (or any earlier announcement by the Company that such distribution will not take place) by Physical Settlement; and (y) such notice must state that all such Conversions will be settled by Physical Settlement.

(b) *Certain Corporate Events.* If, prior to August 15, 2031, a Fundamental Change, Make-Whole Fundamental Change (other than a Make-Whole Fundamental Change pursuant to **clause (B)** of the definition thereof) or Common Stock Change Event occurs (other than a merger or other business combination transaction that is effected solely to change the Company's jurisdiction of incorporation and that does not constitute a Fundamental Change or a Make-Whole Fundamental Change), then, in each case, Holders may Convert their Notes at any time from, and including, the effective date of such transaction or event to, and including, the thirty fifth (35th) Trading Day after such effective date (or, if such transaction or event also constitutes a Fundamental Change (other than an Exempted Fundamental Change), to, but excluding, the related Fundamental Change Repurchase Date); *provided, however*, that if the Company does not provide the notice referred to in the immediately following sentence by such effective date, then the last day on which the Notes are Convertible pursuant to this sentence will be extended by the number of Business Days from, and including, such effective date to, but excluding, the date the Company provides such notice. No later than the second (2nd) Business Day after such effective date, the Company will send notice to the Holders, the Trustee and the Conversion Agent of such transaction or event, such effective date and the related right to Convert Notes.

(4) *Conversion Upon Redemption.* If the Company calls any Note for Redemption, then the Holder of such Note may Convert such Note at any time before the Close of Business on the second (2nd) Business Day immediately before the related Redemption Date (or, if the Company fails to pay the Redemption Price due on such Redemption Date in full, at any time until such time as the Company pays such Redemption Price in full).

(5) *Conversions During Free Convertibility Period.* A Holder may Convert its Notes at any time from, and including, August 15, 2031 until the Close of Business on the second (2nd) Scheduled Trading Day immediately before the Maturity Date.

For the avoidance of doubt, the Notes may become Convertible pursuant to any one or more of the preceding sub-paragraphs of this **Section 5.01(C)(i)** and the Notes ceasing to be Convertible pursuant to a particular sub-paragraph of this **Section 5.01(C)(i)** will not preclude the Notes from being Convertible pursuant to any other sub-paragraph of this **Section 5.01(C)(i)**.

(ii) *Limitations and Closed Periods.* Notwithstanding anything to the contrary in this Indenture or the Notes:

(1) Notes may be surrendered for Conversion only after the Open of Business and before the Close of Business on a day that is a Business Day;

(2) in no event may any Note be Converted after the Close of Business on the second (2nd) Scheduled Trading Day immediately before the Maturity Date;

(3) if the Company calls any Note for Redemption pursuant to **Section 4.03**, then the Holder of such Note may not Convert such Note after the Close of Business on the second (2nd) Business Day immediately before the applicable Redemption Date, except to the extent the Company fails to pay the Redemption Price for such Note in accordance with this Indenture; and

(4) if a Fundamental Change Repurchase Notice is validly delivered pursuant to **Section 4.02(F)** with respect to any Note, then such Note may not be Converted, except to the extent (a) such Note is not subject to such notice; (b) such notice is withdrawn in accordance with **Section 4.02(F)**; or (c) the Company fails to pay the Fundamental Change Repurchase Price for such Note in accordance with this Indenture.

SECTION 5.02. CONVERSION PROCEDURES.

(A) *Generally.*

(i) *Global Notes.* To Convert a beneficial interest in a Global Note that is Convertible pursuant to **Section 5.01(C)**, the owner of such beneficial interest must (1) comply with the Depositary Procedures for Converting such beneficial interest (at which time such Conversion will become irrevocable); and (2) pay any amounts due pursuant to **Section 5.02(D)**.

(ii) *Physical Notes.* To Convert all or a portion of a Physical Note that is Convertible pursuant to **Section 5.01(C)**, the Holder of such Note must (1) complete, manually sign and deliver to the Conversion Agent the Conversion Notice attached to such Physical Note or a facsimile of such Conversion Notice; (2) deliver such Physical Note to the Conversion Agent (at which time such Conversion will become irrevocable); (3) furnish any endorsements and transfer documents that the Company or the Conversion Agent may require; and (4) pay any amounts due pursuant to **Section 5.02(E)**.

(B) *Effect of Converting a Note.* At the Close of Business on the Conversion Date for a Note (or any portion thereof) to be Converted, such Note (or such portion) will (unless there occurs a Default in the delivery of the Conversion Consideration or interest, if any, due, pursuant to **Section 5.03(B)** or **5.02(D)**, upon such Conversion) be deemed to cease to be outstanding (and, for the avoidance of doubt, no Person will be deemed to be a Holder of such Note (or such portion thereof) as of the Close of Business on such Conversion Date), except to the extent provided in **Section 5.02(D)**.

(C) *Holder of Record of Conversion Shares.* The Person in whose name any share of Common Stock is issuable upon Conversion of any Note will be deemed to become the holder of record of such share as of the Close of Business on (i) the Conversion Date for such Conversion, in the case of Physical Settlement; or (ii) the last VWAP Trading Day of the Observation Period for such Conversion, in the case of Combination Settlement.

(D) *Interest Payable Upon Conversion in Certain Circumstances.* If any payment of Special Interest or Additional Interest is due in respect of any Interest Payment Date and the Conversion Date of a Note is after the related Interest Record Date and before such Interest Payment Date, then the Holder of such Note at the Close of Business on such Interest Record Date will be entitled, notwithstanding such conversion, to receive, on or, at the Company's election, before such Interest Payment Date, such payment of Special Interest or Additional Interest, as applicable (assuming, solely for these purposes, that such Note remained outstanding through such Interest Payment Date). For the avoidance of doubt, if the Conversion Date of a Note to be converted is on an Interest Payment Date in respect of which any Special Interest or Additional Interest is payable, then the Holder of such Note at the Close of Business on the Interest Record Date immediately before such Interest Payment Date will be entitled to receive, on such Interest Payment Date, such Special Interest or Additional Interest, as applicable.

(E) *Taxes and Duties.* If a Holder Converts a Note, the Company will pay any documentary, stamp or similar issue or transfer tax or duty due on the issue or delivery of any shares of Common Stock upon such Conversion, except any tax or duty that is due because the Converting Holder requests those shares to be registered in a name other than the Holder's name.

(F) *Conversion Agent to Notify Company of Conversions.* If any Note is submitted for Conversion to the Conversion Agent or the Conversion Agent receives any notice of Conversion with respect to a Note, then the Conversion Agent will promptly notify the Company and the Trustee of such occurrence, together with any other information reasonably requested by the Company, and will cooperate with the Company to determine the Conversion Date for such Note.

SECTION 5.03. SETTLEMENT UPON CONVERSION.

(A) *Settlement Method.* Upon the Conversion of any Note, the Company will settle such Conversion by paying or delivering, as applicable and as provided in this **Article 5**, either (x) shares of Common Stock, together, if applicable, with cash in lieu of fractional shares as provided in **Section 5.03(B)(i)(1)** (a "**Physical Settlement**"); (y) solely cash as provided in **Section 5.03(B)(i)(2)** (a "**Cash Settlement**"); or (z) a combination of cash and shares of Common Stock, together, if applicable, with cash in lieu of fractional shares as provided in **Section 5.03(B)(i)(3)** (a "**Combination Settlement**").

(i) *The Company's Right to Elect Settlement Method.* The Company will have the right to elect the Settlement Method applicable to any Conversion of a Note; *provided, however*, that:

(1) subject to **clause (3)** below, all Conversions of Notes with a Conversion Date that occurs on or after August 15, 2031 will be settled using the same Settlement Method, and the Company will send notice of such Settlement Method to Holders no later than the Open of Business on August 15, 2031;

(2) subject to **clause (3)** below, if the Company elects a Settlement Method with respect to the Conversion of any Note whose Conversion Date occurs before August 15, 2031, then the Company will send notice of such Settlement Method to the Holder of such Note no later than the Close of Business on the Business Day immediately after such Conversion Date;

(3) if any Notes are called for Redemption, then (a) the Company will specify, in the related Redemption Notice (and, in the case of a Redemption of less than all outstanding Notes, in a notice simultaneously sent to all Holders of Notes not called for Redemption) sent pursuant to **Section 4.03(F)**, the Settlement Method that will apply to all Conversions of Notes with a Conversion Date that occurs on or after the related Redemption Notice Date and on or before the second (2nd) Business Day before the related Redemption Date; and (b) if such Redemption Date occurs on or after August 15, 2031, then such Settlement Method must be the same Settlement Method that, pursuant to **clause (1)** above, applies to all Conversions of Notes with a Conversion Date that occurs on or after August 15, 2031;

(4) the Company will use the same Settlement Method for all Conversions of Notes with the same Conversion Date (and, for the avoidance of doubt, the Company will not be obligated to use the same Settlement Method with respect to Conversions of Notes with different Conversion Dates, except as provided in **clause (1) or (3)** above);

(5) if the Company does not timely elect a Settlement Method with respect to the Conversion of a Note, then the Company will be deemed to have elected the Default Settlement Method (and, for the avoidance of doubt, the failure to timely make such election will not constitute a Default or Event of Default);

(6) if the Company timely elects Combination Settlement with respect to the Conversion of a Note but does not timely notify the Holder of such Note of the applicable Specified Dollar Amount, then the Specified Dollar Amount for such Conversion will be deemed to be \$1,000 per \$1,000 principal amount of Notes (and, for the avoidance of doubt, the failure to timely send such notification will not constitute a Default or Event of Default); and

(7) the Settlement Method will be subject to **Sections 4.03(D) and 5.01(C)(i)(3)(a)**.

At or before the time the Company sends any notice referred to in the preceding sentence, the Company will send a copy of such notice to the Trustee and the Conversion Agent, but the failure to timely send such copy will not affect the validity of any Settlement Method election.

(ii) *The Company's Right to Irrevocably Fix Settlement Method.* The Company will have the right, exercisable at its election by sending notice of such exercise to the Holders (with a copy to the Trustee and the Conversion Agent), to irrevocably fix the Settlement Method, to any Settlement Method that the Company is then permitted to elect, that will apply to all Conversions of Notes with a Conversion Date that occurs on or after the date such notice is sent to Holders. For the avoidance of doubt, such an irrevocable election, if made, will be effective without the need to amend this Indenture or the Notes, including pursuant to **Section 8.01(G)** (it being understood, however, that the Company may nonetheless choose to execute such an amendment at its option).

(B) *Conversion Consideration.*

(i) *Generally.* The type and amount of consideration (the “**Conversion Consideration**”) due in respect of each \$1,000 principal amount of a Note to be Converted will be as follows:

(1) if Physical Settlement applies to such Conversion, a number of shares of Common Stock equal to the Conversion Rate in effect on the Conversion Date for such Conversion;

(2) if Cash Settlement applies to such Conversion, cash in an amount equal to the sum of the Daily Conversion Values for each VWAP Trading Day in the Observation Period for such Conversion; or

(3) if Combination Settlement applies to such Conversion, consideration consisting of (a) a number of shares of Common Stock equal to the sum of the Daily Share Amounts for each VWAP Trading Day in the Observation Period for such Conversion; and (b) an amount of cash equal to the sum of the Daily Cash Amounts for each VWAP Trading Day in such Observation Period.

(ii) *Cash in Lieu of Fractional Shares.* If Physical Settlement or Combination Settlement applies to the Conversion of any Note and the number of shares of Common Stock deliverable pursuant to **Section 5.03(B)(i)** upon such Conversion is not a whole number, then such number will be rounded down to the nearest whole number and the Company will deliver, in addition to the other consideration due upon such Conversion, cash in lieu of the related fractional share in an amount equal to the product of (1) such fraction and (2) (x) the Daily VWAP on the Conversion Date for such Conversion (or, if such Conversion Date is not a VWAP Trading Day, the immediately preceding VWAP Trading Day), in the case of Physical Settlement; or (y) the Daily VWAP on the last VWAP Trading Day of the Observation Period for such Conversion, in the case of Combination Settlement.

(iii) *Conversion of Multiple Notes by a Single Holder.* If a Holder Converts more than one (1) Note on a single Conversion Date, then the Conversion Consideration due in respect of such Conversion will (in the case of any Global Note, to the extent permitted by, and practicable under, the Depositary Procedures) be computed based on the total principal amount of Notes Converted on such Conversion Date by such Holder.

(iv) *Notice of Calculation of Conversion Consideration.* If Cash Settlement or Combination Settlement applies to the Conversion of any Note, then the Company will determine the Conversion Consideration due thereupon promptly following the last VWAP Trading Day of the applicable Observation Period and will promptly thereafter send notice to the Trustee and the Conversion Agent of the same and the calculation thereof in reasonable detail. Neither the Trustee nor the Conversion Agent will have any duty to make any such determination.

(C) *Delivery of the Conversion Consideration.* Except as set forth in **Sections 5.05(D)** and **5.09**, the Company will pay or deliver, as applicable, the Conversion Consideration due upon the Conversion of any Note to the Holder as follows: (i) if Cash Settlement or Combination Settlement applies to such Conversion, on the second (2nd) Business Day immediately after the last VWAP Trading Day of the Observation Period for such Conversion; and (ii) if Physical Settlement applies to such Conversion, on the second (2nd) Business Day immediately after the Conversion Date for such Conversion; *provided, however*, that if Physical Settlement applies to the Conversion of any Note with a Conversion Date that is after the Interest Record Date immediately before the Maturity Date, then, solely for purposes of such Conversion, the Company will pay or deliver, as applicable, the Conversion Consideration due upon such Conversion on the Maturity Date (or, if the Maturity Date is not a Business Day, the next Business Day) and the Conversion Date will instead be deemed to be the second (2nd) Business Day immediately before the Maturity Date.

(D) *Deemed Payment of Principal and Interest; Settlement of Accrued Interest Notwithstanding Conversion.* If a Holder Converts a Note, then the Company will not adjust the Conversion Rate to account for any accrued and unpaid Special Interest or Additional Interest on such Note, and, except as provided in **Section 5.02(D)**, the Company's delivery of the Conversion Consideration due in respect of such Conversion will be deemed to fully satisfy and discharge the Company's obligation to pay the principal of, and accrued and unpaid interest, if any, on, such Note to, but excluding the Conversion Date. As a result, except as provided in **Section 5.02(D)**, any accrued and unpaid interest on a Converted Note will be deemed to be paid in full rather than cancelled, extinguished or forfeited.

SECTION 5.04. RESERVE AND STATUS OF COMMON STOCK ISSUED UPON CONVERSION.

(A) *Stock Reserve.* At all times when any Notes are outstanding, the Company will reserve (out of its authorized and not outstanding shares of Common Stock that are not reserved for other purposes) a number of shares of Common Stock sufficient to permit the Conversion of all then-outstanding Notes, assuming (x) Physical Settlement will apply to such Conversion; and (y) the Conversion Rate is increased by the maximum amount pursuant to which the Conversion Rate may be increased pursuant to **Section 5.07**. To the extent the Company delivers shares of Common Stock held in its treasury in settlement of the Conversion of any Notes, each reference in this Indenture or the Notes to the issuance of shares of Common Stock in connection therewith will be deemed to include such delivery, *mutatis mutandis*.

(B) *Status of Conversion Shares; Listing.* Each Conversion Share, if any, delivered upon Conversion of any Note will be a newly issued or treasury share (except that any Conversion Share delivered by a designated financial institution pursuant to **Section 5.08** need not be a newly issued or treasury share) and will be duly authorized, validly issued, fully paid, non-assessable, free from preemptive rights and free of any lien or adverse claim (except to the extent of any lien or adverse claim created by the action or inaction of the Holder of such Note or the Person to whom such Conversion Share will be delivered). If the Common Stock is then listed on any securities exchange, or quoted on any inter-dealer quotation system, then the Company will use commercially reasonable efforts to cause each Conversion Share, when delivered upon Conversion of any Note, to be admitted for listing on such exchange or quotation on such system.

SECTION 5.05. ADJUSTMENTS TO THE CONVERSION RATE.

(A) *Events Requiring an Adjustment to the Conversion Rate.* The Conversion Rate will be adjusted from time to time as follows:

(i) *Stock Dividends, Splits and Combinations.* If the Company issues solely shares of Common Stock as a dividend or distribution on all or substantially all shares of the Common Stock, or if the Company effects a stock split or a stock combination of the Common Stock (in each case excluding an issuance solely pursuant to a Common Stock Change Event, as to which **Section 5.09** will apply), then the Conversion Rate will be adjusted based on the following formula:

$$CR_1 = CR_0 \times \frac{OS_1}{OS_0}$$

where:

CR_0	=	the Conversion Rate in effect immediately before the Open of Business on the Ex-Dividend Date for such dividend or distribution, or immediately before the Open of Business on the effective date of such stock split or stock combination, as applicable;
CR_1	=	the Conversion Rate in effect immediately after the Open of Business on such Ex-Dividend Date or effective date, as applicable;
OS_0	=	the number of shares of Common Stock outstanding immediately before the Open of Business on such Ex-Dividend Date or effective date, as applicable, without giving effect to such dividend, distribution, stock split or stock combination; and
OS_1	=	the number of shares of Common Stock outstanding immediately after giving effect to such dividend, distribution, stock split or stock combination.

If any dividend, distribution, stock split or stock combination of the type described in this **Section 5.05(A)(i)** is declared or announced, but not so paid or made, then the Conversion Rate will be readjusted, effective as of the date the Board of Directors determines not to pay such dividend or distribution or to effect such stock split or stock combination, to the Conversion Rate that would then be in effect had such dividend, distribution, stock split or stock combination not been declared or announced.

(ii) *Rights, Options and Warrants*. If the Company distributes, to all or substantially all holders of Common Stock, rights, options or warrants (other than rights issued or otherwise distributed pursuant to a stockholder rights plan, as to which **Sections 5.05(A)(iii)(1)** and **5.05(F)** will apply) entitling such holders, for a period of not more than sixty (60) calendar days after the record date of such distribution, to subscribe for or purchase shares of Common Stock at a price per share that is less than the average of the Last Reported Sale Prices per share of Common Stock for the ten (10) consecutive Trading Days ending on, and including, the Trading Day immediately before the date such distribution is announced, then the Conversion Rate will be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{OS + X}{OS + Y}$$

where:

CR_0	=	the Conversion Rate in effect immediately before the Open of Business on the Ex-Dividend Date for such distribution;
CR_1	=	the Conversion Rate in effect immediately after the Open of Business on such Ex-Dividend Date;
OS	=	the number of shares of Common Stock outstanding immediately before the Open of Business on such Ex-Dividend Date;
X	=	the total number of shares of Common Stock issuable pursuant to such rights, options or warrants; and
Y	=	a number of shares of Common Stock obtained by dividing (x) the aggregate price payable to exercise such rights, options or warrants by (y) the average of the Last Reported Sale Prices per share of Common Stock for the ten (10) consecutive Trading Days ending on, and including, the Trading Day immediately before the date such distribution is announced.

To the extent such rights, options or warrants are not so distributed, the Conversion Rate will be readjusted to the Conversion Rate that would then be in effect had the increase to the Conversion Rate for such distribution been made on the basis of only the rights, options or warrants, if any, actually distributed. In addition, to the extent that shares of Common Stock are not delivered after the expiration of such rights, options or warrants (including as a result of such rights, options or warrants not being exercised), the Conversion Rate will be readjusted to the Conversion Rate that would then be in effect had the increase to the Conversion Rate for such distribution been made on the basis of delivery of only the number of shares of Common Stock actually delivered upon exercise of such rights, options or warrants.

For purposes of this **Section 5.05(A)(ii)** and **Section 5.01(C)(i)(3)(a)(I)**, in determining whether any rights, options or warrants entitle holders of Common Stock to subscribe for or purchase shares of Common Stock at a price per share that is less than the average of the Last Reported Sale Prices per share of Common Stock for the ten (10) consecutive Trading Days ending on, and including, the Trading Day immediately before the date the distribution of such rights, options or warrants is announced, and in determining the aggregate price payable to exercise such rights, options or warrants, there will be taken into account any consideration the Company receives for such rights, options or warrants and any amount payable on exercise thereof, with the value of such consideration, if not cash, to be determined by the Company in good faith and in a commercially reasonable manner.

(iii) *Spin-Offs and Other Distributed Property.*

(1) *Distributions Other than Spin-Offs.* If the Company distributes shares of its Capital Stock, evidences of its indebtedness or other assets or property of the Company, or rights, options or warrants to acquire Capital Stock of the Company or other securities, to all or substantially all holders of the Common Stock, excluding:

(u) dividends, distributions, rights, options or warrants for which an adjustment to the Conversion Rate is required (or would be required without regard to **Section 5.05(C)**) pursuant to **Section 5.05(A)(i)** or **5.05(A)(ii)**;

(v) dividends or distributions paid exclusively in cash, for which an adjustment to the Conversion Rate is required (or would be required without regard to **Section 5.05(C)**) pursuant to **Section 5.05(A)(iv)**;

(w) rights issued or otherwise distributed pursuant to a stockholder rights plan, except to the extent provided in **Section 5.05(F)**;

(x) Spin-Offs for which an adjustment to the Conversion Rate is required (or would be required without regard to **Section 5.05(C)**) pursuant to **Section 5.05(A)(iii)(2)**;

(y) a distribution solely pursuant to a tender offer or exchange offer for shares of Common Stock, as to which **Section 5.05(A)(v)** will apply; and

(z) a distribution solely pursuant to a Common Stock Change Event, as to which **Section 5.09** will apply,

then the Conversion Rate will be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{SP}{SP - FMV}$$

where:

CR_0 = the Conversion Rate in effect immediately before the Open of Business on the Ex-Dividend Date for such distribution;

CR_1 = the Conversion Rate in effect immediately after the Open of Business on such Ex-Dividend Date;

SP = the average of the Last Reported Sale Prices per share of Common Stock for the ten (10) consecutive Trading Days ending on, and including, the Trading Day immediately before such Ex-Dividend Date; and

FMV = the fair market value (as determined by the Company in good faith and in a commercially reasonable manner), as of such Ex-Dividend Date, of the shares of Capital Stock, evidences of indebtedness, assets, property, rights, options or warrants distributed per share of Common Stock pursuant to such distribution;

provided, however, that if *FMV* is equal to or greater than *SP*, then, in lieu of the foregoing adjustment to the Conversion Rate, each Holder will receive, for each \$1,000 principal amount of Notes held by such Holder on the record date for such distribution, at the same time and on the same terms as holders of Common Stock, the amount and kind of shares of Capital Stock, evidences of indebtedness, assets, property, rights, options or warrants that such Holder would have received in such distribution if such Holder had owned, on such record date, a number of shares of Common Stock equal to the Conversion Rate in effect on such record date.

To the extent such distribution is not so paid or made, the Conversion Rate will be readjusted to the Conversion Rate that would then be in effect had the adjustment been made on the basis of only the distribution, if any, actually made or paid.

(2) *Spin-Offs*. If the Company distributes or dividends shares of Capital Stock of any class or series, or similar equity interests, of or relating to an Affiliate, a Subsidiary or other business unit of the Company to all or substantially all holders of the Common Stock (other than solely pursuant to (x) a Common Stock Change Event, as to which **Section 5.09** will apply; or (y) a tender offer or exchange offer for shares of Common Stock, as to which **Section 5.05(A)(v)** will apply), and such Capital Stock or equity interests are listed or quoted (or will be listed or quoted upon the consummation of the transaction) on a U.S. national securities exchange (a “**Spin-Off**”), then the Conversion Rate will be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{FMV + SP}{SP}$$

where:

CR_0	=	the Conversion Rate in effect immediately before the Close of Business on the last Trading Day of the Spin-Off Valuation Period for such Spin-Off;
CR_1	=	the Conversion Rate in effect immediately after the Close of Business on the last Trading Day of the Spin-Off Valuation Period;
FMV	=	the product of (x) the average of the Last Reported Sale Prices per share or unit of the Capital Stock or equity interests distributed in such Spin-Off over the ten (10) consecutive Trading Day period (the “ Spin-Off Valuation Period ”) beginning on, and including, the Ex-Dividend Date for such Spin-Off (such average to be determined as if references to Common Stock in the definitions of Last Reported Sale Price, Trading Day and Market Disruption Event were instead references to such Capital Stock or equity interests); and (y) the number of shares or units of such Capital Stock or equity interests distributed per share of Common Stock in such Spin-Off; and
SP	=	the average of the Last Reported Sale Prices per share of Common Stock for each Trading Day in the Spin-Off Valuation Period.

Notwithstanding anything to the contrary in this **Section 5.05(A)(iii)(2)**, (i) if any VWAP Trading Day of the Observation Period for a Note whose Conversion will be settled pursuant to Cash Settlement or Combination Settlement occurs during the Spin-Off Valuation Period for such Spin-Off, then, solely for purposes of determining the Conversion Rate for such VWAP Trading Day for such Conversion, such Spin-Off Valuation Period will be deemed to consist of the Trading Days occurring in the period from, and including, the Ex-Dividend Date for such Spin-Off to, and including, such VWAP Trading Day; and (ii) if the Conversion Date for a Note whose Conversion will be settled pursuant to Physical Settlement occurs during the Spin-Off Valuation Period for such Spin-Off, then, solely for purposes of determining the Conversion Consideration for such Conversion, such Spin-Off Valuation Period will be deemed to consist of the Trading Days occurring in the period from, and including, the Ex-Dividend Date for such Spin-Off to, and including, such Conversion Date.

To the extent any dividend or distribution of the type set forth in this **Section 5.05(A)(iii)(2)** is declared but not made or paid, the Conversion Rate will be readjusted to the Conversion Rate that would then be in effect had the adjustment been made on the basis of only the dividend or distribution, if any, actually made or paid.

(iv) *Cash Dividends or Distributions.* If any cash dividend or distribution is made to all or substantially all holders of Common Stock, then the Conversion Rate will be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{SP}{SP - D}$$

where:

CR_0	=	the Conversion Rate in effect immediately before the Open of Business on the Ex-Dividend Date for such dividend or distribution;
CR_1	=	the Conversion Rate in effect immediately after the Open of Business on such Ex-Dividend Date;
SP	=	the Last Reported Sale Price per share of Common Stock on the Trading Day immediately before such Ex-Dividend Date; and
D	=	the cash amount distributed per share of Common Stock in such dividend or distribution;

provided, however, that if D is equal to or greater than SP , then, in lieu of the foregoing adjustment to the Conversion Rate, each Holder will receive, for each \$1,000 principal amount of Notes held by such Holder on the record date for such dividend or distribution, at the same time and on the same terms as holders of Common Stock, the amount of cash that such Holder would have received in such dividend or distribution if such Holder had owned, on such record date, a number of shares of Common Stock equal to the Conversion Rate in effect on such record date.

To the extent such dividend or distribution is declared but not made or paid, the Conversion Rate will be readjusted to the Conversion Rate that would then be in effect had the adjustment been made on the basis of only the dividend or distribution, if any, actually made or paid.

(v) *Tender Offers or Exchange Offers.* If the Company or any of its Subsidiaries makes a payment in respect of a tender offer or exchange offer for shares of Common Stock (other than solely pursuant to an odd-lot tender offer pursuant to Rule 13e-4(h)(5) under the Exchange Act), and the value (determined as of the Expiration Time by the Company in good faith and in a commercially reasonable manner) of the cash and other consideration paid per share of Common Stock in such tender or exchange offer exceeds the Last Reported Sale Price per share of Common Stock on the Trading Day immediately after the last date (the “**Expiration Date**”) on which tenders or exchanges may be made pursuant to such tender or exchange offer (as it may be amended), then the Conversion Rate will be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{AC + (SP \times OS_1)}{SP \times OS_0}$$

where:

CR_0	=	the Conversion Rate in effect immediately before the Close of Business on the last Trading Day of the Tender/Exchange Offer Valuation Period for such tender or exchange offer;
CR_1	=	the Conversion Rate in effect immediately after the Close of Business on the last Trading Day of the Tender/Exchange Offer Valuation Period;
AC	=	the aggregate value (determined as of the time (the “ Expiration Time ”) such tender or exchange offer expires by the Company in good faith and in a commercially reasonable manner) of all cash and other consideration paid for shares of Common Stock purchased or exchanged in such tender or exchange offer;
OS_0	=	the number of shares of Common Stock outstanding immediately before the Expiration Time (including all shares of Common Stock accepted for purchase or exchange in such tender or exchange offer);
OS_1	=	the number of shares of Common Stock outstanding immediately after the Expiration Time (excluding all shares of Common Stock accepted for purchase or exchange in such tender or exchange offer); and
SP	=	the average of the Last Reported Sale Prices per share of Common Stock over the ten (10) consecutive Trading Day period (the “ Tender/Exchange Offer Valuation Period ”) beginning on, and including, the Trading Day immediately after the Expiration Date;

provided, however, that the Conversion Rate will in no event be adjusted down pursuant to this **Section 5.05(A)(v)**, except to the extent provided in the immediately following paragraph. Notwithstanding anything to the contrary in this **Section 5.05(A)(v)**, (i) if any VWAP Trading Day of the Observation Period for a Note whose Conversion will be settled pursuant to Cash Settlement or Combination Settlement occurs during the Tender/Exchange Offer Valuation Period for such tender or exchange offer, then, solely for purposes of determining the Conversion Rate for such VWAP Trading Day for such Conversion, such Tender/Exchange Offer Valuation Period will be deemed to consist of the Trading Days occurring in the period from, and including, the Trading Day immediately after the Expiration Date for such tender or exchange offer to, and including, such VWAP Trading Day; and (ii) if the Conversion Date for a Note whose Conversion will be settled pursuant to Physical Settlement occurs during the Tender/Exchange Offer Valuation Period for such tender or exchange offer, then, solely for purposes of determining the Conversion Consideration for such Conversion, such Tender/Exchange Offer Valuation Period will be deemed to consist of the Trading Days occurring in the period from, and including, the Trading Day immediately after the Expiration Date to, and including, such Conversion Date.

To the extent such tender or exchange offer is announced but not consummated (including as a result of being precluded from consummating such tender or exchange offer under applicable law), or any purchases or exchanges of shares of Common Stock in such tender or exchange offer are rescinded, the Conversion Rate will be readjusted to the Conversion Rate that would then be in effect had the adjustment been made on the basis of only the purchases or exchanges of shares of Common Stock, if any, actually made, and not rescinded, in such tender or exchange offer.

(B) *No Adjustments in Certain Cases.*

(i) *Where Holders Participate in the Transaction or Event Without Conversion.* Notwithstanding anything to the contrary in **Section 5.05(A)**, the Company will not be obligated to adjust the Conversion Rate on account of a transaction or other event otherwise requiring an adjustment pursuant to **Section 5.05(A)** (other than a stock split or combination of the type set forth in **Section 5.05(A)(i)** or a tender or exchange offer of the type set forth in **Section 5.05(A)(v)**) if each Holder participates, at the same time and on the same terms as holders of Common Stock, and solely by virtue of being a Holder of Notes, in such transaction or event without having to Convert such Holder's Notes and as if such Holder held a number of shares of Common Stock equal to the product of (i) the Conversion Rate in effect on the related record date; and (ii) the aggregate principal amount (expressed in thousands) of Notes held by such Holder on such date.

(ii) *Certain Events*. The Company will not be required to adjust the Conversion Rate except as provided in **Section 5.05** or **Section 5.07**. Without limiting the foregoing, the Company will not be obligated to adjust the Conversion Rate on account of:

- (1) except as otherwise provided in **Section 5.05**, the sale of shares of Common Stock for a purchase price that is less than the market price per share of Common Stock or less than the Conversion Price;
- (2) the issuance of any shares of Common Stock pursuant to any present or future plan providing for the reinvestment of dividends or interest payable on the Company's securities and the investment of additional optional amounts in shares of Common Stock under any such plan;
- (3) the issuance of any shares of Common Stock or options or rights to purchase shares of Common Stock pursuant to any present or future employee, director or consultant benefit plan or program of, or assumed by, the Company or any of its Subsidiaries;
- (4) the issuance of any shares of Common Stock pursuant to any option, warrant, right or convertible or exchangeable security of the Company outstanding as of the Issue Date;
- (5) solely a change in the par value of the Common Stock; or
- (6) accrued and unpaid interest, if any, on the Notes.

(C) *Adjustment Deferral*. If an adjustment to the Conversion Rate otherwise required by this **Article 5** would result in a change of less than one percent (1%) to the Conversion Rate, then, notwithstanding anything to the contrary in this **Article 5**, the Company may, at its election, defer such adjustment, except that all such deferred adjustments must be given effect immediately upon the earliest of the following: (i) when all such deferred adjustments would result in a change of at least one percent (1%) to the Conversion Rate; (ii) the Conversion Date of, or any VWAP Trading Day of an Observation Period for, any Note; (iii) the date a Fundamental Change or Make-Whole Fundamental Change occurs; (iv) the date the Company calls any Notes for Redemption; and (v) August 15, 2031.

(D) *Adjustments Not Yet Effective*. Notwithstanding anything to the contrary in this Indenture or the Notes, if:

- (i) a Note is to be Converted pursuant to Physical Settlement or Combination Settlement;

(ii) the record date, effective date or Expiration Time for any event that requires an adjustment to the Conversion Rate pursuant to **Section 5.05(A)** has occurred on or before the Conversion Date for such Conversion (in the case of Physical Settlement) or on or before any VWAP Trading Day in the Observation Period for such Conversion (in the case of Combination Settlement), but an adjustment to the Conversion Rate for such event has not yet become effective as of such Conversion Date or VWAP Trading Day, as applicable;

(iii) the Conversion Consideration due upon such Conversion includes any whole shares of Common Stock (in the case of Physical Settlement) or due in respect of such VWAP Trading Day includes any whole or fractional shares of Common Stock (in the case of Combination Settlement); and

(iv) such shares are not entitled to participate in such event (because they were not held on the related record date or otherwise),

then, solely for purposes of such Conversion, the Company will, without duplication, give effect to such adjustment on such Conversion Date (in the case of Physical Settlement) or such VWAP Trading Day (in the case of Combination Settlement). In such case, if the date on which the Company is otherwise required to deliver the consideration due upon such Conversion is before the first date on which the amount of such adjustment can be determined, then the Company will delay the settlement of such Conversion until the second (2nd) Business Day after such first date.

(E) *Conversion Rate Adjustments Where Converting Holders Participate in the Relevant Transaction or Event.* Notwithstanding anything to the contrary in this Indenture or the Notes, if:

(i) a Conversion Rate adjustment for any dividend or distribution becomes effective on any Ex-Dividend Date pursuant to **Section 5.05(A)**;

(ii) a Note is to be Converted pursuant to Physical Settlement or Combination Settlement;

(iii) the Conversion Date for such Conversion (in the case of Physical Settlement) or any VWAP Trading Day in the Observation Period for such Conversion (in the case of Combination Settlement) occurs on or after such Ex-Dividend Date and on or before the related record date;

(iv) the Conversion Consideration due upon such Conversion includes any whole shares of Common Stock (in the case of Physical Settlement) or due in respect of such VWAP Trading Day includes any whole or fractional shares of Common Stock (in the case of Combination Settlement), in each case based on a Conversion Rate that is adjusted for such dividend or distribution; and

(v) such shares would be entitled to participate in such dividend or distribution (including pursuant to **Section 5.02(C)**),

then (x) in the case of Physical Settlement, such Conversion Rate adjustment will not be given effect for such Conversion and the shares of Common Stock issuable upon such Conversion based on such unadjusted Conversion Rate will not be entitled to participate in such dividend or distribution, but there will be added, without duplication, to the Conversion Consideration otherwise due upon such Conversion, the same kind and amount of consideration that would have been delivered in such dividend or distribution with respect to such shares of Common Stock had such shares been entitled to participate in such dividend or distribution; and (y) in the case of Combination Settlement, the Conversion Rate adjustment relating to such Ex-Dividend Date will be made for such Conversion in respect of such VWAP Trading Day, but the shares of Common Stock issuable with respect to such VWAP Trading Day based on such adjusted Conversion Rate will not be entitled to participate in such dividend or distribution.

(F) *Stockholder Rights Plans.* If any shares of Common Stock are to be issued upon Conversion of any Note and, at the time of such Conversion, the Company has in effect any stockholder rights plan, then the Holder of such Note will be entitled to receive, in addition to, and concurrently with the delivery of, the Conversion Consideration otherwise payable under this Indenture upon such Conversion, the rights set forth in such stockholder rights plan, unless such rights have separated from the Common Stock at such time, in which case, and only in such case, the Conversion Rate will be adjusted pursuant to **Section 5.05(A)(iii)(1)** on account of such separation as if, at the time of such separation, the Company had made a distribution of the type referred to in such Section to all holders of the Common Stock, subject to readjustment as described in the last paragraph of **Section 5.05(A)(iii)(1)** if such rights expire, terminate or are redeemed.

(G) *Limitation on Effecting Transactions Resulting in Certain Adjustments.* The Company will not engage in or be a party to any transaction or event that would require the Conversion Rate to be adjusted pursuant to **Section 5.05(A)** or **Section 5.07** to an amount that would result in the Conversion Price per share of Common Stock being less than the par value per share of Common Stock.

(H) *Equitable Adjustments to Prices.* Whenever any provision of this Indenture requires the Company to calculate the average of the Last Reported Sale Prices, or any function thereof, over a period of multiple days (including to calculate the Stock Price or an adjustment to the Conversion Rate), or to calculate Daily VWAPs over an Observation Period, the Company will make proportionate adjustments to those calculations to account for any adjustment to the Conversion Rate pursuant to **Section 5.05(A)** that becomes effective, or any event requiring such an adjustment to the Conversion Rate where the Ex-Dividend Date or effective date, as applicable, of such event occurs, at any time during such period or Observation Period, as applicable.

(I) *Calculation of Number of Outstanding Shares of Common Stock.* For purposes of **Section 5.05(A)**, the number of shares of Common Stock outstanding at any time will (i) include shares issuable in respect of scrip certificates issued in lieu of fractions of shares of Common Stock; and (ii) exclude shares of Common Stock held in the Company's treasury (unless the Company pays any dividend or makes any distribution on shares of Common Stock held in its treasury).

(J) *Calculations.* All calculations with respect to the Conversion Rate and adjustments thereto will be made to the nearest 1/10,000th of a share of Common Stock (with 5/100,000ths rounded upward).

(K) *Notice of Conversion Rate Adjustments.* Upon the effectiveness of any adjustment to the Conversion Rate pursuant to **Section 5.05(A)**, the Company will promptly send notice to the Holders, the Trustee and the Conversion Agent containing (i) a brief description of the transaction or other event on account of which such adjustment was made; (ii) the Conversion Rate in effect immediately after such adjustment; and (iii) the effective time of such adjustment.

SECTION 5.06. VOLUNTARY ADJUSTMENTS.

(A) *Generally.* To the extent permitted by law and applicable stock exchange rules, the Company, from time to time, may (but is not required to) increase the Conversion Rate by any amount if (i) the Board of Directors determines that such increase is either (x) in the best interest of the Company; or (y) advisable to avoid or diminish any income tax imposed on holders of Common Stock or rights to purchase Common Stock as a result of any dividend or distribution of shares (or rights to acquire shares) of Common Stock or any similar event; (ii) such increase is in effect for a period of at least twenty (20) Business Days; and (iii) such increase is irrevocable during such period.

(B) *Notice of Voluntary Increases.* If the Board of Directors determines to increase the Conversion Rate pursuant to **Section 5.06(A)**, then, no later than the first Business Day of the related twenty (20) Business Day period referred to in **Section 5.06(A)**, the Company will send notice to each Holder, the Trustee and the Conversion Agent of such increase, the amount thereof and the period during which such increase will be in effect.

SECTION 5.07. ADJUSTMENTS TO THE CONVERSION RATE IN CONNECTION WITH A MAKE-WHOLE FUNDAMENTAL CHANGE.

(A) *Generally.* If a Make-Whole Fundamental Change occurs and the Conversion Date for the Conversion of a Note occurs during the related Make-Whole Fundamental Change Conversion Period, then, subject to this **Section 5.07**, the Conversion Rate applicable to such Conversion will be increased by a number of shares (the “**Additional Shares**”) set forth in the table below corresponding (after interpolation as provided in, and subject to, the provisions below) to the Make-Whole Fundamental Change Effective Date and the Stock Price of such Make-Whole Fundamental Change:

Make-Whole Fundamental Change Effective Date	Stock Price											
	\$16.85	\$18.00	\$20.00	\$23.17	\$25.00	\$30.12	\$35.00	\$40.00	\$50.00	\$75.00	\$100.00	\$150.00
May 7, 2026	16.1855	14.5650	12.2495	9.5183	8.3116	5.8612	4.3351	3.2560	1.9240	0.5785	0.1613	0.0000
November 15, 2026	16.1855	14.5650	12.2495	9.5183	8.3116	5.8546	4.2903	3.1930	1.8536	0.5308	0.1360	0.0000
November 15, 2027	16.1855	14.5650	12.2495	9.5183	8.3116	5.7009	4.0774	2.9623	1.6396	0.4108	0.0812	0.0000
November 15, 2028	16.1855	14.5650	12.2495	9.4989	8.0628	5.2626	3.6237	2.5325	1.2960	0.2553	0.0301	0.0000
November 15, 2029	16.1855	14.5650	12.2495	8.7255	7.2212	4.3884	2.8220	1.8378	0.8110	0.0924	0.0001	0.0000
November 15, 2030	16.1855	14.5000	10.8715	6.9823	5.4468	2.7902	1.5200	0.8318	0.2486	0.0005	0.0000	0.0000
November 15, 2031	16.1855	12.3939	6.8385	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000

If such Make-Whole Fundamental Change Effective Date or Stock Price is not set forth in the table above, then:

(i) if such Stock Price is between two Stock Prices in the table above or the Make-Whole Fundamental Change Effective Date is between two dates in the table above, then the number of Additional Shares will be determined by straight-line interpolation between the numbers of Additional Shares set forth for the higher and lower Stock Prices in the table above or the earlier and later dates in the table above, based on a 365- or 366-day year, as applicable; and

(ii) if the Stock Price is greater than \$150.00 (subject to adjustment in the same manner as the Stock Prices set forth in the column headings of the table above are adjusted pursuant to **Section 5.07(B)**), or less than \$16.85 (subject to adjustment in the same manner), per share, then no Additional Shares will be added to the Conversion Rate.

Notwithstanding anything to the contrary in this Indenture or the Notes, in no event will the Conversion Rate be increased to an amount that exceeds 59.3471 shares of Common Stock per \$1,000 principal amount of Notes, which amount is subject to adjustment in the same manner as, and at the same time and for the same events for which, the Conversion Rate is required to be adjusted pursuant to **Section 5.05(A)**.

For the avoidance of doubt, but subject to **Section 4.03(I)**, (x) the sending of a Redemption Notice will constitute a Make-Whole Fundamental Change only with respect to the Notes called (or deemed called pursuant to **Section 4.03(I)**) for Redemption pursuant to such Redemption Notice, and not with respect to any other Notes; and (y) the Conversion Rate applicable to the Notes not so called for Redemption will not be subject to increase pursuant to this **Section 5.07** on account of such Redemption Notice.

(B) *Adjustment of Stock Prices and Number of Additional Shares.* The Stock Prices in the first row (*i.e.*, the column headers) of the table set forth in **Section 5.07(A)** will be adjusted in the same manner as, and at the same time and for the same events for which, the Conversion Price is adjusted as a result of the operation of **Section 5.05(A)**. The numbers of Additional Shares in the table set forth in **Section 5.07(A)** will be adjusted in the same manner as, and at the same time and for the same events for which, the Conversion Rate is adjusted pursuant to **Section 5.05(A)**.

(C) *Notice of the Occurrence of a Make-Whole Fundamental Change.* The Company will notify the Holders, the Trustee and the Conversion Agent of each Make-Whole Fundamental Change (i) occurring pursuant to **clause (A)** of the definition thereof in accordance with **Section 5.01(C)(i)(3)(b)**; and (ii) occurring pursuant to **clause (B)** of the definition thereof in accordance with **Section 4.03(F)**.

SECTION 5.08. EXCHANGE IN LIEU OF CONVERSION.

Notwithstanding anything to the contrary in this **Article 5**, and subject to the terms of this **Section 5.08**, if a Note is submitted for Conversion, the Company may elect to arrange to have such Note exchanged in lieu of Conversion by a financial institution designated by the Company. To make such election, the Company must send notice of such election to the Holder of such Note, the Trustee and the Conversion Agent before the Close of Business on the Business Day immediately following the Conversion Date for such Note. If the Company has made such election, then:

(A) no later than the Business Day immediately following such Conversion Date, the Company must deliver (or cause the Conversion Agent to deliver) such Note, together with delivery instructions for the Conversion Consideration due upon such Conversion (including wire instructions, if applicable), to a financial institution designated by the Company that has agreed to deliver such Conversion Consideration in the manner and at the time the Company would have had to deliver the same pursuant to this **Article 5**;

(B) if such Note is a Global Note, then (i) such designated institution will send written confirmation to the Conversion Agent promptly after wiring the cash Conversion Consideration, if any, and delivering any other Conversion Consideration, due upon such Conversion to the Holder of such Note; and (ii) the Conversion Agent will as soon as reasonably practicable thereafter contact such Holder's custodian with the Depositary to confirm receipt of the same; and

(C) such Note will not cease to be outstanding by reason of such exchange in lieu of Conversion;

provided, however, that if such financial institution does not accept such Note or fails to timely deliver such Conversion Consideration, then the Company will be responsible for delivering such Conversion Consideration in the manner and at the time provided in this **Article 5** as if the Company had not elected to make an exchange in lieu of Conversion.

SECTION 5.09. EFFECT OF COMMON STOCK CHANGE EVENT.

(A) *Generally*. If there occurs any:

(i) recapitalization, reclassification or change of the Common Stock (other than (x) changes solely resulting from a subdivision or combination of the Common Stock, (y) a change only in par value or from par value to no par value or no par value to par value and (z) stock splits and stock combinations that do not involve the issuance of any other series or class of securities);

(ii) consolidation, merger, combination or binding or statutory share exchange involving the Company;

(iii) sale, lease or other transfer of all or substantially all of the assets of the Company and its Subsidiaries, taken as a whole, to any Person; or

(iv) other similar event,

and, as a result of which, the Common Stock is converted into, or is exchanged for, or represents solely the right to receive, other securities, cash or other property, or any combination of the foregoing (such an event, a "**Common Stock Change Event**," and such other securities, cash or property, the "**Reference Property**," and the amount and kind of Reference Property that a holder of one (1) share of Common Stock would be entitled to receive on account of such Common Stock Change Event (without giving effect to any arrangement not to issue or deliver a fractional portion of any security or other property), a "**Reference Property Unit**"), then, notwithstanding anything to the contrary in this Indenture or the Notes,

(1) from and after the effective time of such Common Stock Change Event, (I) the Conversion Consideration due upon Conversion of any Note, and the conditions to any such Conversion, will be determined in the same manner as if each reference to any number of shares of Common Stock in this **Article 5** (or in any related definitions) were instead a reference to the same number of Reference Property Units; (II) for purposes of **Section 4.03**, each reference to any number of shares of Common Stock in such Section (or in any related definitions) will instead be deemed to be a reference to the same number of Reference Property Units; and (III) for purposes of the definitions of "Fundamental Change" and "Make-Whole Fundamental Change" the terms "Common Stock" and the Company's "common equity" will be deemed to mean the common equity (including depositary receipts representing common equity), if any, forming part of such Reference Property;

(2) if such Reference Property Unit consists entirely of cash, then the Company will be deemed to elect Physical Settlement in respect of all Conversions whose Conversion Date occurs on or after the effective date of such Common Stock Change Event and will pay the cash due upon such Conversions no later than the second (2nd) Business Day after the relevant Conversion Date; and

(3) for these purposes, (I) the Daily VWAP of any Reference Property Unit or portion thereof that consists of a class of common equity securities will be determined by reference to the definition of “Daily VWAP,” substituting, if applicable, the Bloomberg page for such class of securities in such definition; and (II) the Daily VWAP of any Reference Property Unit or portion thereof that does not consist of a class of common equity securities, and the Last Reported Sale Price of any Reference Property Unit or portion thereof that does not consist of a class of securities, will be the fair value of such Reference Property Unit or portion thereof, as applicable, determined in good faith by the Company (or, in the case of cash denominated in U.S. dollars, the face amount thereof).

If the Reference Property consists of more than a single type of consideration to be determined based in part upon any form of stockholder election, then the composition of the Reference Property Unit will be deemed to be the weighted average of the types and amounts of consideration actually received, per share of Common Stock, by the holders of Common Stock. The Company will notify Holders, the Trustee and the Conversion Agent of such weighted average as soon as practicable after such determination is made.

Subject to the last sentence of this paragraph, at or before the effective time of such Common Stock Change Event, the Company and the resulting, surviving or transferee Person (if not the Company) of such Common Stock Change Event (the “**Successor Person**”) will execute and deliver to the Trustee a supplemental indenture pursuant to **Section 8.01(F)**, which supplemental indenture will (x) provide for subsequent Conversions of Notes in the manner set forth in this **Section 5.09**; (y) provide for subsequent adjustments to the Conversion Rate pursuant to **Section 5.05(A)** in a manner consistent with this **Section 5.09**; and (z) contain such other provisions, if any, that the Company reasonably determines are appropriate to preserve the economic interests of the Holders and to give effect to the provisions of this **Section 5.09(A)**. If the Reference Property includes shares of stock or other securities or assets (other than cash) of a Person other than the Successor Person, then such other Person will also execute such supplemental indenture and such supplemental indenture will contain such additional provisions, if any, that the Company reasonably determines are appropriate to preserve the economic interests of the Holders. Notwithstanding anything to the contrary in this paragraph, no such supplemental indenture is required (but the Company may nonetheless choose to execute such a supplemental indenture at its option) if (i) the Company is the resulting, surviving or transferee Person of such Common Stock Change Event; and (ii) the Reference Property of such Common Stock Change Event does not include consideration other than cash or securities of the Company.

(B) *Notice of Common Stock Change Events.* The Company will provide notice of each Common Stock Change Event to Holders, the Trustee and the Conversion Agent no later than the second (2nd) Business Day after the effective date of such Common Stock Change Event.

(C) *Compliance Covenant.* The Company will not become a party to any Common Stock Change Event unless its terms are consistent with this **Section 5.09**.

Article 6. SUCCESSORS

SECTION 6.01. WHEN THE COMPANY MAY MERGE, ETC.

(A) *Generally.* The Company will not consolidate with or merge with or into, or (directly, or indirectly through one or more of its Subsidiaries) sell, lease or otherwise transfer, in one transaction or a series of transactions, all or substantially all of the assets of the Company and its Subsidiaries, taken as a whole, to another Person (a “**Business Combination Event**”), unless:

(i) the resulting, surviving or transferee Person either (x) is the Company or (y) if not the Company, is a Qualified Successor Entity (such Qualified Successor Entity, the “**Successor Entity**”) duly organized and existing under the laws of the United States of America, any State thereof or the District of Columbia that expressly assumes (by executing and delivering to the Trustee, at or before the effective time of such Business Combination Event, a supplemental indenture pursuant to **Section 8.01(E)**) all of the Company’s obligations under this Indenture and the Notes; and

(ii) immediately after giving effect to such Business Combination Event, no Default will have occurred and be continuing.

(B) *Delivery of Officer’s Certificate and Opinion of Counsel to the Trustee.* At or before the effective time of any Business Combination Event, the Company will deliver to the Trustee an Officer’s Certificate and Opinion of Counsel, each stating that (i) such Business Combination Event (and, if applicable, the related supplemental indenture) comply with **Section 6.01(A)**; and (ii) all conditions precedent to such Business Combination Event provided in this Indenture have been satisfied.

SECTION 6.02. SUCCESSOR ENTITY SUBSTITUTED.

At the effective time of any Business Combination Event that complies with **Section 6.01**, the Successor Entity (if not the Company) will succeed to, and may exercise every right and power of, the Company under this Indenture and the Notes with the same effect as if such Successor Entity had been named as the Company in this Indenture and the Notes, and, except in the case of a lease, the predecessor Company will be discharged from its obligations under this Indenture and the Notes.

Article 7. DEFAULTS AND REMEDIES

SECTION 7.01. EVENTS OF DEFAULT.

(A) *Definition of Events of Default.* “**Event of Default**” means the occurrence of any of the following:

- (i) a default in the payment when due (whether at maturity, upon Redemption or Repurchase Upon Fundamental Change or otherwise) of the principal of, or the Redemption Price or Fundamental Change Repurchase Price for, any Note;
- (ii) a default for thirty (30) consecutive days in the payment when due of any Special Interest or Additional Interest that has accrued on any Note;
- (iii) the Company’s failure to deliver, when required by this Indenture, a Fundamental Change Notice, or a notice pursuant to **Section 5.01(C)(i)(3)** if (in the case of any notice other than a notice pursuant to **Section 5.01(C)(i)(3)**) such failure is not cured within five (5) Business Days after its occurrence;
- (iv) a default in the Company’s obligation to Convert a Note in accordance with **Article 5** upon the exercise of the Conversion right with respect thereto, if such default is not cured within five (5) Business Days after its occurrence;
- (v) a default in the Company’s obligations under **Article 6**;
- (vi) a default in any of the Company’s obligations or agreements under the Notes or under this Indenture with respect to the Notes (other than a default set forth in **clause (i), (ii), (iii), (iv) or (v)** of this **Section 7.01(A)**) where such default is not cured or waived within sixty (60) days after notice to the Company by the Trustee, or to the Company and the Trustee by Holders of at least twenty five percent (25%) of the aggregate principal amount of Notes then outstanding, which notice must specify such default, demand that it be remedied and state that such notice is a “Notice of Default”;
- (vii) a default by the Company or any of the Company’s Significant Subsidiaries with respect to any one or more mortgages, agreements or other instruments under which there is outstanding, or by which there is secured or evidenced, any indebtedness for money borrowed of at least fifty million dollars (\$50,000,000) (or its foreign currency equivalent) in the aggregate of the Company or any of the Company’s Significant Subsidiaries, whether such indebtedness exists as of the Issue Date or is thereafter created, where such default:
 - (1) constitutes a failure to pay the principal of such indebtedness when due and payable at its stated maturity, upon required repurchase, upon declaration of acceleration or otherwise, in each case after the expiration of any applicable grace period; or

(2) results in such indebtedness becoming or being declared due and payable before its stated maturity,

in each case where such default is not cured or waived within thirty (30) days after notice to the Company by the Trustee or to the Company and the Trustee by Holders of at least twenty five percent (25%) of the aggregate principal amount of Notes then outstanding; and

(viii) the Company or any of its Significant Subsidiaries, pursuant to or within the meaning of any Bankruptcy Law, either:

- (1) commences a voluntary case or proceeding;
- (2) consents to the entry of an order for relief against it in an involuntary case or proceeding;
- (3) consents to the appointment of a custodian of it or for any substantial part of its property;
- (4) makes a general assignment for the benefit of its creditors;
- (5) takes any comparable action under any foreign Bankruptcy Law; or
- (6) generally is not paying its debts as they become due; or

(ix) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that either:

- (1) is for relief against the Company or any of its Significant Subsidiaries in an involuntary case or proceeding;
- (2) appoints a custodian of the Company or any of its Significant Subsidiaries, or for any substantial part of the property of the Company or any of its Significant Subsidiaries;
- (3) orders the winding up or liquidation of the Company or any of its Significant Subsidiaries; or
- (4) grants any similar relief under any foreign Bankruptcy Law,

and, in each case under this **Section 7.01(A)(ix)**, such order or decree remains unstayed and in effect for at least sixty (60) days.

(B) *Cause Irrelevant.* Each of the events set forth in **Section 7.01(A)** will constitute an Event of Default regardless of the cause thereof or whether voluntary or involuntary or effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body.

SECTION 7.02. ACCELERATION.

(A) *Automatic Acceleration in Certain Circumstances.* If an Event of Default set forth in **Section 7.01(A)(viii)** or **7.01(A)(ix)** occurs with respect to the Company (and not solely with respect to a Significant Subsidiary of the Company), then the principal amount of, and all accrued and unpaid interest, if any, on, all of the Notes then outstanding will immediately become due and payable without any further action or notice by any Person.

(B) *Optional Acceleration.* Subject to **Section 7.03**, if an Event of Default (other than an Event of Default set forth in **Section 7.01(A)(viii)** or **7.01(A)(ix)** with respect to the Company and not solely with respect to a Significant Subsidiary of the Company) occurs and is continuing, then the Trustee, by notice to the Company, or Holders of at least twenty five percent (25%) of the aggregate principal amount of Notes then outstanding, by notice to the Company and the Trustee, may declare the principal amount of, and all accrued and unpaid interest, if any, on, all of the Notes then outstanding to become due and payable immediately. For the avoidance of doubt, if such Event of Default is not continuing at the time such notice is provided (that is, such Event of Default has been cured or waived as of such time), then such notice will not be effective to cause such amounts to become due and payable immediately.

(C) *Rescission of Acceleration.* Notwithstanding anything to the contrary in this Indenture or the Notes, the Holders of a majority in aggregate principal amount of the Notes then outstanding, by notice to the Company and the Trustee, may, on behalf of all Holders, rescind any acceleration of the Notes and its consequences if (i) such rescission would not conflict with any judgment or decree of a court of competent jurisdiction; and (ii) all existing Events of Default (except the non-payment of principal of, or interest, if any, on, the Notes that has become due solely because of such acceleration) have been cured or waived. No such rescission will affect any subsequent Default or impair any right consequent thereto.

SECTION 7.03. SOLE REMEDY FOR A FAILURE TO REPORT.

(A) *Generally.* Notwithstanding anything to the contrary in this Indenture or the Notes, the Company may elect that the sole remedy for any Event of Default (a “**Reporting Event of Default**”) pursuant to **Section 7.01(A)(vi)** arising from the Company’s failure to comply with **Section 3.02** will, for each of the first three hundred sixty five (365) calendar days on which a Reporting Event of Default has occurred and is continuing, consist exclusively of the accrual of Special Interest on the Notes. If the Company has made such an election, then (i) the Notes will be subject to acceleration pursuant to **Section 7.02** on account of the relevant Reporting Event of Default from, and including, the three hundred sixty sixth (366th) calendar day on which a Reporting Event of Default has occurred and is continuing or if the Company fails to pay any accrued and unpaid Special Interest when due; and (ii) Special Interest will cease to accrue on any Notes from, and including, such three hundred sixty sixth (366th) calendar day (it being understood that interest on any defaulted Special Interest will nonetheless accrue pursuant to **Section 2.05(B)**).

(B) *Amount and Payment of Special Interest.* Any Special Interest that accrues on a Note pursuant to **Section 7.03(A)** will accrue at a rate per annum equal to one quarter of one percent (0.25%) of the principal amount thereof for the first one hundred eighty (180) days on which Special Interest accrues and, thereafter, at a rate per annum equal to one half of one percent (0.50%) of the principal amount thereof; *provided, however*, that in no event will Special Interest, together with any Additional Interest, accrue on any day on a Note at a combined rate per annum that exceeds one half of one percent (0.50%). For the avoidance of doubt, any Special Interest that accrues on a Note will, subject to the proviso of the immediately preceding sentence, be in addition to any Additional Interest that accrues on such Note.

(C) *Notice of Election.* To make the election set forth in **Section 7.03(A)**, the Company must send to the Holders, the Trustee and the Paying Agent, before the date on which each Reporting Event of Default first occurs, a notice that (i) briefly describes the report(s) that the Company failed to file with the SEC; (ii) states that the Company is electing that the sole remedy for such Reporting Event of Default consist of the accrual of Special Interest; and (iii) briefly describes the periods during which and rate at which Special Interest will accrue and the circumstances under which the Notes will be subject to acceleration on account of such Reporting Event of Default.

(D) *Notice to Trustee and Paying Agent; Trustee's Disclaimer.* If Special Interest accrues on any Note, then, no later than five (5) Business Days before each date on which such Special Interest is to be paid, the Company will deliver an Officer's Certificate to the Trustee and the Paying Agent stating (i) that the Company is obligated to pay Special Interest on such Note on such date of payment; and (ii) the amount of such Special Interest that is payable on such date of payment. The Trustee will have no duty to determine whether any Special Interest is payable or the amount thereof.

(E) *No Effect on Other Events of Default.* No election pursuant to this **Section 7.03** with respect to a Reporting Event of Default will affect the rights of any Holder with respect to any other Event of Default.

SECTION 7.04. OTHER REMEDIES.

(A) *Trustee May Pursue All Remedies.* If an Event of Default occurs and is continuing, then the Trustee may pursue any available remedy to collect the payment of any amounts due with respect to the Notes or to enforce the performance of any provision of this Indenture or the Notes.

(B) *Procedural Matters.* The Trustee may maintain a proceeding even if it does not possess any of the Notes or does not produce any of them in such proceeding. A delay or omission by the Trustee or any Holder in exercising any right or remedy following an Event of Default will not impair the right or remedy or constitute a waiver of, or acquiescence in, such Event of Default. All remedies will be cumulative to the extent permitted by law.

SECTION 7.05. WAIVER OF PAST DEFAULTS.

A Default that is (or, after notice, passage of time or both, would be) an Event of Default pursuant to **clause (i), (ii), (iv) or (vi) of Section 7.01(A)** (that, in the case of **clause (vi)** only, results from a Default under any covenant that cannot be amended without the consent of each affected Holder) can be waived only with the consent of each affected Holder. Each other Default may be waived, on behalf of all Holders, by the Holders of a majority in aggregate principal amount of the Notes then outstanding. If an Event of Default is so waived, then it will cease to exist. If a Default is so waived, then it will be deemed to be cured and any Event of Default arising therefrom will be deemed not to occur. However, no such waiver will extend to any subsequent or other Default or impair any right arising therefrom. Each such waiver of a Default will have the effect set forth in **Section 8.04(D)**.

SECTION 7.06. CURE OF DEFAULTS; ABILITY TO CURE OR WAIVE BEFORE EVENT OF DEFAULT OCCURS.

For the avoidance of doubt, and without limiting the manner in which any Default can be cured, (A) a Default consisting of a failure to send a notice in accordance with this Indenture will be cured upon the sending of such notice; (B) a Default in making any payment on (or delivering any other consideration in respect of) any Note will be cured upon the delivery, in accordance with this Indenture, of such payment (or other consideration) together, if applicable, with Default Interest thereon; and (C) a Default that is (or, after notice, passage of time or both, would be) a Reporting Event of Default will be cured upon the filing of the relevant report(s) giving rise to such Default. In addition, for the avoidance of doubt, if a Default that is not an Event of Default is cured or waived before such Default would have constituted an Event of Default, then no Event of Default will result from such Default.

SECTION 7.07. CONTROL BY MAJORITY.

Holders of a majority in aggregate principal amount of the Notes then outstanding may direct the time, method and place of conducting any proceeding for exercising any remedy available to the Trustee or exercising any trust or power conferred on it. However, the Trustee may refuse to follow any direction that conflicts with law, this Indenture or the Notes, or that, subject to **Section 10.01**, the Trustee determines may be unduly prejudicial to the rights of other Holders (it being understood the Trustee does not have an affirmative duty to determine whether any direction is prejudicial to any Holder) or may involve the Trustee in liability. Prior to taking any action under this Indenture or the Notes, the Trustee will be entitled to security and indemnity satisfactory to the Trustee against any loss, liability or expense to the Trustee that may result from the Trustee's following such direction.

SECTION 7.08. LIMITATION ON SUITS.

No Holder may pursue any remedy with respect to this Indenture or the Notes (except to enforce (x) its rights to receive the principal of, or the Fundamental Change Repurchase Price or Redemption Price for, or interest, if any, on, any Notes; or (y) the Company's obligations to Convert any Notes pursuant to **Article 5**), unless:

- (A) such Holder has previously delivered to the Trustee notice that an Event of Default is continuing;

- (B) Holders of at least twenty five percent (25%) in aggregate principal amount of the Notes then outstanding deliver a request to the Trustee to pursue such remedy;
- (C) such Holder or Holders offer and, if requested, provide to the Trustee security and indemnity satisfactory to the Trustee against any loss, liability or expense to the Trustee that may result from the Trustee's following such request;
- (D) the Trustee does not comply with such request within sixty (60) calendar days after its receipt of such request and such offer of security or indemnity; and
- (E) during such sixty (60) calendar day period, Holders of a majority in aggregate principal amount of the Notes then outstanding do not deliver to the Trustee a direction that is inconsistent with such request.

A Holder of a Note may not use this Indenture to prejudice the rights of another Holder or to obtain a preference or priority over another Holder. The Trustee will have no duty to determine whether any Holder's use of this Indenture complies with the preceding sentence.

SECTION 7.09. ABSOLUTE RIGHT OF HOLDERS TO INSTITUTE SUIT FOR THE ENFORCEMENT OF THE RIGHT TO RECEIVE PAYMENT AND CONVERSION CONSIDERATION.

Notwithstanding anything to the contrary in this Indenture or the Notes (but without limiting **Section 8.01**), the right of each Holder of a Note to bring suit for the enforcement of any payment or delivery, as applicable, of the principal of, or the Redemption Price or Fundamental Change Repurchase Price for, or any interest on, or the Conversion Consideration due pursuant to **Article 5** upon Conversion of, such Note on or after the respective due dates therefor provided in this Indenture and the Notes, or to bring suit for the enforcement of any such payment or delivery on or after such respective due dates, will not be impaired or affected without the consent of such Holder.

SECTION 7.10. COLLECTION SUIT BY TRUSTEE.

The Trustee will have the right, upon the occurrence and continuance of an Event of Default pursuant to **clause (i), (ii) or (iv) of Section 7.01(A)**, to recover judgment in its own name and as trustee of an express trust against the Company for the total unpaid or undelivered principal of, or Fundamental Change Repurchase Price or Redemption Price for, or interest, if any, on, or Conversion Consideration due pursuant to **Article 5** upon Conversion of, the Notes, as applicable, and, to the extent lawful, any Default Interest on any Defaulted Amounts, and such further amounts sufficient to cover the costs and expenses of collection, including compensation provided for in **Section 10.06**.

SECTION 7.11. TRUSTEE MAY FILE PROOFS OF CLAIM.

The Trustee has the right to (A) file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee and the Holders allowed in any judicial proceedings relative to the Company (or any other obligor upon the Notes) or its creditors or property and (B) collect, receive and distribute any money or other property payable or deliverable on any such claims. Each Holder authorizes any custodian in such proceeding to make such payments to the Trustee, and, if the Trustee consents to the making of such payments directly to the Holders, to pay to the Trustee any amount due to the Trustee for the reasonable compensation, expenses, disbursements and advances of the Trustee, and its agents and counsel, and any other amounts payable to the Trustee pursuant to **Section 10.06**. To the extent that the payment of any such compensation, expenses, disbursements, advances and other amounts out of the estate in such proceeding, is denied for any reason, payment of the same will be secured by a lien (senior to the rights of Holders) on, and will be paid out of, any and all distributions, dividends, money, securities and other properties that the Holders may be entitled to receive in such proceeding (whether in liquidation or under any plan of reorganization or arrangement or otherwise). Nothing in this Indenture will be deemed to authorize the Trustee to authorize, consent to, accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting the Notes or the rights of any Holder, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding.

SECTION 7.12. PRIORITIES.

The Trustee will pay or deliver in the following order any money or other property that it collects pursuant to this **Article 7**:

First: to the Trustee and its agents and attorneys for amounts due under **Section 10.06**, including payment of all fees and compensation of, and all expenses and liabilities incurred, and all advances made, by, the Trustee (in each of its capacities under this Indenture, including as Note Agent) and the costs and expenses of collection;

Second: to Holders for unpaid amounts or other property due on the Notes, including the principal of, or the Fundamental Change Repurchase Price or Redemption Price for, or any interest on, or any Conversion Consideration due upon Conversion of, the Notes, ratably, and without preference or priority of any kind, according to such amounts or other property due and payable on all of the Notes; and

Third: to the Company or such other Person as a court of competent jurisdiction directs.

The Trustee may fix a record date and payment date for any payment or delivery to the Holders pursuant to this **Section 7.12**, in which case the Trustee will instruct the Company to, and the Company will, deliver, at least fifteen (15) calendar days before such record date, to each Holder and the Trustee a notice stating such record date, such payment date and the amount of such payment or nature of such delivery, as applicable.

SECTION 7.13. UNDERTAKING FOR COSTS.

In any suit for the enforcement of any right or remedy under this Indenture or the Notes or in any suit against the Trustee for any action taken or omitted by it as Trustee, a court, in its discretion, may (A) require the filing by any litigant party in such suit of an undertaking to pay the costs of such suit; and (B) assess reasonable costs (including reasonable attorneys' fees) against any litigant party in such suit, having due regard to the merits and good faith of the claims or defenses made by such litigant party; *provided, however*, that this **Section 7.13** does not apply to any suit by the Trustee, any suit by a Holder pursuant to **Section 7.09** or any suit by one or more Holders of more than ten percent (10%) in aggregate principal amount of the Notes then outstanding.

Article 8. AMENDMENTS, SUPPLEMENTS AND WAIVERS

SECTION 8.01. WITHOUT THE CONSENT OF HOLDERS.

Notwithstanding anything to the contrary in **Section 8.02**, the Company and the Trustee may amend or supplement this Indenture or the Notes without the consent of any Holder to:

- (A) cure any ambiguity or correct any omission, defect or inconsistency in this Indenture or the Notes;
- (B) add guarantees with respect to the Company's obligations under this Indenture or the Notes;
- (C) secure the Notes or any guarantees;
- (D) add to the Company's covenants or Events of Default for the benefit of the Holders or surrender any right or power conferred on the Company;
- (E) provide for the assumption of the Company's obligations under this Indenture and the Notes pursuant to, and in compliance with, **Article 6**;
- (F) enter into supplemental indentures pursuant to, and in accordance with, **Section 5.09** in connection with a Common Stock Change Event;
- (G) irrevocably elect or eliminate any Settlement Method or Specified Dollar Amount; *provided, however*, that no such election or elimination will affect any Settlement Method theretofore elected (or deemed to be elected) with respect to any Note pursuant to **Section 5.03(A)**;
- (H) evidence or provide for the acceptance of the appointment, under this Indenture, of a successor Trustee;
- (I) conform the provisions of this Indenture and the Notes to the "Description of Notes" section of the Company's preliminary offering memorandum, dated May 4, 2026, as supplemented by the related pricing term sheet, dated May 4, 2026;
- (J) provide for or confirm the issuance of additional Notes pursuant to **Section 2.03(B)**;

(K) comply with any requirement of the SEC in connection with any qualification of this Indenture, or any related supplemental indenture, under the Trust Indenture Act, as then in effect; or

(L) make any other change to this Indenture or the Notes that does not, individually or in the aggregate with all other such changes, adversely affect the rights of the Holders, as such, in any material respect.

SECTION 8.02. WITH THE CONSENT OF HOLDERS.

(A) *Generally.* Subject to **Sections 8.01, 7.05 and 7.09** and the immediately following sentence, the Company and the Trustee may, with the consent of the Holders of a majority in aggregate principal amount of the Notes then outstanding, amend or supplement this Indenture or the Notes or waive compliance with any provision of this Indenture or the Notes. Notwithstanding anything to the contrary in the foregoing sentence, but subject to **Section 8.01**, without the consent of each affected Holder, no amendment or supplement to this Indenture or the Notes, or waiver of any provision of this Indenture or the Notes, may:

- (i) reduce the principal, or extend the stated maturity, of any Note;
- (ii) reduce the Redemption Price or Fundamental Change Repurchase Price for any Note or change the times at which, or the circumstances under which, the Notes may or will be redeemed or repurchased by the Company;
- (iii) reduce the rate, or extend the time for the payment, of Special Interest or Additional Interest on any Note;
- (iv) make any change that adversely affects the Conversion rights of any Note;
- (v) impair the rights of any Holder set forth in **Section 7.09** (as such section is in effect on the Issue Date);
- (vi) change the ranking of the Notes;
- (vii) make any Note payable in money, or at a place of payment, other than that stated in this Indenture or the Note;
- (viii) reduce the amount of Notes whose Holders must consent to any amendment, supplement, waiver or other modification; or
- (ix) make any direct or indirect change to any amendment, supplement, waiver or modification provision of this Indenture or the Notes that requires the consent of each affected Holder.

(B) *Holders Need Not Approve the Particular Form of any Amendment.* A consent of any Holder pursuant to this **Section 8.02** need approve only the substance, and not necessarily the particular form, of the proposed amendment, supplement or waiver.

SECTION 8.03. NOTICE OF AMENDMENTS, SUPPLEMENTS AND WAIVERS.

As soon as reasonably practicable after any amendment, supplement or waiver pursuant to **Section 8.01** or **8.02** becomes effective, the Company will send to the Holders and the Trustee notice that (A) describes the substance of such amendment, supplement or waiver in reasonable detail and (B) states the effective date thereof; *provided, however*, that the Company will not be required to provide such notice to the Holders if such amendment, supplement or waiver is included in a periodic report filed by the Company with the SEC within four (4) Business Days of its effectiveness. The failure to send, or the existence of any defect in, such notice will not impair or affect the validity of such amendment, supplement or waiver.

SECTION 8.04. REVOCATION, EFFECT AND SOLICITATION OF CONSENTS; SPECIAL RECORD DATES; ETC.

(A) *Revocation and Effect of Consents.* The consent of a Holder of a Note to an amendment, supplement or waiver will bind (and constitute the consent of) each subsequent Holder of any Note to the extent the same evidences any portion of the same indebtedness as the consenting Holder's Note, subject to the right of any Holder of a Note to revoke (if not prohibited pursuant to **Section 8.04(B)**) any such consent with respect to such Note by delivering notice of revocation to the Trustee before the time such amendment, supplement or waiver becomes effective.

(B) *Special Record Dates.* The Company may, but is not required to, fix a record date for the purpose of determining the Holders entitled to consent or take any other action in connection with any amendment, supplement or waiver pursuant to this **Article 8**. If a record date is fixed, then, notwithstanding anything to the contrary in **Section 8.04(A)**, only Persons who are Holders as of such record date (or their duly designated proxies) will be entitled to give such consent, to revoke any consent previously given or to take any such action, regardless of whether such Persons continue to be Holders after such record date; *provided, however*, that no such consent will be valid or effective for more than one hundred and twenty (120) calendar days after such record date.

(C) *Solicitation of Consents.* For the avoidance of doubt, each reference in this Indenture or the Notes to the consent of a Holder will be deemed to include any such consent obtained in connection with a repurchase of, or tender or exchange offer for, any Notes.

(D) *Effectiveness and Binding Effect.* Each amendment or supplement to this Indenture or the Notes, or waiver of any Default, Event of Default or compliance with any provision of this Indenture or the Notes, will become effective in accordance with its terms and, when it becomes effective with respect to any Note (or any portion thereof), will thereafter bind every Holder of such Note (or such portion).

SECTION 8.05. NOTATIONS AND EXCHANGES.

If any amendment, supplement or waiver changes the terms of a Note, then the Trustee or the Company may, in its discretion, require the Holder of such Note to deliver such Note to the Trustee so that the Trustee may place an appropriate notation prepared by the Company on such Note and return such Note to such Holder. Alternatively, at its discretion, the Company may, in exchange for such Note, issue, execute and deliver, and the Trustee will authenticate, in each case in accordance with **Section 2.02**, a new Note that reflects the changed terms. The failure to make any appropriate notation or issue a new Note pursuant to this **Section 8.05** will not impair or affect the validity of such amendment, supplement or waiver.

SECTION 8.06. TRUSTEE TO EXECUTE SUPPLEMENTAL INDENTURES.

The Trustee will execute and deliver any amendment or supplemental indenture authorized pursuant to this **Article 8**; *provided, however*, that the Trustee need not (but may, in its sole and absolute discretion) execute or deliver any such amendment or supplemental indenture that the Trustee concludes adversely affects the Trustee's rights, duties, liabilities or immunities. In executing any amendment or supplemental indenture, the Trustee will be entitled to receive, and (subject to **Sections 10.01** and **10.02**) will be fully protected in relying on, an Officer's Certificate and an Opinion of Counsel stating that (A) the execution and delivery of such amendment or supplemental indenture is authorized or permitted by this Indenture; and (B) in the case of the Opinion of Counsel, such amendment or supplemental indenture is valid, binding and enforceable against the Company in accordance with its terms.

Article 9. SATISFACTION AND DISCHARGE

SECTION 9.01. TERMINATION OF COMPANY'S OBLIGATIONS.

This Indenture will be discharged, and the Company's obligations with respect to the Notes under this Indenture will cease to be of further effect as to all Notes issued under this Indenture, when:

(A) all Notes then outstanding (other than Notes replaced pursuant to **Section 2.13**) have (i) been delivered to the Trustee for cancellation; or (ii) become due and payable (whether on a Redemption Date, a Fundamental Change Repurchase Date, the Maturity Date, upon Conversion or otherwise) for an amount of cash or Conversion Consideration, as applicable, that has been fixed;

(B) the Company has caused there to be irrevocably deposited with the Trustee, or with the Paying Agent (or, with respect to Conversion Consideration, the Conversion Agent), in each case for the benefit of the Holders, or has otherwise caused there to be delivered to the Holders, cash (or, with respect to Notes to be Converted, Conversion Consideration) sufficient to satisfy all amounts or other property due on all Notes then outstanding (other than Notes replaced pursuant to **Section 2.13**);

(C) the Company has paid all other amounts payable by it under this Indenture; and

(D) the Company has delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that the conditions precedent to the discharge of this Indenture have been satisfied;

provided, however, that **Article 10** and **Section 11.01** will survive such discharge and, until no Notes remain outstanding, **Section 2.15** and the obligations of the Trustee, the Paying Agent and the Conversion Agent with respect to money or other property deposited with them will survive such discharge.

At the Company's request, the Trustee will acknowledge the satisfaction and discharge of this Indenture.

SECTION 9.02. REPAYMENT TO COMPANY.

Subject to applicable unclaimed property law, the Trustee, the Paying Agent and the Conversion Agent will promptly notify the Company if there exists (and, at the Company's request, promptly deliver to the Company) any cash, Conversion Consideration or other property held by any of them for payment or delivery on the Notes that remain unclaimed two (2) years after the date on which such payment or delivery was due. After such delivery to the Company, the Trustee, the Paying Agent and the Conversion Agent will have no further liability to any Holder with respect to such cash, Conversion Consideration or other property, and Holders entitled to the payment or delivery of such cash, Conversion Consideration or other property must look to the Company for payment as a general creditor of the Company.

SECTION 9.03. REINSTATEMENT.

If the Trustee, the Paying Agent or the Conversion Agent is unable to apply any cash or other property deposited with it pursuant to **Section 9.01** because of any legal proceeding or any order or judgment of any court or other governmental authority that enjoins, restrains or otherwise prohibits such application, then the discharge of this Indenture pursuant to **Section 9.01** will be rescinded; *provided, however*, that if the Company thereafter pays or delivers any cash or other property due on the Notes to the Holders thereof, then the Company will be subrogated to the rights of such Holders to receive such cash or other property from the cash or other property, if any, held by the Trustee, the Paying Agent or the Conversion Agent, as applicable.

Article 10. TRUSTEE

SECTION 10.01. DUTIES OF THE TRUSTEE.

(A) If an Event of Default has occurred and is continuing, and a Responsible Officer of the Trustee has written notice or actual knowledge of the same, then, without limiting the generality of **Section 10.02(F)**, the Trustee will exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in its exercise, as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs.

(B) Except during the continuance of an Event of Default:

(i) the duties of the Trustee will be determined solely by the express provisions of this Indenture, and the Trustee need perform only those duties that are specifically set forth in this Indenture and no others, and no implied covenants or obligations will be read into this Indenture against the Trustee; and

(ii) in the absence of gross negligence or willful misconduct on its part, the Trustee may, without investigation, conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon Officer's Certificates or Opinions of Counsel that are provided to the Trustee and conform to the requirements of this Indenture; *provided, however*, that the Trustee will examine the certificates and opinions to determine whether or not they conform to the requirements of this Indenture.

(C) The Trustee may not be relieved from liabilities for its gross negligence or willful misconduct, except that:

(i) this paragraph will not limit the effect of **Section 10.01(B)**;

(ii) the Trustee will not be liable for any error of judgment made in good faith by a Responsible Officer, unless it is proved that the Trustee was grossly negligent in ascertaining the pertinent facts; and

(iii) the Trustee will not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it pursuant to **Section 7.07**.

(D) No provision of this Indenture will require the Trustee to expend or risk its own funds or incur any liability.

(E) The Trustee will not be liable for interest on any money received by it, except as the Trustee may agree in writing with the Company. Money held in trust by the Trustee need not be segregated from other funds, except to the extent required by law.

(F) The Trustee will not be liable in its individual capacity for the obligations evidenced by the Notes.

(G) Each provision of this Indenture that in any way relates to the Trustee (including any provision that affects the liability of, or affords protection to, the Trustee) is subject to this **Section 10.01**, regardless of whether such provision so expressly provides.

(H) In the event that the Trustee is also acting as Note Agent hereunder, the rights and protections afforded to the Trustee pursuant to this Article 10 shall also be afforded to such Note Agent.

SECTION 10.02. RIGHTS OF THE TRUSTEE.

(A) The Trustee may conclusively rely on any document that it believes to be genuine and signed or presented by the proper Person, and the Trustee need not investigate any fact or matter stated in such document.

(B) Before the Trustee acts or refrains from acting, it may require an Officer's Certificate, an Opinion of Counsel or both. The Trustee will not be liable for any action it takes or omits to take in good faith in reliance on such Officer's Certificate or Opinion of Counsel. The Trustee may consult with counsel; and the advice of such counsel, or any Opinion of Counsel, will constitute full and complete authorization of the Trustee to take or omit to take any action in good faith in reliance thereon without liability.

- (C) The Trustee may act through its attorneys and agents and will not be responsible for the misconduct or negligence of any such agent appointed with due care.
- (D) The Trustee will not be liable for any action it takes or omits to take in good faith and that it believes to be authorized or within the rights or powers vested in it by this Indenture.
- (E) Unless otherwise specifically provided in this Indenture, any demand, request, direction or notice from the Company will be sufficient if signed by an Officer of the Company.
- (F) The Trustee need not exercise any rights or powers vested in it by this Indenture at the request or direction of any Holder unless such Holder has offered (and, if requested, provided) the Trustee security or indemnity satisfactory to the Trustee against any loss, liability or expense that it may incur in complying with such request or direction.
- (G) The Trustee will not be responsible or liable for any punitive, special, indirect or consequential loss or damage (including lost profits), even if the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action.
- (H) The permissive rights of the Trustee set forth in this Indenture will not be construed as duties imposed on the Trustee.
- (I) The Trustee will not be required to give any bond or surety in respect of the execution or performance of this Indenture or otherwise.
- (J) Unless a Responsible Officer of the Trustee has received notice from the Company that Special Interest or Additional Interest is owing or accruing, on the Notes, the Trustee may assume that no Special Interest or Additional Interest, as applicable, is payable or accruing.
- (K) The rights, privileges, protections, immunities and benefits given to the Trustee, including its right to be indemnified, are extended to, and will be enforceable by, the Trustee in each of its capacities under this Indenture, including as Note Agent.
- (L) The Trustee will not be charged with knowledge of any document or agreement other than this Indenture and the Notes.
- (M) Neither the Trustee nor any Note Agent will have any responsibility or liability to any person for any action taken or not taken by, or any records or any other aspect of the operations of, the Depositary (including the delivery of notices, or the making of payments, through the facilities of the Depositary) and may conclusively rely, without investigation, on any information provided by the Depositary.

SECTION 10.03. INDIVIDUAL RIGHTS OF THE TRUSTEE.

The Trustee, in its individual or any other capacity, may become the owner or pledgee of any Note and may otherwise deal with the Company or any of its Affiliates with the same rights that it would have if it were not Trustee; *provided, however*, that if the Trustee acquires a “conflicting interest” (within the meaning of Section 310(b) of the Trust Indenture Act), then it must eliminate such conflict within ninety (90) days or resign as Trustee. Each Note Agent will have the same rights and duties as the Trustee under this **Section 10.03**.

SECTION 10.04. TRUSTEE'S DISCLAIMER.

The Trustee will not be (A) responsible for, and makes no representation as to, the validity or adequacy of this Indenture or the Notes; (B) accountable for the Company's use of the proceeds from the Notes or any money paid to the Company or upon the Company's direction under any provision of this Indenture; (C) responsible for the use or application of any money received by any Paying Agent other than the Trustee; and (D) responsible for any statement or recital in this Indenture, the Notes or any other document relating to the sale of the Notes or this Indenture, other than the Trustee's certificate of authentication.

SECTION 10.05. NOTICE OF DEFAULTS.

If a Default occurs and is continuing and is actually known to a Responsible Officer of the Trustee, then the Trustee will send Holders a notice of such Default within ninety (90) days after it occurs or, if it is not actually known to a Responsible Officer of the Trustee at such time, promptly (and in any event within ten (10) Business Days) after it becomes actually known to a Responsible Officer of the Trustee; *provided, however*, that, except in the case of a Default in the payment of the principal of, or interest, if any, on, any Note, the Trustee may withhold such notice if and for so long as it in good faith determines that withholding such notice is in the interests of the Holders. For the avoidance of doubt, the Trustee will not be required to deliver such notice at any time after such Default is cured or waived. The Trustee will not be deemed to have notice or be charged with knowledge of any Default or Event of Default unless (A) written notice thereof has been received by a Responsible Officer; and (B) such notice references the Notes and this Indenture and states on its face that a Default or Event of Default, as applicable, has occurred.

SECTION 10.06. COMPENSATION AND INDEMNITY.

(A) The Company will, from time to time, pay the Trustee reasonable compensation for its acceptance of this Indenture and services under this Indenture as separately agreed to by the Company and the Trustee. The Trustee's compensation will not be limited by any law on compensation of a trustee of an express trust. In addition to the compensation for the Trustee's services, the Company will reimburse the Trustee promptly upon request for all reasonable disbursements, advances and expenses incurred or made by it under this Indenture, including the reasonable compensation, disbursements and expenses of the Trustee's agents and counsel.

(B) The Company will indemnify and hold harmless the Trustee (in each of its capacities under this Indenture, including as Note Agent) and its directors, officers, employees and agents, in their capacities as such, against any and all losses, liabilities or expenses (including taxes (other than taxes based upon, or measured by or determined by the income of the Trustee) and reasonable attorneys' fees and expenses and court costs) incurred by it arising out of or in connection with the acceptance or administration of its duties under this Indenture, including the costs and expenses of enforcing this Indenture against the Company (including this **Section 10.06**) and defending itself against any claim (whether asserted by the Company, any Holder or any other Person) or liability in connection with the exercise or performance of any of its powers or duties under this Indenture, except to the extent any such loss, liability or expense is attributable (as determined by a final decision of a court of competent jurisdiction) to its gross negligence or willful misconduct. The Trustee will promptly notify the Company of any claim for which it may seek indemnity, but the Trustee's failure to so notify the Company will not relieve the Company of its obligations under this **Section 10.06(B)**. The Company will defend such claim, and the Trustee will cooperate in such defense. The Trustee may have separate counsel and the Company will pay the reasonable fees and expenses of such counsel. The Company need not pay for any settlement of any such claim made without its consent, which consent will not be unreasonably withheld.

(C) The obligations of the Company under this **Section 10.06** will survive the resignation or removal of the Trustee and the discharge of this Indenture.

(D) To secure the Company's payment obligations in this **Section 10.06**, the Trustee will have a lien prior to the Notes on all money or property held or collected by the Trustee, except that held in trust to pay principal of, or interest, if any, on, particular Notes, which lien will survive the discharge of this Indenture.

(E) If the Trustee incurs expenses or renders services after an Event of Default pursuant to **clause (viii) or (ix) of Section 7.01(A)** occurs, then such expenses and the compensation for such services (including the fees and expenses of its agents and counsel) are intended to constitute expenses of administration under any Bankruptcy Law.

SECTION 10.07. REPLACEMENT OF THE TRUSTEE.

(A) Notwithstanding anything to the contrary in this **Section 10.07**, a resignation or removal of the Trustee, and the appointment of a successor Trustee, will become effective only upon such successor Trustee's acceptance of appointment as provided in this **Section 10.07**.

(B) The Trustee may resign at any time and be discharged from the trust created by this Indenture by so notifying the Company. The Holders of a majority in aggregate principal amount of the Notes then outstanding may remove the Trustee by so notifying the Trustee and the Company in writing. The Company may remove the Trustee if:

- (i) the Trustee fails to comply with **Section 10.09**;
- (ii) the Trustee is adjudged to be bankrupt or insolvent or an order for relief is entered with respect to the Trustee under any Bankruptcy Law;
- (iii) a custodian or public officer takes charge of the Trustee or its property; or
- (iv) the Trustee becomes incapable of acting.

(C) If the Trustee resigns or is removed, or if a vacancy exists in the office of the Trustee for any reason, then (i) the Company will promptly appoint a successor Trustee; and (ii) at any time within one (1) year after the successor Trustee takes office, the Holders of a majority in aggregate principal amount of the Notes then outstanding may appoint a successor Trustee to replace such successor Trustee appointed by the Company.

(D) If a successor Trustee does not take office within sixty (60) days after the retiring Trustee resigns or is removed, then the retiring Trustee (at the Company's expense), the Company or the Holders of at least ten percent (10%) in aggregate principal amount of the Notes then outstanding may petition any court of competent jurisdiction for the appointment of a successor Trustee.

(E) If the Trustee, after written request by a Holder of at least six (6) months, fails to comply with **Section 10.09**, then such Holder may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

(F) A successor Trustee will deliver a written acceptance of its appointment to the retiring Trustee and to the Company, upon which notice the resignation or removal of the retiring Trustee will become effective and the successor Trustee will have all the rights, powers and duties of the Trustee under this Indenture. The successor Trustee will send notice of its succession to Holders. The retiring Trustee will, upon payment of all amounts due to it under this Indenture, promptly transfer all property held by it as Trustee to the successor Trustee, which property will, for the avoidance of doubt, be subject to the lien provided for in **Section 10.06(D)**.

SECTION 10.08. SUCCESSOR TRUSTEE BY MERGER, ETC.

Any entity into which the Trustee may be merged or converted or with which it may be consolidated, or any entity resulting from any merger, conversion or consolidation to which the Trustee is a party, or any entity succeeding to all or substantially all of the corporate trust business of the Trustee, will (without the execution or filing of any paper or any further act on the part of any of the parties to this Indenture) be the successor of the Trustee under this Indenture, *provided* that such entity is otherwise qualified and eligible to act as such under this **Article 10**.

SECTION 10.09. ELIGIBILITY; DISQUALIFICATION.

There will at all times be a Trustee under this Indenture that is a corporation organized and doing business under the laws of the United States of America or of any state thereof, that is authorized under such laws to exercise corporate trustee power, that is subject to supervision or examination by federal or state authorities and that has a combined capital and surplus of at least \$100.0 million as set forth in its most recent published annual report of condition.

Article 11. MISCELLANEOUS

SECTION 11.01. NOTICES.

Any notice or communication by the Company or the Trustee to the other will be deemed to have been duly given if in writing and delivered in person or by first class mail (registered or certified, return receipt requested), facsimile transmission, electronic transmission or other similar means of unsecured electronic communication or overnight air courier guaranteeing next day delivery, or to the other's address, which initially is as follows:

If to the Company:

ProPetro Holding Corp.
One Marienfeld Place, 110 N. Marienfeld Street, Suite 300
Midland, Texas 79701
Attention: General Counsel

If to the Trustee:

U.S. Bank Trust Company, National Association
2 Concourse Parkway NE, Suite 800
Atlanta, GA 30328
Attention: Global Corporate Trust Services

Notwithstanding anything to the contrary in the preceding paragraph, notices to the Trustee (other than a notice pursuant to **Section 2.12**) or any Note Agent must be in writing and will be deemed to have been given upon actual receipt by the Trustee or such Note Agent, as applicable.

The Company or the Trustee, by notice to the other, may designate additional or different addresses (including facsimile numbers and electronic addresses) for subsequent notices or communications.

The Trustee will not have any duty to confirm that the person sending any notice, instruction or other communication by electronic transmission (including by e-mail, facsimile transmission, web portal or other electronic methods) is, in fact, a person authorized to do so. Electronic signatures believed by the Trustee to comply with the ESIGN Act of 2000 or other applicable law (including electronic images of handwritten signatures and digital signatures provided by DocuSign, Orbit, Adobe Sign or any other digital signature provider acceptable to the Trustee) will be deemed original signatures for all purposes. Any person that uses electronic signatures or electronic methods to send communications to the Trustee assumes all risks arising out of such use, including the risk of the Trustee acting on an unauthorized communication and the risk of interception or misuse by third parties. Notwithstanding anything to the contrary in this paragraph, the Trustee may, in any instance and in its sole discretion, require that an original document bearing a manual signature be delivered to the Trustee in lieu of, or in addition to, any such electronic communication.

All notices and communications (other than those sent to Holders) will be deemed to have been duly given: (A) at the time delivered by hand, if personally delivered; (B) five (5) Business Days after being deposited in the mail, postage prepaid, if mailed; (C) when receipt is acknowledged, if transmitted by facsimile, electronic transmission or other similar means of unsecured electronic communication; and (D) the next Business Day after timely delivery to the courier, if sent by overnight air courier guaranteeing next day delivery.

All notices or communications required to be made to a Holder pursuant to this Indenture must be made in writing and will be deemed to be duly sent or given in writing if mailed by first class mail, certified or registered, return receipt requested, or by overnight air courier guaranteeing next day delivery, to its address shown on the Register; *provided, however*, that a notice or communication to a Holder of a Global Note may, but need not, instead be sent pursuant to the Depositary Procedures (in which case, such notice will be deemed to be duly sent or given in writing). The failure to send a notice or communication to a Holder, or any defect in such notice or communication, will not affect its sufficiency with respect to any other Holder.

If the Trustee is then acting as the Depositary's custodian for the Notes, then, at the reasonable request of the Company to the Trustee, the Trustee will cause any notice prepared by the Company to be sent to any Holder(s) pursuant to the Depositary Procedures, *provided* such request is evidenced in a Company Order delivered, together with the text of such notice, to the Trustee at least two (2) Business Days before the date such notice is to be so sent. For the avoidance of doubt, such Company Order need not be accompanied by an Officer's Certificate or Opinion of Counsel. The Trustee will not have any liability relating to the contents of any notice that it sends to any Holder pursuant to any such Company Order.

If a notice or communication is mailed or sent in the manner provided above within the time prescribed, it will be deemed to have been duly given, whether or not the addressee receives it.

Notwithstanding anything to the contrary in this Indenture or the Notes, (A) whenever any provision of this Indenture requires a party to send notice to another party, no such notice need be sent if the sending party and the recipient are the same Person acting in different capacities (and, for purposes of the interpretation of this Indenture, such notice will be deemed to have been duly sent at the time otherwise required by this Indenture); and (B) whenever any provision of this Indenture requires a party to send notice to more than one receiving party, and each receiving party is the same Person acting in different capacities, then only one such notice need be sent to such Person.

SECTION 11.02. DELIVERY OF OFFICER'S CERTIFICATE AND OPINION OF COUNSEL AS TO CONDITIONS PRECEDENT.

Upon any request or application by the Company to the Trustee to take any action under this Indenture (other than the initial authentication of Notes under this Indenture), the Company will furnish to the Trustee:

(A) an Officer's Certificate that complies with **Section 11.03** and states that, in the opinion of the signatory thereto, all conditions precedent and covenants, if any, provided for in this Indenture relating to such action have been satisfied; and

(B) an Opinion of Counsel that complies with **Section 11.03** and states that, in the opinion of such counsel, all such conditions precedent and covenants, if any, have been satisfied.

SECTION 11.03. STATEMENTS REQUIRED IN OFFICER'S CERTIFICATE AND OPINION OF COUNSEL.

Each Officer's Certificate (other than an Officer's Certificate pursuant to **Section 3.05**) or Opinion of Counsel with respect to compliance with a covenant or condition provided for in this Indenture will include:

- (A) a statement that the signatory thereto has read such covenant or condition;
- (B) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained therein are based;
- (C) a statement that, in the opinion of such signatory, he, she or it has made such examination or investigation as is necessary to enable him, her or it to express an informed opinion as to whether or not such covenant or condition has been satisfied; and
- (D) a statement as to whether, in the opinion of such signatory, such covenant or condition has been satisfied.

SECTION 11.04. RULES BY THE TRUSTEE, THE REGISTRAR, THE PAYING AGENT AND THE CONVERSION AGENT.

The Trustee may make reasonable rules for action by or at a meeting of Holders. Each of the Registrar, the Paying Agent and the Conversion Agent may make reasonable rules and set reasonable requirements for its functions.

SECTION 11.05. NO PERSONAL LIABILITY OF DIRECTORS, OFFICERS, EMPLOYEES AND STOCKHOLDERS.

No past, present or future director, officer, employee, incorporator or stockholder of the Company, as such, will have any liability for any obligations of the Company under this Indenture or the Notes or for any claim based on, in respect of, or by reason of, such obligations or their creation. By accepting any Note, each Holder waives and releases all such liability. Such waiver and release are part of the consideration for the issuance of the Notes.

SECTION 11.06. GOVERNING LAW; WAIVER OF JURY TRIAL.

THIS INDENTURE AND THE NOTES, AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS INDENTURE OR THE NOTES, WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK. EACH OF THE COMPANY AND THE TRUSTEE AND EACH HOLDER (BY ITS ACCEPTANCE OF ANY NOTE) IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS INDENTURE, THE NOTES OR THE TRANSACTIONS CONTEMPLATED BY THIS INDENTURE OR THE NOTES.

SECTION 11.07. SUBMISSION TO JURISDICTION.

Any legal suit, action or proceeding arising out of or based upon this Indenture or the transactions contemplated by this Indenture may be instituted in the federal courts of the United States of America located in the City of New York or the courts of the State of New York, in each case located in the City of New York (collectively, the "**Specified Courts**"), and each party irrevocably submits to the non-exclusive jurisdiction of such courts in any such suit, action or proceeding. Service of any process, summons, notice or document by mail (to the extent allowed under any applicable statute or rule of court) to such party's address set forth in **Section 11.01** will be effective service of process for any such suit, action or proceeding brought in any such court. Each of the Company, the Trustee and each Holder (by its acceptance of any Note) irrevocably and unconditionally waives any objection to the laying of venue of any suit, action or other proceeding in the Specified Courts and irrevocably and unconditionally waives and agrees not to plead or claim any such suit, action or other proceeding has been brought in an inconvenient forum.

SECTION 11.08. NO ADVERSE INTERPRETATION OF OTHER AGREEMENTS.

Neither this Indenture nor the Notes may be used to interpret any other indenture, note, loan or debt agreement of the Company or its Subsidiaries or of any other Person, and no such indenture, note, loan or debt agreement may be used to interpret this Indenture or the Notes.

SECTION 11.09. SUCCESSORS.

All agreements of the Company in this Indenture and the Notes will bind its successors. All agreements of the Trustee in this Indenture will bind its successors.

SECTION 11.10. FORCE MAJEURE.

The Trustee and each Note Agent will not incur any liability for not performing any act or fulfilling any duty, obligation or responsibility under this Indenture or the Notes by reason of any occurrence beyond its control (including, without limitation, (i) any act or provision of any present or future law or regulation or governmental authority, (ii) any act of God, (iii) natural disaster, (iv) war, (v) terrorism, (vi) civil unrest, (vii) accidents, (viii) labor dispute, (ix) disease, (x) epidemic or pandemic, (xi) quarantine, (xii) national emergency, (xiii) loss or malfunction of utility or computer software or hardware, (xiv) communications system failure, (xv) malware or ransomware or (xvi) unavailability of the Federal Reserve Bank wire or telex system or other wire or other funds transfer systems, or (xvii) unavailability of any securities clearing system.

SECTION 11.11. U.S.A. PATRIOT ACT.

The Company acknowledges that, in accordance with Section 326 of the U.S.A. PATRIOT Act, the Trustee, like all financial institutions, in order to help fight the funding of terrorism and money laundering, is required to obtain, verify and record information that identifies each person or legal entity that establishes a relationship or opens an account with the Trustee. The Company agrees to provide the Trustee with such information as it may request to enable the Trustee to comply with the U.S.A. PATRIOT Act.

SECTION 11.12. CALCULATIONS.

Except as otherwise provided in this Indenture, the Company will be responsible for making all calculations called for under this Indenture or the Notes, including determinations of the Last Reported Sale Price, the Daily Conversion Value, the Daily Cash Amount, the Daily Share Amount, accrued interest, if any, on the Notes and the Conversion Rate.

The Company will make all calculations in good faith, and, absent manifest error, its calculations will be final and binding on all Holders. The Company will provide a schedule of its calculations to the Trustee and the Conversion Agent, and each of the Trustee and the Conversion Agent may rely conclusively on the accuracy of the Company's calculations without independent verification. The Trustee will promptly forward a copy of each such schedule to a Holder upon its written request therefor. For the avoidance of doubt, neither the Trustee nor the Conversion Agent will be obligated to make or confirm any calculations or other amounts called for under this Indenture or the Notes.

SECTION 11.13. SEVERABILITY.

If any provision of this Indenture or the Notes is invalid, illegal or unenforceable, then the validity, legality and enforceability of the remaining provisions of this Indenture or the Notes will not in any way be affected or impaired thereby.

SECTION 11.14. COUNTERPARTS.

This Indenture (or any documents executed in connection with this Indenture) shall be valid, binding and enforceable against a party when executed and delivered by an authorized individual on behalf of the party by means of (i) an original manual signature, (ii) a faxed, scanned, or photocopied manual signature, or (iii) any other electronic signature permitted by the federal Electronic Signatures in Global and National Commerce Act, state enactments of Uniform Electronic Transactions Act, and/or any relevant electronic signature law (in each case other than the Trustee's authentication of the Notes), including any relevant provisions of the Uniform Commercial Code (collectively, "Signature Law"), in each case to the extent applicable. Each faxed, scanned or photocopied manual signature, or other electronic signature (other than with respect to the authentication of the Notes), shall for all purposes have the same validity, legal effect, and admissibility in evidence as an original manual signature. Each party hereto shall be entitled to conclusively rely upon, and shall have no liability with respect to, any faxed, scanned, or photocopied manual signature, or other electronic signature, of any other party and shall have no duty to investigate, confirm or otherwise verify the validity or authenticity thereof. For the avoidance of doubt, original manual signatures shall be used for the execution or indorsement of writings when required under the Uniform Commercial Code or other Signature Law due to the character or intended character of the writings.

SECTION 11.15. TABLE OF CONTENTS, HEADINGS, ETC.

The table of contents and the headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not to be considered a part of this Indenture and will in no way modify or restrict any of the terms or provisions of this Indenture.

SECTION 11.16. WITHHOLDING TAXES.

Each Holder of a Note agrees, and each beneficial owner of an interest in a Global Note, by its acquisition of such interest, is deemed to agree, that any applicable withholding taxes (including backup withholding) may be withheld from any interest, if any, and payments upon conversion, repurchase or maturity of the Notes, or if the Company or other applicable withholding agent (including the Trustee) pays withholding taxes or backup withholding on behalf of such Holder or beneficial owner, then the Company or such withholding agent, as applicable, may, at its option, set off such payments against payments of cash or the delivery of other Conversion Consideration on such Note, any payments on the Common Stock or sales proceeds received by, or other funds or assets of, such Holder or the beneficial owner of such Note.

[The Remainder of This Page Intentionally Left Blank; Signature Page Follows]

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

PROPETRO HOLDING CORP.

By: /s/ Caleb Weatherl
Name: Caleb Weatherl
Title: Chief Financial Officer

U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION, as Trustee

By: /s/ Gregory M. Jackson
Name: Gregory M. Jackson
Title: Vice President

[Signature Page to Indenture]

FORM OF NOTE*[Insert Global Note Legend, if applicable]**[Insert Restricted Note Legend, if applicable]**[Insert Non-Affiliate Legend]***PROPETRO HOLDING CORP.****0.00% Convertible Senior Note due 2031**CUSIP No.: [] *[Insert for a “restricted” CUSIP number: *]*

Certificate No. []

ISIN No.: [] *[Insert for a “restricted” ISIN number: *]*

ProPetro Holding Corp., a Delaware corporation, for value received, promises to pay to [Cede & Co.], or its registered assigns, the principal sum of [] dollars (\$[]) [(as revised by the attached Schedule of Exchanges of Interests in the Global Note)][†] on November 15, 2031 and, to the extent applicable, to pay Special Interest and Additional Interest thereon, as provided in the Indenture referred to below, until the principal and all accrued and unpaid interest, if any, are paid or duly provided for.

Interest Payment Dates: May 15 and November 15 of each year.

Interest Record Dates: May 1 and November 1.

Additional provisions of this Note are set forth on the other side of this Note.

[The Remainder of This Page Intentionally Left Blank; Signature Page Follows]

* This Note will be deemed to be identified by CUSIP No. [] and ISIN No. [] from and after such time when the Company delivers, pursuant to Section 2.12 of the within-mentioned Indenture, written notice to the Trustee of the deemed removal of the Restricted Note Legend affixed to this Note.

† Insert bracketed language for Global Notes only.

IN WITNESS WHEREOF, ProPetro Holding Corp. has caused this instrument to be duly executed as of the date set forth below.

PROPETRO HOLDING CORP.

Date: _____

By: _____
Name:
Title:

TRUSTEE’S CERTIFICATE OF AUTHENTICATION

U.S. Bank Trust Company, National Association, as Trustee, certifies that this is one of the Notes referred to in the within-mentioned Indenture.

Date: _____ By: _____
Authorized Signatory

PROPETRO HOLDING CORP.

0.00% Convertible Senior Note due 2031

This Note is one of a duly authorized issue of notes of ProPetro Holding Corp., a Delaware corporation (the “**Company**”), designated as its 0.00% Convertible Senior Notes due 2031 (the “**Notes**”), all issued or to be issued pursuant to an indenture, dated as of May 7, 2026 (as the same may be amended from time to time, the “**Indenture**”), between the Company and U.S. Bank Trust Company, National Association, as trustee. Capitalized terms used in this Note without definition have the respective meanings ascribed to them in the Indenture.

The Indenture sets forth the rights and obligations of the Company, the Trustee and the Holders and the terms of the Notes. Notwithstanding anything to the contrary in this Note, to the extent that any provision of this Note conflicts with the provisions of the Indenture, the provisions of the Indenture will control.

1. **Interest.** This Note will not bear regular interest, and the principal amount of this Note will not accrete. Special Interest and Additional Interest will accrue on this Note in the circumstances, at the rates, and payable on the dates, and in the manner, set forth in Sections 2.05, 7.03 and 3.04 of the Indenture.

2. **Maturity.** This Note will mature on November 15, 2031, unless earlier repurchased, redeemed or Converted.

3. **Method of Payment.** Cash amounts due on this Note will be paid in the manner set forth in Section 2.04 of the Indenture.

4. **Persons Deemed Owners.** The Holder of this Note will be treated as the owner of this Note for all purposes.

5. **Denominations; Transfers and Exchanges.** All Notes will be in registered form, without coupons, in principal amounts equal to any Authorized Denominations. Subject to the terms of the Indenture, the Holder of this Note may transfer or exchange this Note by presenting it to the Registrar and delivering any required documentation or other materials.

6. **Right of Holders to Require the Company to Repurchase Notes Upon a Fundamental Change.** If a Fundamental Change (other than an Exempted Fundamental Change) occurs, then each Holder will have the right to require the Company to repurchase such Holder’s Notes (or any portion thereof in an Authorized Denomination) for cash in the manner, and subject to the terms, set forth in Section 4.02 of the Indenture.

7. **Right of the Company to Redeem the Notes.** The Company will have the right to redeem the Notes for cash in the manner, and subject to the terms, set forth in Section 4.03 of the Indenture.

8. **Conversion.** The Holder of this Note may Convert this Note into Conversion Consideration in the manner, and subject to the terms, set forth in Article 5 of the Indenture.

9. **When the Company May Merge, Etc.** Article 6 of the Indenture places limited restrictions on the Company's ability to be a party to a Business Combination Event.

10. **Defaults and Remedies.** If an Event of Default occurs, then the principal amount of, and all accrued and unpaid interest, if any, on, all of the Notes then outstanding may (and, in certain circumstances, will automatically) become due and payable in the manner, and subject to the terms, set forth in Article 7 of the Indenture.

11. **Amendments, Supplements and Waivers.** The Company and the Trustee may amend or supplement the Indenture or the Notes or waive compliance with any provision of the Indenture or the Notes in the manner, and subject to the terms, set forth in Section 7.05 and Article 8 of the Indenture.

12. **No Personal Liability of Directors, Officers, Employees and Stockholders.** No past, present or future director, officer, employee, incorporator or stockholder of the Company, as such, will have any liability for any obligations of the Company under the Indenture or the Notes or for any claim based on, in respect of, or by reason of, such obligations or their creation. By accepting any Note, each Holder waives and releases all such liability. Such waiver and release are part of the consideration for the issuance of the Notes.

13. **Authentication.** No Note will be valid until it is authenticated by the Trustee. A Note will be deemed to be duly authenticated only when an authorized signatory of the Trustee (or a duly appointed authenticating agent) manually signs the certificate of authentication of such Note.

14. **Abbreviations.** Customary abbreviations may be used in the name of a Holder or its assignee, such as TEN COM (tenants in common), TEN ENT (tenants by the entireties), JT TEN (joint tenants with right of survivorship and not as tenants in common), CUST (custodian), and U/G/M/A (Uniform Gift to Minors Act).

15. **Governing Law.** THIS NOTE, AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS NOTE, WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

* * *

To request a copy of the Indenture, which the Company will provide to any Holder at no charge, please send a written request to the following address:

ProPetro Holding Corp.
One Marienfeld Place, 110 N. Marienfeld Street, Suite 300
Midland, Texas 79701
Attention: Chief Financial Officer

SCHEDULE OF EXCHANGES OF INTERESTS IN THE GLOBAL NOTE*

INITIAL PRINCIPAL AMOUNT OF THIS GLOBAL NOTE: \$[_____]

The following exchanges, transfers or cancellations of this Global Note have been made:

[illegible]

* Insert for Global Notes only.

CONVERSION NOTICE

PROPETRO HOLDING CORP.

0.00% Convertible Senior Notes due 2031

Subject to the terms of the Indenture, by executing and delivering this Conversion Notice, the undersigned Holder of the Note identified below directs the Company to Convert (check one):

☐ the entire principal amount of

☐ \$_____ * aggregate principal amount of

the Note identified by CUSIP No. _____ and Certificate No. _____.

Date: _____

(Legal Name of Holder)

By: _____

Name:

Title:

Signature Guaranteed:

Participant in a Recognized Signature
Guarantee Medallion Program

By: _____

Authorized Signatory

* Must be an Authorized Denomination.

FUNDAMENTAL CHANGE REPURCHASE NOTICE

PROPETRO HOLDING CORP.

0.00% Convertible Senior Notes due 2031

Subject to the terms of the Indenture, by executing and delivering this Fundamental Change Repurchase Notice, the undersigned Holder of the Note identified below is exercising its Fundamental Change Repurchase Right with respect to (check one):

☐ the entire principal amount of

☐ \$_____ * aggregate principal amount of

the Note identified by CUSIP No. _____ and Certificate No. _____.

The undersigned acknowledges that this Note, duly endorsed for transfer, must be delivered to the Paying Agent before the Fundamental Change Repurchase Price will be paid.

Date: _____ (Legal Name of Holder)

By: _____
Name:
Title:

Signature Guaranteed:

Participant in a Recognized Signature
Guarantee Medallion Program

By: _____
Authorized Signatory

* Must be an Authorized Denomination.

ASSIGNMENT FORM

PROPETRO HOLDING CORP.

0.00% Convertible Senior Notes due 2031

Subject to the terms of the Indenture, the undersigned Holder of the Note identified below assigns (check one):

- ☐ the entire principal amount of
- ☐ \$_____ * aggregate principal amount of

the Note identified by CUSIP No. _____ and Certificate No. _____, and all rights thereunder, to:

Name: _____

Address: _____

Social security or tax id. #: _____

and irrevocably appoints: _____

as agent to transfer the within Note on the books of the Company. The agent may substitute another to act for him/her.

Date: _____ (Legal Name of Holder)

By: _____
Name:
Title:

Signature Guaranteed:

Participant in a Recognized Signature
Guarantee Medallion Program

By: _____
Authorized Signatory

* Must be an Authorized Denomination.

TRANSFEROR ACKNOWLEDGMENT

If the within Note bears a Restricted Note Legend, the undersigned further certifies that (check one):

1. o Such Transfer is being made to the Company or a Subsidiary of the Company.
2. o Such Transfer is being made pursuant to, and in accordance with, a registration statement that is effective under the Securities Act at the time of the Transfer.
3. o Such Transfer is being made pursuant to, and in accordance with, Rule 144A under the Securities Act, and, accordingly, the undersigned further certifies that the within Note is being transferred to a Person that the undersigned reasonably believes is purchasing the within Note for its own account, or for one or more accounts with respect to which such Person exercises sole investment discretion, and such Person and each such account is a Person reasonably believed to be a “qualified institutional buyer” within the meaning of Rule 144A under the Securities Act in a transaction meeting the requirements of Rule 144A. **If this item is checked, then the transferee must complete and execute the acknowledgment contained on the next page.**
4. o Such Transfer is being made pursuant to, and in accordance with, any other available exemption from the registration requirements of the Securities Act (including, if available, the exemption provided by Rule 144 under the Securities Act).

Dated: _____

(Legal Name of Holder)

By: _____
Name:
Title:

Signature Guaranteed:

(Participant in a Recognized Signature
Guarantee Medallion Program)

By: _____
Authorized Signatory

TRANSFeree ACKNOWLEDGMENT

The undersigned represents that it is purchasing the within Note for its own account, or for one or more accounts with respect to which the undersigned exercises sole investment discretion, and that and the undersigned and each such account is a “qualified institutional buyer” within the meaning of Rule 144A under the Securities Act. The undersigned acknowledges that the transferor is relying, in transferring the within Note, on the exemption from the registration and prospectus-delivery requirements of the Securities Act of 1933, as amended, provided by Rule 144A and that the undersigned has received such information regarding the Company as the undersigned has requested pursuant to Rule 144A.

Dated: _____

(Name of Transferee)

By: _____

Name:

Title:

FORM OF RESTRICTED NOTE LEGEND

THE OFFER AND SALE OF THIS NOTE AND THE SHARES OF COMMON STOCK, IF ANY, ISSUABLE UPON CONVERSION OF THIS NOTE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND THIS NOTE MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED EXCEPT IN ACCORDANCE WITH THE FOLLOWING SENTENCE. BY ITS ACQUISITION HEREOF OR OF A BENEFICIAL INTEREST HEREIN, THE ACQUIRER:

- (1) REPRESENTS THAT IT AND ANY ACCOUNT FOR WHICH IT IS ACTING IS A "QUALIFIED INSTITUTIONAL BUYER" (WITHIN THE MEANING OF RULE 144A UNDER THE SECURITIES ACT) AND THAT IT EXERCISES SOLE INVESTMENT DISCRETION WITH RESPECT TO EACH SUCH ACCOUNT; AND
- (2) AGREES FOR THE BENEFIT OF THE COMPANY THAT IT WILL NOT OFFER, SELL OR OTHERWISE TRANSFER THIS NOTE OR ANY BENEFICIAL INTEREST HEREIN, EXCEPT ONLY:
 - (A) TO THE COMPANY OR ANY SUBSIDIARY THEREOF;
 - (B) PURSUANT TO A REGISTRATION STATEMENT THAT IS EFFECTIVE UNDER THE SECURITIES ACT;
 - (C) TO A PERSON REASONABLY BELIEVED TO BE A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT;
 - (D) PURSUANT TO RULE 144 UNDER THE SECURITIES ACT; OR
 - (E) PURSUANT TO ANY OTHER EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

BEFORE THE REGISTRATION OF ANY SALE OR TRANSFER IN ACCORDANCE WITH (2)(C), (D) OR (E) ABOVE, THE COMPANY, THE TRUSTEE AND THE REGISTRAR RESERVE THE RIGHT TO REQUIRE THE DELIVERY OF SUCH CERTIFICATES OR OTHER DOCUMENTATION OR EVIDENCE AS THEY MAY REASONABLY REQUIRE IN ORDER TO DETERMINE THAT THE PROPOSED SALE OR TRANSFER IS BEING MADE IN COMPLIANCE WITH THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS.*

* This paragraph and the immediately preceding paragraph will be deemed to be removed from the face of this Note at such time when the Company delivers written notice to the Trustee of such deemed removal pursuant to Section 2.12 of the within-mentioned Indenture.

FORM OF GLOBAL NOTE LEGEND

THIS IS A GLOBAL NOTE WITHIN THE MEANING OF THE INDENTURE HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF THE DEPOSITARY OR A NOMINEE OF THE DEPOSITARY, WHICH MAY BE TREATED BY THE COMPANY, THE TRUSTEE AND ANY AGENT THEREOF AS THE OWNER AND HOLDER OF THIS NOTE FOR ALL PURPOSES.

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY ("DTC") TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT HEREON IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL SINCE THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

TRANSFERS OF THIS GLOBAL NOTE WILL BE LIMITED TO TRANSFERS IN WHOLE, BUT NOT IN PART, TO NOMINEES OF DTC, OR TO A SUCCESSOR THEREOF OR SUCH SUCCESSOR'S NOMINEE, AND TRANSFERS OF PORTIONS OF THIS GLOBAL NOTE WILL BE LIMITED TO TRANSFERS MADE IN ACCORDANCE WITH THE RESTRICTIONS SET FORTH IN ARTICLE 2 OF THE INDENTURE HEREINAFTER REFERRED TO.

FORM OF NON-AFFILIATE LEGEND

NO AFFILIATE (AS DEFINED IN RULE 144 UNDER THE SECURITIES ACT OF 1933, AS AMENDED) OF THE COMPANY MAY PURCHASE OR OTHERWISE ACQUIRE THIS NOTE OR ANY BENEFICIAL INTEREST HEREIN.

[Insert Dealer Name]
[Insert Dealer Address]

DATE: [____], 2026

TO: ProPetro Holding Corp.
One Marienfeld Place, 110 N. Marienfeld Street, Suite 300
Midland, Texas 79701

FROM: [Insert Dealer Name]

SUBJECT: [Base][Additional] Call Option Transaction

The purpose of this letter agreement (this “**Confirmation**”) is to confirm the terms and conditions of the call option transaction entered into between [Dealer] (“**Dealer**”) and ProPetro Holding Corp. (“**Counterparty**”) as of the Trade Date specified below (the “**Transaction**”). This letter agreement constitutes a “Confirmation” as referred to in the ISDA Master Agreement specified below. Each party further agrees that this Confirmation together with the Agreement evidence a complete binding agreement between Counterparty and Dealer as to the subject matter and terms of the Transaction to which this Confirmation relates, and shall supersede all prior or contemporaneous written or oral communications with respect thereto.

The definitions and provisions contained in the 2002 ISDA Equity Derivatives Definitions (the “**Equity Definitions**”), as published by the International Swaps and Derivatives Association, Inc. (“**ISDA**”), are incorporated into this Confirmation. In the event of any inconsistency between the Equity Definitions and this Confirmation, this Confirmation shall govern. Certain defined terms used herein are based on terms that are defined in the Offering Memorandum dated [____], 2026 (the “**Offering Memorandum**”) relating to the [____]% Convertible Senior Notes due 2031 (as originally issued by Counterparty, the “**Convertible Notes**” and each USD 1,000 principal amount of Convertible Notes, a “**Convertible Note**”) issued by Counterparty in an aggregate initial principal amount of USD [____] (as increased by [up to]¹ an additional aggregate principal amount of USD [____] [if and to the extent that]² [pursuant to the exercise by]³ the Initial Purchasers (as defined herein) [exercise]⁴[of]⁵ their option to purchase additional Convertible Notes pursuant to the Purchase Agreement (as defined herein)) pursuant to an Indenture [to be]⁶ dated [____], 2026 between Counterparty and U.S. Bank Trust Company, National Association, as trustee (the “**Indenture**”). In the event of any inconsistency between the terms defined in the Offering Memorandum, the Indenture and this Confirmation, this Confirmation shall govern. The parties acknowledge that this Confirmation is entered into on the date hereof with the understanding that (i) definitions set forth in the Indenture that are also defined herein by reference to the Indenture and (ii) sections of the Indenture that are referred to herein, in each case, will conform to the descriptions thereof in the Offering Memorandum. If any such definitions in the Indenture or any such sections of the Indenture differ from the descriptions thereof in the Offering Memorandum, the descriptions thereof in the Offering Memorandum will govern for purposes of this Confirmation. The parties further acknowledge that the Indenture section numbers used herein are based on the [draft of the Indenture last reviewed by Dealer as of the date of this Confirmation, and if any such section numbers are changed in the Indenture as executed, the parties will amend this Confirmation in good faith to preserve the intent of the parties]⁷[Indenture as executed]⁸. Subject to the foregoing, references to the Indenture herein are references to the Indenture as in effect on the date of its execution, and if the Indenture is amended or supplemented following such date, any such amendment or supplement (other than any amendment or supplement (x) pursuant to Section [8.01(I)]⁹ of the Indenture that, as determined by the Calculation Agent, conforms the Indenture to the description of the Convertible Notes in the Offering Memorandum or (y) pursuant to Section [5.09]¹⁰ of the Indenture, subject, in the case of this clause (y), to the second paragraph under “Method of Adjustment” in Section 3 below) will be disregarded for purposes of this Confirmation unless the parties agree otherwise in writing. For purposes of the Equity Definitions, the Transaction shall be deemed to be a Share Option Transaction.

¹ Include in the Base Call Option Confirmation.

² Include in the Base Call Option Confirmation.

³ Include in the Additional Call Option Confirmation.

⁴ Include in the Base Call Option Confirmation.

⁵ Include in the Additional Call Option Confirmation.

⁶ Insert if Indenture is not completed at the time of the Confirmation.

⁷ Include in the Base Call Option Confirmation. Include in the Additional Call Option Confirmation if it is executed before closing of the base deal.

⁸ Include in the Additional Call Option Confirmation, but only if the Additional Call Option Confirmation is executed after closing of the base deal.

⁹ Include cross-reference to Indenture section permitting amendments without holder consent to conform the Indenture to the Description of Notes.

¹⁰ Include cross-reference to Indenture section governing common stock change events.

Each party is hereby advised, and each such party acknowledges, that the other party has engaged in, or refrained from engaging in, substantial financial transactions and has taken other material actions in reliance upon the parties' entry into the Transaction to which this Confirmation relates on the terms and conditions set forth below.

1. This Confirmation evidences a complete and binding agreement between Dealer and Counterparty as to the terms of the Transaction to which this Confirmation relates. This Confirmation shall supplement, form a part of and be subject to an agreement (the "**Agreement**") in the form of the 2002 ISDA Master Agreement as if Dealer and Counterparty had executed an agreement in such form on the date hereof (but without any Schedule except for (i) the election of U.S. Dollars ("**USD**") as the Termination Currency, (ii) the election of the laws of the State of New York as the governing law (without reference to choice of law doctrine), (iii) the modification that following the payment of the Premium on the Premium Payment Date, the condition precedent in Section 2(a)(iii) of the Agreement with respect to Events of Default or Potential Events of Default (other than an Event of Default or Potential Event of Default arising under Section 5(a)(ii), 5(a)(iv) or 5(a)(vii) of the Agreement) shall not apply to a payment or delivery owing by Dealer to Counterparty [, (iv) the election of an executed guarantee of [] ("**Guarantor**") dated as of the Trade Date in customary form as a Credit Support Document, (v) the election of Guarantor as Credit Support Provider in relation to Dealer]¹¹ and [(vi)][(iv)] the election that the "Cross-Default" provisions of Section 5(a)(vi) of the Agreement shall apply to Dealer with a "Threshold Amount" of three percent of [Dealer's][Dealer's ultimate parent's] shareholders' equity; *provided* that (A) "Specified Indebtedness" shall not include obligations in respect of deposits received in the ordinary course of Dealer's banking business, (B) the phrase "or becoming capable at such time of being declared" shall be deleted from clause (1) of such Section 5(a)(vi), (C) the following language shall be added to the end thereof: "Notwithstanding the foregoing, a default under subsection (2) hereof shall not constitute an Event of Default if (x) the default was caused solely by error or omission of an administrative or operational nature; (y) funds were available to enable the party to make the payment when due; and (z) the payment is made within two Local Business Days of such party's receipt of written notice of its failure to pay."). In the event of any inconsistency between provisions of the Agreement and this Confirmation, this Confirmation will prevail for the purpose of the Transaction to which this Confirmation relates. The parties hereby agree that no transaction other than the Transaction to which this Confirmation relates shall be governed by the Agreement.

2. The terms of the particular Transaction to which this Confirmation relates are as follows:

General Terms.

Trade Date:	[],2026
Effective Date:	The Premium Payment Date (it being understood, for the avoidance of doubt, that Section 9(u) of this Confirmation shall be effective as of the Trade Date).
Option Style:	"Modified American", as described opposite the caption "Procedures for Exercise" below.
Option Type:	Call
Buyer:	Counterparty
Seller:	
Dealer:	

¹¹ To be included for Dealers without a long-term debt rating (to be ultimate parent if applicable).

Shares: The common stock of Counterparty, USD 0.001 par value per share (Exchange symbol "PUMP").

Number of Options: []¹². For the avoidance of doubt, the Number of Options shall be reduced by any Options exercised or deemed exercised by Counterparty. In no event will the Number of Options be less than zero.

Applicable Percentage: []¹³%

Option Entitlement: A number equal to the product of the Applicable Percentage and []¹⁴.

Strike Price: USD []

Cap Price: USD []

Premium: USD []

Premium Payment Date: [], 2026

Exchange: The New York Stock Exchange

Related Exchange(s): All Exchanges

Excluded Provisions: Section [5.06(A)]¹⁵ and Section [5.07]¹⁶ of the Indenture.

Procedures for Exercise.

Conversion Date: With respect to any conversion of a Convertible Note (other than any conversion of Convertible Notes with a "Conversion Date" (as such term is defined in the Indenture) occurring prior to the Free Convertibility Date (any such conversion, an "**Early Conversion**"), which conversion shall be subject to the provisions set forth in Section 9(h)(i)), the date on which the "Holder" (as such term is defined in the Indenture) of such Convertible Note satisfies all of the requirements for conversion thereof as set forth in Section [5.02(A)]¹⁷ of the Indenture; provided that if Counterparty has not delivered to Dealer a related Notice of Exercise, then in no event shall a Conversion Date be deemed to occur hereunder (and no Option shall be exercised or deemed to be exercised hereunder) with respect to any surrender of a Convertible Note for conversion in respect of which Counterparty has elected to designate a financial institution for exchange in lieu of conversion of such Convertible Note pursuant to Section [5.08]¹⁸ of the Indenture.

Free Convertibility Date: August 15, 2031

¹² For the Base Call Option Confirmation, this is equal to the number of Convertible Notes in principal amount of USD 1,000 initially issued on the closing date for the Convertible Notes. For the Additional Call Option Confirmation, this is equal to the number of additional Convertible Notes in principal amount of USD 1,000.

¹³ To be the relevant percentage for each Dealer.

¹⁴ Insert the initial Conversion Rate for the Convertible Notes.

¹⁵ Include cross-reference to Indenture section(s) containing discretionary adjustments to the Conversion Rate by Counterparty.

¹⁶ Include cross-reference to Indenture section(s) governing make-whole adjustments to the Conversion Rate.

¹⁷ Include cross-reference to Indenture section(s) setting forth the requirements for conversion of the Convertible Notes.

¹⁸ Include cross-reference to section of the Indenture containing provisions for exchange in lieu of conversion.

Expiration Time: The Valuation Time

Expiration Date: November 15, 2031, subject to earlier exercise.

Multiple Exercise: Applicable, as described opposite the captions “Automatic Exercise” and “Automatic Exercise of Remaining Repayment Options After Free Convertibility Date” below.

Automatic Exercise: Notwithstanding Section 3.4 of the Equity Definitions, on each Conversion Date occurring on or after the Free Convertibility Date, in respect of which a “Notice of Conversion” (as such term is defined in the Indenture) that is effective as to Counterparty has been delivered by the relevant converting “Holder” (as such term is defined in the Indenture), a number of Options equal to [(i)] the number of Convertible Notes in denominations of USD 1,000 as to which such Conversion Date has occurred[, minus (ii) the number of Options that are or are deemed to be automatically exercised on such Conversion Date under the Base Call Option Transaction Confirmation letter agreement dated [____], 2026 between Dealer and Counterparty (the “**Base Call Option Confirmation**”),]¹⁹ shall be deemed to be automatically exercised; provided that such Options shall be exercised or deemed exercised only if Counterparty has provided a Notice of Exercise to Dealer in accordance with “Notice of Exercise” below.

Notwithstanding the foregoing, in no event shall the aggregate number of Options that are exercised or deemed exercised hereunder exceed the Number of Options.

Automatic Exercise of Remaining Repayment Options After Free Convertibility Date:

Notwithstanding anything herein or in Section 3.4 of the Equity Definitions to the contrary, unless Counterparty notifies Dealer in writing prior to 5:00 p.m. (New York City time) on the Scheduled Valid Day immediately preceding the Expiration Date that it does not wish automatic exercise to occur with respect to any Remaining Repayment Options (as defined below), a number of Options equal to the lesser of (a) the Number of Options (after giving effect to the provisions opposite the caption “Automatic Exercise” above) as of 9:00 a.m. (New York City time) on the Expiration Date and (b) the Remaining Repayment Options [minus the number of “Remaining Options” (as defined in the Base Call Option Confirmation)]²⁰ (such lesser number, the “**Remaining Options**”) will be deemed to be automatically exercised as if (i) a number of Convertible Notes (in denominations of USD 1,000 principal amount) equal to such number of Remaining Options were outstanding under the Indenture and were converted with a “Conversion Date” (as defined in the Indenture) occurring on or after the Free Convertibility Date and (ii) the Notice of Final Settlement Method, if any, applied to such Convertible Notes; *provided* that no such automatic exercise pursuant to this paragraph will occur if the Relevant Price for each Valid Day during the Settlement Averaging Period is less than or equal to the Strike Price. “**Remaining Repayment Options**” shall mean the excess of (I) the number of Options corresponding to the aggregate number of Convertible Notes (in denominations of USD 1,000 principal amount) that were subject to Repayment Events (as defined in Section 9(h)(ii) below) (other than Repayment Events that result directly from a “Fundamental Change” (as defined in the Indenture) or an “Optional Redemption” (as defined in the Indenture)) (“**Repurchase Events**”) during the term of the Transaction over (II) the aggregate number of Repayment Options (as defined below) that were terminated hereunder pursuant to Section 9(h)(ii) relating to Repurchase Events during the term of the Transaction [*plus* the aggregate number of “Repayment Options” (as defined in the Base Call Option Confirmation) terminated under the Base Call Option Confirmation relating to “Repurchase Events” (as defined therein) during the term of the “Transaction” under the Base Call Option Confirmation]²¹. Counterparty shall notify Dealer in writing of the number of Remaining Repayment Options before 5:00 p.m. (New York City time) on the Scheduled Valid Day immediately preceding the Expiration Date.

¹⁹ Include for Additional Call Option Confirmation only.

²⁰ Include in the Additional Call Option Confirmation.

²¹ Include in the Additional Call Option Confirmation.

Notice of Exercise:

Notwithstanding anything to the contrary in the Equity Definitions or opposite the caption “Automatic Exercise” above, but subject to “Automatic Exercise of Remaining Repayment Options After Free Convertibility Date” above, in order to exercise any Options, Counterparty must notify Dealer in writing on or prior to 5:00 p.m. (New York City time) on the second Scheduled Valid Day immediately preceding the Expiration Date of the number of such Options; *provided* that, notwithstanding the foregoing, such notice (and the related exercise of Options hereunder) shall be effective if given after the applicable notice deadline specified above but prior to 5:00 p.m. (New York City time) on the fifth Exchange Business Day following such notice deadline, in which event the Calculation Agent shall have the right to adjust Dealer’s delivery obligation hereunder and the Settlement Date in good faith and in a commercially reasonable manner, with respect to the exercise of such Options, as appropriate to reflect the additional commercially reasonable costs and losses (limited to losses as a result of hedging mismatches and market losses) and expenses incurred by Dealer or any of its affiliates in connection with its hedging activities as a result of its not having received such notice prior to such notice deadline (it being understood that the adjusted delivery obligation described in the preceding proviso can never be less than zero and can never require any payment by Counterparty); *provided further* that, if the Relevant Settlement Method for such Options is (x) Net Share Settlement and the Specified Cash Amount is not USD 1,000, (y) Cash Settlement or (z) Combination Settlement, Dealer shall have received a separate written notice (the “**Notice of Final Settlement Method**”) on or prior to 5:00 p.m. (New York City time) on the Scheduled Valid Day immediately preceding the Free Convertibility Date specifying (1) the Relevant Settlement Method for such Options and (2) if the settlement method for the related Convertible Notes is not “Settlement in Shares” or “Settlement in Cash” (each as defined below), the fixed amount of cash per Convertible Note that Counterparty has elected to pay to “Holders” (as such term is defined in the Indenture) of the related Convertible Notes (the “**Specified Cash Amount**”). Counterparty acknowledges its responsibilities under applicable securities laws, and in particular Section 9 and Section 10(b) of the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”), and the rules and regulations thereunder, in respect of any election of a settlement method with respect to the Convertible Notes. For the avoidance of doubt, if the relevant “Conversion Date” (as such term is defined in the Indenture) for any Convertible Notes occurs prior to the Free Convertibility Date, no Options shall be subject to exercise in connection with such Early Conversion, and such conversion shall be subject to the provisions set forth in Section 9(h)(i).

Valuation Time:	At the close of trading of the regular trading session on the Exchange; <i>provided</i> that if the principal trading session is extended, the Calculation Agent shall determine the Valuation Time in its reasonable discretion.
VWAP Market Disruption Event:	[With respect to any date, (i) a failure by the principal U.S. national or regional securities exchange on which the Shares are then listed or, if the Shares are not then listed on a U.S. national or regional securities exchange, the principal other market on which the Shares are then traded, to open for trading during its regular trading session on such date; or (ii) the occurrence or existence, for more than one half hour period in the aggregate, of any suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the relevant exchange or otherwise) in the Shares or in any options contracts or futures contracts relating to the Shares, and such suspension or limitation occurs or exists at any time before 1:00 p.m., New York City time, on such date] ²² .
Market Disruption Event:	Section 6.3(a) of the Equity Definitions is hereby replaced in its entirety by the following: [“Market Disruption Event’ means, with respect to any date, the occurrence or existence, during the one-half hour period ending at the scheduled close of trading on such date on the principal U.S. national or regional securities exchange or other market on which the Shares are listed for trading or trade, of any material suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the relevant exchange or otherwise) in the Shares or in any options contracts or futures contracts relating to the Shares.”] ²³

²² To conform to the definition of “VWAP market disruption event” in the description of notes.

²³ To conform to the definition of market disruption event in the description of notes.

Settlement Terms.

Settlement Method:

For any Option, Net Share Settlement; *provided* that if the Relevant Settlement Method set forth below for such Option is not Net Share Settlement, then the Settlement Method for such Option shall be such Relevant Settlement Method, but only if Counterparty shall have notified Dealer of the Relevant Settlement Method in the Notice of Final Settlement Method for such Option.

Relevant Settlement Method:

In respect of any Option:

(i) if Counterparty has elected (or is deemed to have elected) to settle its conversion obligations in respect of the related Convertible Note (A) entirely in Shares pursuant to Section [5.03(B)(i)(1)]²⁴ of the Indenture (together with cash in lieu of fractional Shares) (such settlement method, “**Settlement in Shares**”), (B) in a combination of cash and Shares pursuant to Section [5.03(B)(i)(3)]²⁵ of the Indenture with a Specified Cash Amount less than USD 1,000 (such settlement method, “**Low Cash Combination Settlement**”) or (C) in a combination of cash and Shares pursuant to Section [5.03(B)(i)(3)]²⁶ of the Indenture with a Specified Cash Amount equal to USD 1,000, then, in each case, the Relevant Settlement Method for such Option shall be Net Share Settlement;]

(ii) if Counterparty has elected to settle its conversion obligations in respect of the related Convertible Note in a combination of cash and Shares pursuant to Section [5.03(B)(i)(3)]²⁷ of the Indenture with a Specified Cash Amount greater than USD 1,000, then the Relevant Settlement Method for such Option shall be Combination Settlement; and

(iii) if Counterparty has elected to settle its conversion obligations in respect of the related Convertible Note entirely in cash pursuant to [5.03(B)(i)(2)]²⁸ of the Indenture (such settlement method, “**Settlement in Cash**”), then the Relevant Settlement Method for such Option shall be Cash Settlement.

Net Share Settlement:

If Net Share Settlement is applicable to any Option exercised or deemed exercised hereunder, Dealer will deliver to Counterparty, on the relevant Settlement Date for each such Option, a number of Shares (the “**Net Share Settlement Amount**”) equal to the sum, for each Valid Day during the Settlement Averaging Period for each such Option, of (i) (a) the Daily Option Value for such Valid Day, *divided by* (b) the Relevant Price on such Valid Day, *divided by* (ii) the number of Valid Days in the Settlement Averaging Period; *provided* that in no event shall the Net Share Settlement Amount for any Option exceed a number of Shares equal to the Applicable Limit for such Option, *divided by* the Applicable Limit Price on the Settlement Date for such Option.

²⁴ Include cross-reference to section of the Indenture containing provisions for full physical settlement of the Convertible Notes.

²⁵ Include cross-reference to section of the Indenture containing provisions for combination settlement of the Convertible Notes.

²⁶ Include cross-reference to section of the Indenture containing provisions for combination settlement of the Convertible Notes.

²⁷ Include cross-reference to section of the Indenture containing provisions for combination settlement of the Convertible Notes.

²⁸ Include cross-reference to section of the Indenture containing provisions for cash settlement of the Convertible Notes.

Dealer will pay cash in lieu of delivering any fractional Shares to be delivered with respect to any Net Share Settlement Amount valued at the Relevant Price for the last Valid Day of the Settlement Averaging Period.

Combination Settlement:

If Combination Settlement is applicable to any Option exercised or deemed exercised hereunder, Dealer will pay or deliver, as the case may be, to Counterparty, on the relevant Settlement Date for each such Option:

(i) an amount of cash (the “**Combination Settlement Cash Amount**”) equal to the sum, for each Valid Day during the Settlement Averaging Period for such Option, of (A) an amount (the “**Daily Combination Settlement Cash Amount**”) equal to the lesser of (1) the product of (x) the Applicable Percentage and (y) the Specified Cash Amount, *minus* USD 1,000 and (2) the Daily Option Value, *divided by* (B) the number of Valid Days in the Settlement Averaging Period; *provided* that if the calculation in clause (A) above results in zero or a negative number for any Valid Day, the Daily Combination Settlement Cash Amount for such Valid Day shall be deemed to be zero; and

(ii) a number of Shares (the “**Combination Settlement Share Amount**”) equal to the sum, for each Valid Day during the Settlement Averaging Period for such Option, of a number of Shares for such Valid Day (the “**Daily Combination Settlement Share Amount**”) equal to (A) (1) the Daily Option Value on such Valid Day *minus* the Daily Combination Settlement Cash Amount for such Valid Day, *divided by* (2) the Relevant Price on such Valid Day, *divided by* (B) the number of Valid Days in the Settlement Averaging Period; *provided* that if the calculation in sub-clause (A) (1) above results in zero or a negative number for any Valid Day, the Daily Combination Settlement Share Amount for such Valid Day shall be deemed to be zero; *provided* that in no event shall the sum of (x) the Combination Settlement Cash Amount for any Option and (y) the Combination Settlement Share Amount for such Option, *multiplied by* the Applicable Limit Price on the Settlement Date for such Option exceed the Applicable Limit for such Option.

Dealer will pay cash in lieu of delivering any fractional Shares to be delivered with respect to any Combination Settlement Share Amount valued at the Relevant Price for the last Valid Day of the Settlement Averaging Period.

Cash Settlement:

If Cash Settlement is applicable to any Option exercised or deemed exercised hereunder, in lieu of Section 8.1 of the Equity Definitions, Dealer will pay to Counterparty, on the relevant Settlement Date for each such Option, an amount of cash (the “**Cash Settlement Amount**”) equal to the sum, for each Valid Day during the Settlement Averaging Period for such Option, of (i) the Daily Option Value for such Valid Day, *divided by* (ii) the number of Valid Days in the Settlement Averaging Period; *provided* that, in no event shall the Cash Settlement Amount for any Option exceed the Applicable Limit for such Option.

Daily Option Value:	For any Valid Day, an amount equal to (i) the Option Entitlement on such Valid Day, <i>multiplied by</i> (ii) (A) the lesser of the Relevant Price on such Valid Day and the Cap Price, <i>minus</i> (B) the Strike Price on such Valid Day; <i>provided</i> that if the calculation contained in clause (ii) above results in a negative number, the Daily Option Value for such Valid Day shall be deemed to be zero. In no event will the Daily Option Value be less than zero.
Applicable Limit:	For any Option, an amount of cash equal to the Applicable Percentage <i>multiplied by</i> the excess of (i) the aggregate of (A) the amount of cash, if any, paid to the “Holder” (as defined in the Indenture) of the related Convertible Note upon conversion of such Convertible Note and (B) the number of Shares, if any, delivered to the “Holder” (as defined in the Indenture) of the related Convertible Note upon conversion of such Convertible Note, <i>multiplied by</i> the Applicable Limit Price on the Settlement Date for such Option, over (ii) USD 1,000. Counterparty shall notify Dealer (which notice may, for the avoidance of doubt, be by e-mail) of such amount of cash, if any, and number of Shares, if any, prior to the Settlement Date.
Applicable Limit Price:	On any day, the opening price as displayed under the heading “Op” on Bloomberg page PUMP <equity> (or any successor thereto).
Valid Day:	[A day on which (i) there is no VWAP Market Disruption Event and (ii) trading in the Shares generally occurs on the principal U.S. national or regional securities exchange on which the Shares are then listed or, if the Shares are not then listed on a U.S. national or regional securities exchange, on the principal other market on which the Shares are then traded. If the Shares are not so listed or traded, then a “Valid Day” means a Business Day.] ²⁹
Scheduled Valid Day:	[A day that is scheduled to be a Valid Trading Day on the principal U.S. national or regional securities exchange on which the Shares are then listed or, if the Shares are not then listed on a U.S. national or regional securities exchange, on the principal other market on which the Shares are then traded. If the Shares are not so listed or traded, a “Scheduled Valid Day” means a Business Day] ³⁰ .
Valid Trading Day:	[Any day on which (i) trading in the Shares generally occurs on the principal U.S. national or regional securities exchange on which the Shares are then listed or, if the Shares are not then listed on a U.S. national or regional securities exchange, on the principal other market on which the Shares are then traded; and (ii) there is no Market Disruption Event. If the Shares not so listed or traded, then “Valid Trading Day” means a Business Day.] ³¹

²⁹ To conform to the definition of “VWAP trading day” in the description of notes.

³⁰ To conform to the definition of “scheduled trading day” in the description of notes.

³¹ To conform to the definition of “trading day” in the description of notes.

Business Day:	[Any day other than a Saturday, a Sunday or any day on which the Federal Reserve Bank of New York is authorized or required by law or executive order to close or be closed.] ³²
Relevant Price:	[On any Valid Day, the per Share volume-weighted average price of the Shares as displayed under the heading “Bloomberg VWAP” on Bloomberg page “PUMP <equity> AQR” (or if such page is not available, its equivalent successor page) in respect of the period from the scheduled open of trading until the scheduled close of trading of the primary trading session on such Valid Day (or if such volume-weighted average price is unavailable at such time, the market value of one Share on such Valid Day, as determined by the Calculation Agent in a commercially reasonable manner using, if practicable, a volume-weighted average method). The Relevant Price will be determined without regard to after-hours trading or any other trading outside of the regular trading session.] ³³
Settlement Averaging Period:	For any Option, the 45 consecutive Valid Days commencing on, and including, the 46 th Scheduled Valid Day immediately prior to the Expiration Date.
Settlement Date:	For any Option, the second Business Day immediately following the last Valid Day of the Settlement Averaging Period for such Option.
Settlement Currency:	USD
Other Applicable Provisions:	The provisions of Sections 9.1(c), 9.8, 9.9 and 9.11 of the Equity Definitions will be applicable, except that all references in such provisions to “Physically-settled” shall be read as references to “Share Settled”. “Share Settled” in relation to any Option means that Net Share Settlement or Combination Settlement is applicable to that Option.
Representation and Agreement:	Notwithstanding Section 9.11 of the Equity Definitions, the parties acknowledge that any Shares delivered to Counterparty may be, upon delivery, subject to restrictions and limitations arising from Counterparty’s status as issuer of the Shares under applicable securities laws.

3. **Additional Terms applicable to the Transaction.**

Adjustments applicable to the Transaction:

Potential Adjustment Events:	Notwithstanding Section 11.2(e) of the Equity Definitions, a “Potential Adjustment Event” means an occurrence of any event or condition, as set forth in any Dilution Adjustment Provision, that would result in an adjustment under the Indenture to the “Conversion Rate” or the composition of a “Reference Property Unit” or to any “Last Reported Sale Price,” “Daily VWAP,” “Daily Conversion Value,” “Daily Share Amount” or “Daily Cash Amount” (each such term as defined in the Indenture). For the avoidance of doubt, Dealer shall not have any delivery or payment obligation hereunder and no adjustment shall be made to the terms of the Transaction, on account of (x) any distribution of cash, property or securities by Counterparty to “Holders” (as defined in the Indenture) of the Convertible Notes (upon conversion or otherwise) or (y) any other transaction in which “Holders” (as such term is defined in the Indenture) of the Convertible Notes are entitled to participate, in each case, in lieu of an adjustment under the Indenture of the type referred to in the immediately preceding sentence (including, without limitation, pursuant to the <i>proviso</i> in the first paragraph of Section 5.05(A)(iii)(1) ³⁴ of the Indenture or the <i>proviso</i> in the first paragraph of Section 5.05(A)(iv)] ³⁵ of the Indenture).

³² To conform to the definition of “business day” in the description of notes.

³³ To conform to the definition of “daily vwap” in the description of notes.

³⁴ Include cross-reference to provision in the Indenture for pass-through of distributed property, at the same time as it is received by holders of the Shares, in lieu of a Conversion Rate adjustment.

³⁵ Include cross-reference to provision in the Indenture for pass-through of cash, at the same time as it is received by holders of the Shares, in lieu of a Conversion Rate adjustment.

Method of Adjustment:

Calculation Agent Adjustment, which means that, notwithstanding Section 11.2(c) of the Equity Definitions, upon any Potential Adjustment Event, the Calculation Agent acting in a commercially reasonable manner shall make an adjustment corresponding to the adjustment to be made pursuant to the Indenture to any one or more of the Strike Price, Number of Options, Option Entitlement, Relevant Price or other applicable price with respect to the Shares and/or composition of the “Shares” hereunder.

Notwithstanding the foregoing and “Consequences of Merger Events / Tender Offers” below:

- (i) if the Calculation Agent, acting in good faith and a commercially reasonable manner, disagrees with any adjustment to the Convertible Notes that involves an exercise of discretion by Counterparty or its board of directors (including, without limitation, pursuant to Section 5.05(H)]³⁶ of the Indenture, Section [5.09]³⁷ of the Indenture or any supplemental indenture entered into thereunder or in connection with any proportional adjustment or the determination of the fair value of any securities, property, rights or other assets), then in each such case, the Calculation Agent will determine an adjustment to be made to any one or more of the Strike Price, Number of Options, Option Entitlement, Relevant Price or other applicable price with respect to the Shares and/or composition of the “Shares” hereunder in a commercially reasonable manner; *provided* that, notwithstanding the foregoing, if any Potential Adjustment Event occurs during the Settlement Averaging Period but no adjustment was made to any Convertible Note under the Indenture because the relevant “Holder” (as such term is defined in the Indenture) was deemed to be a record owner of the underlying Shares on the related “Conversion Date” (as such term is defined in the Indenture), then the Calculation Agent shall make an adjustment, as determined by it, to the terms hereof in order to account for such Potential Adjustment Event in a commercially reasonable manner;

³⁶ Include cross-reference to Indenture section providing for adjustments where a Conversion Rate adjustment occurs during a period over which Last Reported Sale Prices, Daily VWAPs, Daily Conversion Values, Daily Cash Amount or Daily Share Amounts are calculated.

³⁷ Include cross-reference to Indenture section relating to common stock change events.

- (ii) in connection with any Potential Adjustment Event as a result of an event or condition set forth in Section [5.05(A)(ii)]³⁸ of the Indenture or Section [5.05(A)(iii)(1)]³⁹ of the Indenture where, in either case, the period for determining “Y” (as such term is used in Section [5.05(A)(ii)]⁴⁰ of the Indenture) or “SP₀” (as such term is used in Section [5.05(A)(iii)(1)]⁴¹ of the Indenture), as the case may be, begins before Counterparty has publicly announced the event or condition giving rise to such Potential Adjustment Event, then the Calculation Agent shall have the right to adjust any variable relevant to the exercise, settlement or payment for the Transaction as appropriate to reflect the costs (including, but not limited to, hedging mismatches and market losses) and expenses incurred by Dealer in connection with its hedging activities as a result of such event or condition not having been publicly announced prior to the beginning of such period; and
- (iii) if any Potential Adjustment Event is declared and (a) the event or condition giving rise to such Potential Adjustment Event is subsequently amended, modified, cancelled or abandoned, (b) the “Conversion Rate” (as defined in the Indenture) is otherwise not adjusted at the time or in the manner contemplated by the relevant Dilution Adjustment Provision based on such declaration or (c) the “Conversion Rate” (as defined in the Indenture) is adjusted as a result of such Potential Adjustment Event and subsequently re-adjusted (each of clauses (a), (b) and (c), a “**Potential Adjustment Event Change**”) then, in each case, the Calculation Agent shall have the right to adjust any variable relevant to the exercise, settlement or payment for the Transaction as appropriate to reflect the costs (including, but not limited to, hedging mismatches and market losses) and expenses incurred by Dealer in connection with its hedging activities as a result of such Potential Adjustment Event Change.

³⁸ Include cross-reference to Indenture section providing for an adjustment to the Conversion Rate in connection with a below- market rights, options or warrants offering.

³⁹ Include cross-reference to Indenture section providing for an adjustment to the Conversion Rate in connection with distributions of distributed property.

⁴⁰ Include cross-reference to Indenture section providing for an adjustment to the Conversion Rate in connection with a below- market rights, options or warrants offering.

⁴¹ Include cross-reference to Indenture section providing for an adjustment to the Conversion Rate in connection with distributions of distributed property.

Dilution Adjustment Provisions:

Sections [5.05(A)(i), (ii), (iii), (iv) and (v)]⁴² and Section [5.05(H)]⁴³ of the Indenture.

Extraordinary Events applicable to the Transaction:

Merger Events:

Applicable; *provided* that notwithstanding Section 12.1(b) of the Equity Definitions, a “Merger Event” means the occurrence of any event or condition set forth in the definition of [“Common Stock Change Event”]⁴⁴ in Section [5.09(A)]⁴⁵ of the Indenture.

Tender Offers:

Applicable; *provided* that notwithstanding Section 12.1(d) of the Equity Definitions, a “Tender Offer” means the occurrence of any event or condition set forth in Section [5.05(A)(v)]⁴⁶ of the Indenture.

Consequences of Merger Events/Tender Offers:

Notwithstanding Section 12.2 and Section 12.3 of the Equity Definitions, upon the occurrence of a Merger Event or a Tender Offer that is required under the terms of the Indenture to result in an adjustment to the terms of the Convertible Notes, the Calculation Agent shall make a corresponding adjustment to any one or more of the nature of the Shares, Strike Price, Number of Options and Option Entitlement, in each case, to the extent an analogous adjustment would be made pursuant to the Indenture in connection with such Merger Event or Tender Offer, or to the definitions of “Exchange”, “Relevant Price” and “Settlement Averaging Period” in this Confirmation and any other variable relevant to the exercise, settlement or payment for the Transaction, subject to the second paragraph under “Method of Adjustment”; *provided* that any such adjustment shall be made without regard to any adjustment to the “Conversion Rate” (as defined in the Indenture) pursuant to any Excluded Provision. Notwithstanding the foregoing, if, with respect to a Merger Event or a Tender Offer, (i) the consideration for the Shares includes (or, at the option of a holder of Shares, may include) shares of an entity or person that is not a corporation or is not organized under the laws of the United States, any State thereof or the District of Columbia or (ii) the Counterparty to the Transaction following such Merger Event or Tender Offer will not be a corporation or will not be either (A) the Issuer following such Merger Event or Tender Offer or (B) a wholly owned subsidiary of the Issuer (1) that is a corporation organized under the laws of the United States, any State thereof or the District of Columbia, (2) whose obligations under the Transaction are fully and unconditionally guaranteed by the Issuer, (3) with respect to which the Calculation Agent determines that treating such wholly owned subsidiary as the Counterparty will not have a material adverse effect on Dealer’s rights or obligations hereunder, Dealer’s hedging activities, or the costs or expenses of engaging in any of the foregoing and (4) with respect to which Dealer determines, in its reasonable discretion, that treating such wholly owned subsidiary as the Counterparty will be in compliance with applicable legal, regulatory or self-regulatory requirements, and with related policies and procedures, applicable to Dealer, then, in either case, an Additional Termination Event may apply at Dealer’s sole reasonable election with respect to which the Transaction is the sole Affected Transaction and Counterparty is the sole Affected Party, and Dealer shall be the party entitled to designate an Early Termination Date pursuant to Section 6(b) of the Agreement and to determine the amount payable pursuant to Section 6(e) of the Agreement; *provided* that Dealer shall use good faith efforts to consult with Counterparty on a non-binding basis prior to terminating the Transaction pursuant to this sentence (it being understood that Dealer may condition such consultation on Counterparty making the representation in Section 8(f) hereof in writing as of the relevant date and Dealer shall not be obligated to consult with Counterparty if such consultation would have an adverse impact on Dealer under the Transaction) unless Dealer reasonably determines that it is impracticable or inappropriate to preserve the Transaction. For the avoidance of doubt, the foregoing provisions will apply regardless of whether any Merger Event or Tender Offer gives rise to an Early Conversion.

⁴² Include cross-references to Indenture sections containing anti-dilution adjustments to the Conversion Rate.

⁴³ Include cross-reference to Indenture section providing for adjustments where a Conversion Rate adjustment occurs during a period over which Last Reported Sale Prices, Daily VWAPs, Daily Conversion Values, Daily Cash Amount or Daily Share Amounts are calculated.

⁴⁴ Update references as needed based on terms used in the common stock change event provision of the Indenture.

⁴⁵ Include cross-reference to Indenture section describing consequences of common stock change events.

⁴⁶ Include cross-reference to Indenture section describing consequences of tender offers.

Consequences of Announcement Events:

Modified Calculation Agent Adjustment as set forth in Section 12.3(d) of the Equity Definitions; *provided* that, in respect of an Announcement Event, (v) references to “Tender Offer” shall be replaced by references to “Announcement Event” and references to “Tender Offer Date” shall be replaced by references to “date of such Announcement Event”, (w) the phrase “exercise, settlement, payment or any other terms of the Transaction (including, without limitation, the spread)” shall be replaced with the phrase “Cap Price (*provided* that in no event shall the Cap Price be less than the Strike Price)”, (x) the words “whether within a commercially reasonable period of time (as determined by the Calculation Agent) prior to or after the Announcement Event” shall be inserted prior to the word “which” in the seventh line, (y) the text beginning “Cancellation...” in the 11th line thereof through the end of the paragraph shall be deleted and replaced with “such event shall constitute an Additional Termination Event with respect to which the Transaction is the sole Affected Transaction and Counterparty is the sole Affected Party, and Dealer shall be the party entitled to designate an Early Termination Date pursuant to Section 6(b) of the Agreement and to determine the amount payable pursuant to Section 6(e) of the Agreement” and (z) for the avoidance of doubt, the Calculation Agent shall determine whether the relevant Announcement Event has had a material economic effect on the Transaction (and, if so, shall adjust the Cap Price accordingly to account for such economic effect in a commercially reasonable manner) on one or more occasions on or after the date of the Announcement Event up to, and including, the Expiration Date, any Early Termination Date and/or any other date of cancellation, it being understood that any adjustment in respect of an Announcement Event shall take into account any earlier adjustment relating to the same Announcement Event. An Announcement Event shall be an “Extraordinary Event” for purposes of the Equity Definitions, to which Article 12 of the Equity Definitions is applicable.

Announcement Event:

(i) The public announcement by Issuer, any subsidiary, affiliate or agent of Issuer, any Valid Third Party Entity or any subsidiary, agent or affiliate of a Valid Third Party Entity (each, a “**Relevant Entity**”) of (x) any transaction or event that, if completed, would constitute a Merger Event or Tender Offer, (y) any potential acquisition or disposition by Issuer and/or its subsidiaries where the aggregate consideration exceeds 40% of the market capitalization of Issuer as of the date of such announcement (a “**Transformative Transaction**”) or (z) the intention to enter into a Merger Event or Tender Offer or a Transformative Transaction, (ii) the public announcement by Issuer of an intention to solicit or enter into, or to explore strategic alternatives or other similar undertaking that may include, a Merger Event or Tender Offer or a Transformative Transaction or (iii) any subsequent public announcement by a Relevant Entity of a change to a transaction or intention that is the subject of an announcement of the type described in clause (i) or (ii) of this sentence (including, without limitation, a new announcement by a Relevant Entity relating to such a transaction or intention or the announcement of a withdrawal from, or the abandonment or discontinuation of, such a transaction or intention), as determined by the Calculation Agent. For the avoidance of doubt, the occurrence of an Announcement Event with respect to any transaction or intention shall not preclude the occurrence of a later Announcement Event with respect to such transaction or intention. For purposes of this definition of “Announcement Event,” (A) “Merger Event” shall mean such term as defined under Section 12.1(b) of the Equity Definitions (but, for the avoidance of doubt, the remainder of the definition of “Merger Event” in Section 12.1(b) of the Equity Definitions following the definition of “Reverse Merger” therein shall be disregarded) and (B) “Tender Offer” shall mean such term as defined under Section 12.1(d) of the Equity Definitions.

Valid Third Party Entity:

In respect of any transaction or event, any third party or subsidiary, agent or affiliate thereof that has a *bona fide* intent to enter into or consummate such transaction (it being understood and agreed that in determining whether such third party has such a *bona fide* intent, the Calculation Agent may take into consideration the effect of the relevant announcement by such third party on the Shares and/or options relating to the Shares).

Nationalization, Insolvency or Delisting:

Cancellation and Payment (Calculation Agent Determination); *provided* that notwithstanding Section 12.6(c)(ii) of the Equity Definitions such event shall constitute an Additional Termination Event with respect to which the Transaction is the sole Affected Transaction and Counterparty is the sole Affected Party, and Dealer shall be the party entitled to designate an Early Termination Date pursuant to Section 6(b) of the Agreement and to determine the amount payable pursuant to Section 6(e) of the Agreement; *provided further* that, in addition to the provisions of Section 12.6(a)(iii) of the Equity Definitions, it will also constitute a Delisting if the Exchange is located in the United States and the Shares are not immediately re-listed, re-traded or re-quoted on any of the New York Stock Exchange, The Nasdaq Global Select Market or The Nasdaq Global Market (or their respective successors); if the Shares are immediately re-listed, re-traded or re-quoted on any of the New York Stock Exchange, The Nasdaq Global Select Market or The Nasdaq Global Market (or their respective successors), such exchange or quotation system shall thereafter be deemed to be the Exchange.

Additional Disruption Events:

Change in Law:

Applicable; *provided* that (i) Section 12.9(a)(ii) of the Equity Definitions is hereby amended by (a) replacing the phrase “the interpretation” in the third line thereof with the phrase “, or public announcement of, the formal or informal interpretation” and (b) replacing the parenthetical beginning after the word “regulation” in the second line thereof with the words “(including, for the avoidance of doubt and without limitation, (x) any tax law or (y) adoption, effectiveness or promulgation of new regulations authorized or mandated by existing statute),” (ii) Section 12.9(a)(ii)(X) of the Equity Definitions is hereby amended by replacing the word “Shares” with the phrase “its Hedge Positions”, (iii) Section 12.9(a)(ii)(X) of the Equity Definitions is hereby amended by immediately following the word “Transaction”, adding the phrase “in the manner contemplated by the Hedging Party on the Trade Date” and (iv) adding the words “, or holding acquiring or disposing of Shares or any Hedge Positions relating to,” after the words “obligations under” in clause (Y) thereof and (v) adding the words “*provided* that, in the case of clause (Y) hereof where such determination is based on Dealer’s policies and procedures, such policies and procedures have been adopted by Dealer in good faith and are generally applicable in similar situations and applied in a non-discriminatory manner” after the semicolon in the last line thereof.

Failure to Deliver:

Applicable

Hedging Disruption:

Applicable; *provided that*:

- (i) Section 12.9(a)(v) of the Equity Definitions is hereby amended by (a) inserting the following words at the end of clause (A) thereof: “in the manner contemplated by the Hedging Party on the Trade Date” and (b) inserting the following language at the end of such Section:

“, *provided that* any such inability that occurs solely due to the deterioration of the creditworthiness of the Hedging Party shall not be deemed a Hedging Disruption. For the avoidance of doubt, the term “equity price risk” shall be deemed to include, but shall not be limited to, stock price and volatility risk. And, for the further avoidance of doubt, any such transactions or assets referred to in phrases (A) or (B) above must be available on commercially reasonable pricing terms.”; and

- (ii) Section 12.9(b)(iii) of the Equity Definitions is hereby amended by inserting in the third line thereof, after the words “to terminate the Transaction”, the words “or a portion of the Transaction affected by such Hedging Disruption”.

Increased Cost of Hedging:

Not Applicable

Hedging Party:

For all applicable Additional Disruption Events, Dealer or an affiliate of Dealer; *provided that* all calculations and determinations by the Hedging Party shall be made in good faith and in a commercially reasonable manner; *provided further that* nothing herein shall limit or alter, or be deemed to limit or alter, the ability of Dealer or an affiliate of Dealer (whether acting as Dealer, the Hedging Party, the Determining Party or the Calculation Agent) to hedge its obligations under the Transaction in a manner it deems appropriate, as determined by Dealer or an affiliate of Dealer in its sole discretion. The Hedging Party agrees that it will comply with the provisions set forth in the second paragraph under “Calculation Agent” below.

Determining Party:

For all applicable Extraordinary Events, Dealer; *provided, however,* that all calculations, adjustments and determinations by the Determining Party shall be made in good faith and in a commercially reasonable manner. Dealer agrees that it will comply with the provisions set forth in the second paragraph under “Calculation Agent” in Section 4 below in respect of any calculation, adjustment or determination it makes as Determining Party.

Acknowledgments:

Non-Reliance: Applicable

Agreements and Acknowledgments Regarding Hedging Activities: Applicable

Additional Acknowledgments: Applicable

4. **Calculation Agent.**

Dealer; *provided that*, following the occurrence and during the continuance of an Event of Default of the type described in Section 5(a)(vii) of the Agreement with respect to which Dealer is the sole Defaulting Party, Counterparty shall have the right to designate a nationally recognized independent equity derivatives dealer to replace Dealer as the Calculation Agent, and the parties shall work in good faith to execute any appropriate documentation required by such replacement Calculation Agent. All calculations, adjustments and determinations by the Calculation Agent shall be made in good faith and in a commercially reasonable manner.

Following any calculation, adjustment or determination by the Calculation Agent or Determining Party hereunder, upon a written request by Counterparty (which may be by e-mail), the Calculation Agent or Determining Party, as the case may be, shall promptly (but in any event within five (5) Exchange Business Days) provide to Counterparty by e-mail to the e-mail address provided by Counterparty in such request a report (in a commonly used file format for the storage and manipulation of financial data) displaying in reasonable detail the basis for such calculation, adjustment or determination (including any quotations, market data, information from internal or external sources or assumptions used in making such calculation, adjustment or determination), it being understood that neither the Calculation Agent nor Determining Party shall be obligated to disclose any confidential or proprietary models or other information that is confidential, proprietary or subject to contractual, legal or regulatory obligations to not disclose such information.

5. **Account Details.**

- (a) Account for payments to Counterparty: To Be Advised.

Account for delivery of Shares to Counterparty: To Be Advised.

- (b) Account for payments to Dealer (or as otherwise provided by or on behalf of Dealer):

Bank:
SWIFT:
Bank Routing:
Acct Name:
Acct No.:

Account for delivery of Shares from Dealer: To Be Advised.

6. **Offices.**

- (a) The Office of Counterparty for the Transaction is: Inapplicable, Counterparty is not a Multibranch Party.

- (b) The Office of Dealer for the Transaction is:

7. **Notices.**

- (a) Address for notices or communications to Counterparty:

To: ProPetro Holding Corp.
One Marienfeld Place, 110 N. Marienfeld Street, Suite 300
Midland, Texas 79701
Attention: []
Telephone: []
Email: jody.mitchell@propetroservices.com

With a copy to:

Vinson & Elkins LLP
845 Texas Avenue, Suite 4700
Houston, Texas 77002
Attention: []
Telephone: []
Email: []

- (b) Address for notices or communications to Dealer:

[]

8. **Representations and Warranties of Counterparty.**

Counterparty hereby represents and warrants to Dealer that, as of the date hereof, each of the representations and warranties of Counterparty set forth in Section 3 of the Purchase Agreement (the “**Purchase Agreement**”) dated as of [], 2026 between Counterparty and Goldman Sachs & Co. LLC, Barclays Capital Inc., Morgan Stanley & Co. LLC, BofA Securities, Inc. and Scotia Capital (USA) Inc., as representatives of the initial purchasers (the “**Initial Purchasers**”) party thereto, is true and correct and is hereby deemed to be repeated to Dealer as if set forth herein. Counterparty hereby further represents and warrants to Dealer on the date hereof and on and as of the Premium Payment Date that:

- (a) (i) Counterparty has the corporate power and authority to execute, deliver and perform its obligations under this Confirmation; (ii) this Confirmation has been duly authorized and validly executed and delivered by Counterparty; and (iii) this Confirmation constitutes Counterparty’s valid and binding obligation, enforceable against Counterparty in accordance with its terms, subject to (A) bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance and similar laws affecting the rights and remedies of creditors generally, either under state or federal law, (B) general principles of equity and (C) the qualification that broadly worded waivers, waivers of rights to damages, offsets or defenses, indemnification, waivers of unknown or future claims, and waivers of statutory, regulatory or constitutional rights may be limited on public policy or statutory grounds.
- (b) Neither the execution and delivery by Counterparty of this Confirmation nor the incurrence or performance of Counterparty’s obligations hereunder will conflict with or result in a breach of the certificate of incorporation or by-laws (or any equivalent documents) of Counterparty, or any applicable law or regulation, or any order, writ, injunction or decree of any court or governmental authority or agency, or any agreement or instrument to which Counterparty or any of its subsidiaries is a party or by which Counterparty or any of its subsidiaries is bound or to which Counterparty or any of its subsidiaries is subject, or constitute a default under, or result in the creation of any lien under, any such agreement or instrument.

- (c) No consent, approval, license or exemption by, or order or authorization of, or filing, recording or registration with, any governmental authority is required to be obtained or made by Counterparty in connection with the execution and delivery of this Confirmation or the performance by Counterparty of its obligations hereunder, except (i) such as have been obtained or made prior to the date hereof or (ii) such as may be required under federal or state securities laws.
- (d) Counterparty is not and, after consummation of the transactions contemplated hereby, will not be required to register as an “investment company” as such term is defined in the Investment Company Act of 1940, as amended.
- (e) Counterparty is an “eligible contract participant” (as such term is defined in Section 1a(18) of the Commodity Exchange Act, as amended (the “CEA”), other than a person that is an eligible contract participant under Section 1a(18)(C) of the CEA).
- (f) Counterparty is not, on the date hereof, in possession of any material non-public information with respect to Counterparty or the Shares.
- (g) Counterparty is not aware of any state or local (including any non-U.S. jurisdiction’s) law, rule, regulation or regulatory order applicable to the Shares that would give rise to any reporting, consent, registration or other requirement (including without limitation a requirement to obtain prior approval from any person or entity) as a result of Dealer or its affiliates owning or holding (however defined) Shares.
- (h) Counterparty (A) is capable of evaluating investment risks independently, both in general and with regard to all transactions and investment strategies involving a security or securities; (B) will exercise independent judgment in evaluating the recommendations of any broker-dealer or its associated persons, unless it has otherwise notified the broker-dealer in writing; and (C) has total assets of at least USD 50 million.
- (i) The assets used in the Transaction (1) are not assets of any “plan” (as such term is defined in Section 4975 of the U.S. Internal Revenue Code of 1986, as amended (the “Code”)) subject to Section 4975 of the Code or any “employee benefit plan” (as such term is defined in Section 3(3) of the U.S. Employee Retirement Income Security Act of 1974, as amended (“ERISA”)) subject to Title I of ERISA, and (2) do not constitute “plan assets” within the meaning of Department of Labor Regulation 2510.3-101, 29 CFR Section 2510-3-101.
- (j) On and immediately after each of the Trade Date and the Premium Payment Date, (A) the value of the total assets of Counterparty is greater than the sum of the total liabilities (including contingent liabilities) and the capital (as such terms are defined in Section 154 and Section 244 of the General Corporation Law of the State of Delaware) of Counterparty, (B) the capital of Counterparty is adequate to conduct the business of Counterparty, and Counterparty’s entry into the Transaction will not impair its capital, (C) Counterparty has the ability to pay its debts and obligations as such debts mature and does not intend to, or does not believe that it will, incur debt beyond its ability to pay as such debts mature, (D) Counterparty will be able to continue as a going concern; (E) Counterparty is not “insolvent” (as such term is defined under Section 101(32) of the U.S. Bankruptcy Code (Title 11 of the United States Code) (the “**Bankruptcy Code**”)) and (F) Counterparty would be able to purchase the number of Shares with respect to the Transaction in compliance with the laws of the jurisdiction of Counterparty’s incorporation (including the adequate surplus and capital requirements of Sections 154 and 160 of the General Corporation Law of the State of Delaware).
- (k) Without limiting the generality of Section 13.1 of the Equity Definitions, Counterparty acknowledges that neither Dealer nor any of its affiliates is making any representations or warranties or taking any position or expressing any view with respect to the treatment of the Transaction under any accounting standards including ASC Topic 260, *Earnings Per Share*, ASC Topic 815, *Derivatives and Hedging*, or ASC Topic 480, *Distinguishing Liabilities from Equity* and ASC 815-40, *Derivatives and Hedging - Contracts in Entity’s Own Equity* (or any successor issue statements) or any other accounting guidance.

- (l) Counterparty acknowledges that the Transaction may constitute a purchase of its equity securities. Counterparty further acknowledges that, pursuant to the provisions of the Coronavirus Aid, Relief and Economic Security Act (the “**Cares Act**”), Counterparty will be required to agree to certain time-bound restrictions on its ability to purchase its equity securities if it receives loans, loan guarantees or direct loans (as that term is defined in the Cares Act) under section 4003(b) of the Cares Act. Counterparty further acknowledges that it may be required to agree to certain time-bound restrictions on its ability to purchase its equity securities if it receives loans, loan guarantees or direct loans (as that term is defined in the Cares Act) under programs or facilities established by the Board of Governors of the Federal Reserve System for the purpose of providing liquidity to the financial system. Accordingly, Counterparty represents and warrants that it has not applied, and throughout the term of the Transaction shall not apply, for a loan, loan guarantee, direct loan (as that term is defined in the Cares Act) or other investment, or to receive any financial assistance or relief (howsoever defined) under any program or facility that (a) is established under applicable law, including the Cares Act and the Federal Reserve Act, as amended, and (b) requires, as a condition of such loan, loan guarantee, direct loan (as that term is defined in the Cares Act), investment, financial assistance or relief, that Counterparty agree, attest, certify or warrant that it has not, as of the date specified in such condition, repurchased, or will not repurchase, any equity security of Counterparty.

9. **Other Provisions.**

- (a) Opinions. Counterparty shall deliver to Dealer an opinion of counsel, dated as of the Premium Payment Date and reasonably acceptable to Dealer in form and substance, with respect to the matters set forth in Sections 8(a) through (d) of this Confirmation, subject to customary assumptions, qualifications and exceptions. Delivery of such opinion to Dealer shall be a condition precedent for the purpose of Section 2(a)(iii) of the Agreement with respect to each obligation of Dealer under Section 2(a)(i) of the Agreement.
- (b) Repurchase Notices. Counterparty shall, on any day on which Counterparty effects any repurchase of Shares, promptly give Dealer a written notice of such repurchase (a “**Repurchase Notice**”) on such day if following such repurchase, the number of outstanding Shares as determined on such day is (i) less than ⁴⁷ million (in the case of the first such notice) or (ii) thereafter more than ⁴⁸ million less than the number of Shares included in the immediately preceding Repurchase Notice; *provided* that, with respect to any repurchase of Shares pursuant to a plan under Rule 10b5-1 under the Exchange Act (as defined below), Counterparty may elect to satisfy such requirement by giving Dealer written notice of entry into such plan on the date of such entry, the maximum number of Shares that may be purchased thereunder and the approximate dates or periods during which such repurchases may occur (with such maximum number of Shares deemed repurchased on the date of such notice for purposes of this Section 9(b)), in each case so long as such written notice shall not contain any material non-public information with respect to the Issuer or the Shares. Counterparty agrees to indemnify and hold harmless Dealer and its affiliates and their respective officers, directors, employees, affiliates, advisors, agents and controlling persons (each, an “**Indemnified Person**”) from and against any and all losses (including losses relating to Dealer’s commercially reasonable hedging activities as a consequence of becoming, or of the risk of becoming, a Section 16 “insider”, including without limitation, any forbearance from commercially reasonable hedging activities or cessation of commercially reasonable hedging activities and any losses in connection therewith with respect to the Transaction), claims, damages, judgments, liabilities and reasonable expenses (including reasonable out-of-pocket attorney’s fees of one outside counsel in each relevant jurisdiction), joint or several, which an Indemnified Person may become subject to, as a result of Counterparty’s failure to provide Dealer with a Repurchase Notice on the day and in the manner specified in this paragraph, and to reimburse, within 30 days, upon written request, each of such Indemnified Persons for any reasonable out-of-pocket legal or other expenses incurred in connection with investigating, preparing for, providing testimony or other evidence in connection with or defending any of the foregoing. If any suit, action, proceeding (including any governmental or regulatory investigation), claim or demand shall be brought or asserted against the Indemnified Person as a result of Counterparty’s failure to provide Dealer with a Repurchase Notice in accordance with this paragraph, such Indemnified Person shall promptly notify Counterparty in writing, and Counterparty, upon request of the Indemnified Person, shall retain counsel reasonably satisfactory to the Indemnified Person to represent the Indemnified Person and any others Counterparty may designate in such proceeding and shall pay the reasonable fees and expenses of such counsel related to such proceeding. Counterparty shall not be liable for any settlement of any proceeding contemplated by this paragraph that is effected without its written consent, but if settled with such consent or if there be a final judgment for the plaintiff, Counterparty agrees to indemnify any Indemnified Person from and against any loss or liability by reason of such settlement or judgment. Counterparty shall not, without the prior written consent of the Indemnified Person (such consent not to be unreasonably withheld, conditioned or delayed), effect any settlement of any pending or threatened proceeding contemplated by this paragraph that is in respect of which any Indemnified Person is or would have been a party and indemnity could have been sought hereunder by such Indemnified Person, unless such settlement includes an unconditional release of such Indemnified Person from all liability on claims that are the subject matter of such proceeding on terms reasonably satisfactory to such Indemnified Person. If the indemnification provided for in this paragraph is unavailable to an Indemnified Person or insufficient in respect of any losses, claims, damages or liabilities referred to therein, then Counterparty, in lieu of indemnifying such Indemnified Person thereunder, shall contribute to the amount paid or payable by such Indemnified Person as a result of such losses, claims, damages or liabilities. The remedies provided for in this paragraph (b) are not exclusive and shall not limit any rights or remedies which may otherwise be available to any Indemnified Person at law or in equity. The indemnity and contribution agreements contained in this paragraph shall remain operative and in full force and effect regardless of the termination of the Transaction.

⁴⁷ To be the number of Shares outstanding that would cause Dealer’s current position in the shares underlying the Transaction (including the number of Shares underlying any additional transaction if the greenshoe is exercised in full, and any Shares under pre-existing call option transactions with Counterparty) to increase by 0.5%. To be determined with respect to Dealer with greatest number of underlying Shares.

⁴⁸ To be the number of Shares that, if repurchased, would cause Dealer’s current position in the shares underlying the Transaction (including the number of Shares underlying any additional transaction if the greenshoe is exercised in full, and any Shares under pre-existing call option transactions with Counterparty) to increase by a further 0.5% from the threshold for the first Repurchase Notice. To be determined with respect to Dealer with greatest number of underlying Shares.

- (c) Regulation M. Counterparty is not on the Trade Date engaged in a distribution, as such term is used in Regulation M under the Exchange Act, of any securities of Counterparty, other than a distribution meeting the requirements of the exception set forth in Rules 101(b)(10) and 102(b)(7) of Regulation M. Counterparty shall not, until the second Scheduled Trading Day immediately following the Effective Date, engage in any such distribution.
- (d) No Manipulation. Counterparty is not entering into the Transaction to create actual or apparent trading activity in the Shares (or any security convertible into or exchangeable for the Shares) or to raise or depress or otherwise manipulate the price of the Shares (or any security convertible into or exchangeable for the Shares) or otherwise in violation of the Exchange Act.
- (e) Transfer or Assignment.
 - (i) Counterparty shall have the right to transfer or assign its rights and obligations hereunder with respect to all, but not less than all, of the Options hereunder (such Options, the “**Transfer Options**”); *provided* that such transfer or assignment shall be subject to reasonable conditions that Dealer may impose, including but not limited, to the following conditions:
 - (A) With respect to any Transfer Options, Counterparty shall not be released from its notice and indemnification obligations pursuant to Section 9(b) or any obligations under Section 9(n) or 9(s) of this Confirmation;
 - (B) Any Transfer Options shall only be transferred or assigned to a third party that is a “United States person” (as defined in Section 7701(a)(30) of the Code);
 - (C) Such transfer or assignment shall be effected on terms, including any reasonable undertakings by such third party (including, but not limited to, an undertaking with respect to compliance with applicable securities laws in a manner that, in the commercially reasonable judgment of Dealer, will not expose Dealer to material risks under applicable securities laws) and execution of any documentation and delivery of legal opinions with respect to securities laws and other matters by such third party and Counterparty, as are requested and reasonably satisfactory to Dealer;

- (D) Dealer will not, as a result of such transfer or assignment (including, for the avoidance of doubt, after giving effect to any indemnity or other contractual obligation from the transferee or assignee to Dealer provided in connection with such transfer or assignment), be required to (i) pay or deliver to the transferee or assignee on any payment date or delivery date an amount or a number of Shares under Section 2(d)(i)(4) of the Agreement greater than an amount or a number of Shares that Dealer would have been required to pay or deliver to Counterparty in the absence of such transfer or assignment (for the avoidance of doubt, except to the extent that the greater amount or number of Shares is due to a Change in Tax Law after the date of such transfer or assignment pursuant to Section 2(d)(i)(4)(B) of the Agreement) or (ii) receive from the transferee or assignee on any payment date an amount, after taking into account amounts payable under Section 2(d)(i)(4) of the Agreement as well as any applicable withholding or deduction from such amounts payable, that would be less than the amount, if any, that Dealer would have received from Counterparty in the absence of such transfer or assignment (for the avoidance of doubt, except to the extent that the lesser amount is due to a Change in Tax Law after the date of such transfer or assignment pursuant to Section 2(d)(i)(4)(B) of the Agreement);
- (E) An Event of Default, Potential Event of Default or Termination Event will not occur as a result of such transfer or assignment;
- (F) Without limiting the generality of clause (B), Counterparty shall cause the transferee or assignee to make such Payee Tax Representations and to provide such tax documentation (including a duly executed and completed U.S. Internal Revenue Service Form W-9 (or applicable successor form)) as may be reasonably requested by Dealer to permit Dealer to determine that results described in clauses (D) and (E) will not occur upon or after such transfer or assignment; and
- (G) Counterparty shall be responsible for reasonable out-of-pocket costs and expenses, including reasonable counsel fees, incurred by Dealer in connection with such transfer or assignment.

- (ii) Dealer may transfer or assign all or any part of its rights or obligations under the Transaction (A) without Counterparty's consent (but with prompt subsequent (but in no event more than two Exchange Business Days') written notice to Counterparty), to any affiliate or branch of Dealer (1) that has a long-term issuer rating or a rating for its long term, unsecured and unsubordinated indebtedness that is equal to or better than the lesser of (a) Dealer's long-term issuer rating or the rating for Dealer's long-term, unsecured and unsubordinated indebtedness at the time of such transfer or assignment and (b) A- by S&P Global Ratings, a division of S&P Global Inc., or its successor ("**S&P**"), or A3 by Moody's Investors Service, Inc. or its successor ("**Moody's**") or, if either S&P or Moody's ceases to rate such issuer or such indebtedness, as the case may be, at least an equivalent rating or better by a substitute rating agency mutually agreed by Counterparty and Dealer, or (2) whose obligations hereunder will be guaranteed, pursuant to the terms of a customary guarantee in a form used by Dealer generally for similar transactions, by Dealer (or its ultimate parent), or (B) with Counterparty's consent (such consent not to be unreasonably withheld or delayed), to any other third party with a long-term issuer rating or a rating for its long term, unsecured and unsubordinated indebtedness equal to or better than the lesser of (1) Dealer's long-term issuer rating or the rating for Dealer's long-term, unsecured and unsubordinated indebtedness at the time of such transfer or assignment and (2) A- by S&P or A3 by Moody's or, if either S&P or Moody's ceases to rate such issuer or such indebtedness, as the case may be, at least an equivalent rating or better by a substitute rating agency mutually agreed by Counterparty and Dealer; *provided* that (x) Dealer and such affiliate, branch or third party, as the case may be, both qualify as "dealers in securities" within the meaning of Section 475(c)(1) of the Code or such transfer or assignment does not result in a deemed exchange by Counterparty within the meaning of Section 1001 of the Code, (y) Counterparty will not, as a result of any transfer or assignment (including, for the avoidance of doubt, after giving effect to any indemnity or other contractual obligation from the transferee or assignee to Counterparty provided in connection with such transfer or assignment), be required to (I) pay the transferee or assignee on any payment date an amount under Section 2(d)(i)(4) of the Agreement greater than the amount, if any, that Counterparty would have been required to pay to Dealer in the absence of such transfer or assignment (for the avoidance of doubt, except to the extent that the greater amount is due to a Change in Tax Law after the date of such transfer or assignment pursuant to Section 2(d)(i)(4)(B) of the Agreement) or (II) receive from the transferee or assignee on any payment date an amount, after taking into account amounts payable or deliverable under Section 2(d)(i)(4) of the Agreement as well as any applicable withholding or deduction from such amounts payable, that would be less than the amount or a number of Shares, if any, that Counterparty would have received from Dealer in the absence of such transfer or assignment (for the avoidance of doubt, except to the extent that the lesser amount or number of Shares is due to a Change in Tax Law after the date of such transfer or assignment pursuant to Section 2(d)(i)(4)(B) of the Agreement), and (z) Dealer shall cause the transferee or assignee to make such Payee Tax Representations and to provide such tax documentation (including a duly executed and completed U.S. Internal Revenue Service Form W-9 or applicable Form W-8 (or applicable successor form)) as may be reasonably requested by Counterparty to permit Counterparty to determine that the result described in clauses (x) and (y) will not occur upon or after such transfer or assignment. Dealer shall notify Counterparty of any transfer or assignment pursuant to the foregoing sentence promptly following such transfer or assignment. If at any time at which (A) the Section 16 Percentage exceeds 8.5%, (B) the Option Equity Percentage exceeds 14.5% or (C) the Share Amount exceeds the Applicable Share Limit (if any applies) (any such condition described in clauses (A), (B) or (C), an "**Excess Ownership Position**"), Dealer is unable after using its commercially reasonable efforts to effect a transfer or assignment of Options to a third party on pricing terms reasonably acceptable to Dealer and within a time period reasonably acceptable to Dealer such that no Excess Ownership Position exists, then Dealer may designate any Exchange Business Day as an Early Termination Date with respect to a portion of the Transaction (the "**Terminated Portion**"), such that following such partial termination no Excess Ownership Position exists. In the event that Dealer so designates an Early Termination Date with respect to a portion of the Transaction, a payment shall be made pursuant to Section 6 of the Agreement as if (1) an Early Termination Date had been designated in respect of a Transaction having terms identical to the Transaction and a Number of Options equal to the number of Options underlying the Terminated Portion, (2) Counterparty were the sole Affected Party with respect to such partial termination and (3) the Terminated Portion were the sole Affected Transaction (and, for the avoidance of doubt, the provisions of Section 9(k) shall apply to any amount that is payable by Dealer to Counterparty pursuant to this sentence as if Counterparty was not the Affected Party). The "**Section 16 Percentage**" as of any day is the fraction, expressed as a percentage, (A) the numerator of which is the number of Shares that Dealer and each person subject to aggregation of Shares with Dealer and each "group" of which Dealer is a member or may be deemed a member, in each case, under Section 13 or Section 16 of the Exchange Act and rules promulgated thereunder, directly or indirectly beneficially own (as defined under Section 13 or Section 16 of the Exchange Act and rules promulgated thereunder) and (B) the denominator of which is the number of Shares outstanding. The "**Option Equity Percentage**" as of any day is the fraction, expressed as a percentage, (A) the numerator of which is the sum of (1) the product of the Number of Options and the Option Entitlement and (2) the aggregate number of Shares underlying any other call option transaction sold by Dealer to Counterparty, and (B) the denominator of which is the number of Shares outstanding. The "**Share Amount**" as of any day is the number of Shares that Dealer and any person whose ownership position would be aggregated with that of Dealer (Dealer or any such person, a "**Dealer Person**") under any law, rule, regulation, regulatory order or organizational documents or contracts of Counterparty that are, in each case, applicable to ownership of Shares ("**Applicable Restrictions**"), owns, beneficially owns, constructively owns, controls, holds the power to vote or otherwise meets a relevant definition of ownership under any Applicable Restriction, as determined by Dealer in its reasonable discretion. The "**Applicable Share Limit**" means a number of Shares equal to (A) the minimum number of Shares that could give rise to reporting or registration obligations or other requirements (including obtaining prior approval from any person or entity) of a Dealer Person, or could result in an adverse effect on a Dealer Person, under any Applicable Restriction, as determined by Dealer in its reasonable discretion, but excluding reporting obligations arising under Section 13 of the Exchange Act as in effect on the Trade Date, *minus* (B) 1% of the number of Shares outstanding.
- (iii) Notwithstanding any other provision in this Confirmation to the contrary requiring or allowing Dealer to purchase, sell, receive or deliver any Shares or other securities, or make or receive any payment in cash, to or from Counterparty, Dealer may designate any of its affiliates to purchase, sell, receive or deliver such Shares or other securities, or make or receive such payment in cash, and otherwise to perform Dealer's obligations in respect of the Transaction and any such designee may assume such obligations. Dealer shall be discharged of its obligations to Counterparty to the extent of any such performance.

- (f) Staggered Settlement. If upon advice of counsel with respect to applicable legal and regulatory requirements, including any requirements relating to Dealer's hedging activities hereunder, Dealer reasonably determines that it would not be practicable or advisable to deliver, or to acquire Shares to deliver, any or all of the Shares to be delivered by Dealer on any Settlement Date for the Transaction, Dealer may, by notice to Counterparty on or prior to any Settlement Date (a "Nominal Settlement Date"), elect to deliver the Shares on two or more dates (each, a "Staggered Settlement Date") as follows:
- (i) in such notice, Dealer will specify to Counterparty the related Staggered Settlement Dates (the first of which will be such Nominal Settlement Date and the last of which will be no later than the twentieth (20th) Exchange Business Day following such Nominal Settlement Date) and the number of Shares that it will deliver on each Staggered Settlement Date;
 - (ii) the aggregate number of Shares that Dealer will deliver to Counterparty hereunder on all such Staggered Settlement Dates will equal the number of Shares that Dealer would otherwise be required to deliver on such Nominal Settlement Date; and
 - (iii) the Settlement Method terms will apply on each Staggered Settlement Date, except that the cash and/or Shares due upon settlement will be allocated among such Staggered Settlement Dates as specified by Dealer in the notice referred to in clause (i) above.
- (g) Role of Agent. [Insert relevant Dealer agency or communications language, if any.] Any performance by Counterparty of its obligations (including notice obligations) through or by means of [DEALER AGENT's] agency for Dealer shall constitute good performance of Counterparty's obligations to Dealer.] [Reserved.]
- (h) Additional Termination Events.
- (i) Notwithstanding anything to the contrary in this Confirmation, upon any Early Conversion in respect of which a "Notice of Conversion" (as such term is defined in the Indenture) that is effective as to Counterparty has been delivered by the relevant converting "Holder" (as such term is defined in the Indenture):
 - (A) Counterparty shall, within ten Scheduled Trading Days of the "Conversion Date" (as such term is defined in the Indenture) for such Early Conversion, provide written notice (an "**Early Conversion Notice**") to Dealer specifying the number of Convertible Notes surrendered for conversion on such "Conversion Date" (such Convertible Notes, the "**Affected Convertible Notes**"), and the giving of such Early Conversion Notice shall constitute an Additional Termination Event as provided in this clause (i); *provided that* any "Early Conversion Notice" as defined in, and delivered to Dealer pursuant to, the Base Call Option Confirmation shall be deemed to be an Early Conversion Notice pursuant to this Confirmation and the terms of such "Early Conversion Notice" shall apply, *mutatis mutandis*, to this Confirmation]⁴⁹;

⁴⁹ Include in Additional Call Option Confirmation only.

- (B) upon receipt of any such Early Conversion Notice, Dealer shall designate an Exchange Business Day as an Early Termination Date (which Exchange Business Day shall be no earlier than one Scheduled Valid Day following the “Conversion Date” (as such term is defined in the Indenture) for such Early Conversion) with respect to the portion of the Transaction corresponding to a number of Options (the “**Affected Number of Options**”) equal to the lesser of (x) the number of Affected Convertible Notes [*minus* the “Affected Number of Options” (as defined in the Base Call Option Confirmation), if any, that relate to such Affected Convertible Notes (and for the purposes of determining whether any Options under this Confirmation or under, and as defined in, the Base Call Option Confirmation will be among the Affected Number of Options hereunder or under, and as defined in, the Base Call Option Confirmation, such Affected Convertible Notes shall be allocated first to the Base Call Option Confirmation until all Options thereunder are exercised or terminated)]⁵⁰ and (y) the Number of Options as of the “Conversion Date” (as such term is defined in the Indenture) for such Early Conversion;
- (C) any payment hereunder with respect to such termination shall be calculated pursuant to Section 6 of the Agreement as if (x) an Early Termination Date had been designated in respect of a Transaction having terms identical to the Transaction and a Number of Options equal to the Affected Number of Options, (y) Counterparty were the sole Affected Party with respect to such Additional Termination Event and (z) the terminated portion of the Transaction were the sole Affected Transaction; *provided* that the amount payable with respect to such termination shall not be greater than (1) the Applicable Percentage, *multiplied by* (2) the Affected Number of Options, *multiplied by* (3) (x) the sum of (i) the amount of cash paid (if any) to the “Holder” (as such term is defined in the Indenture) of an Affected Convertible Note upon conversion of such Affected Convertible Note (including any cash payable pursuant to Section [5.07]⁵¹ of the Indenture) and (ii) the number of Shares delivered (if any) to the “Holder” (as such term is defined in the Indenture) of an Affected Convertible Note upon conversion of such Affected Convertible Note (including any Shares deliverable pursuant to Section [5.07]⁵² of the Indenture), *multiplied by* the Applicable Limit Price on the date of delivery of such number of Shares upon settlement of the conversion of the relevant Affected Convertible Note (the “**Conversion Settlement Date**”), *minus* (y) the Synthetic Instrument Adjusted Issue Price per Affected Convertible Note, as determined by the Calculation Agent in good faith and in a commercially reasonable manner. “**Synthetic Instrument Adjusted Issue Price**” shall mean the amount determined by the Calculation Agent by reference to the table set forth below (the “**Synthetic Instrument AIP Table**”) based on the Conversion Settlement Date (the “**Unwind Date**”). If the relevant Unwind Date is not listed below, the amount in the preceding sentence shall be determined by the Calculation Agent by reference to the table below using a linear interpolation between the lower and higher Synthetic Instrument Adjusted Issue Prices for the Unwind Dates immediately preceding and immediately following the relevant Unwind Date. For the avoidance of doubt, any payment pursuant to this paragraph shall be subject to Section 9(k) of this Confirmation.

⁵⁰ Include in Additional Call Option Confirmation only.

⁵¹ Include cross-reference to Indenture section(s) governing make-whole adjustments to the Conversion Rate.

⁵² Include cross-reference to Indenture section(s) governing make-whole adjustments to the Conversion Rate.

Unwind Date	Synthetic Instrument Adjusted Issue Price
[] ⁵³	USD []
November 15, 2026	USD []
May 15, 2027	USD []
November 15, 2027	USD []
May 15, 2028	USD []
November 15, 2028	USD []
May 15, 2029	USD []
November 15, 2029	USD []
May 15, 2030	USD []
November 15, 2030	USD []
May 15, 2031	USD []
November 15, 2031	USD 1,000.00

- (D) Counterparty shall notify Dealer (which notice may, for the avoidance of doubt, be by e-mail) of the amount of cash, if any, paid to the “Holder” (as such term is defined in the Indenture) and the number of Shares, if any, delivered to the “Holder” (as such term is defined in the Indenture), in each case as described in clause (3) of the foregoing Section 9(h)(i)(C), prior to the relevant Early Termination Date;
- (E) for the avoidance of doubt, in determining the amount payable in respect of such Affected Transaction pursuant to Section 6 of the Agreement, the Calculation Agent shall assume that (x) the relevant Early Conversion and any conversions, adjustments, agreements, payments, deliveries or acquisitions by or on behalf of Counterparty leading thereto had not occurred, (y) no adjustments to the “Conversion Rate” (as defined in the Indenture) have occurred pursuant to any Excluded Provision and (z) the corresponding Convertible Notes remain outstanding; and
- (F) the Transaction shall remain in full force and effect, except that, as of the “Conversion Date” (as such term is defined in the Indenture) for such Early Conversion, the Number of Options shall be reduced by the Affected Number of Options.

⁵³ Insert initial settlement date of the Convertible Notes.

- (ii) Within ten Scheduled Trading Days following any Repayment Event (as defined below), Counterparty (x) in the case of a Repayment Event resulting from the repurchase of any Convertible Notes by Counterparty (1) upon the occurrence of a “Fundamental Change” (as defined in the Indenture), or (2) in connection with an “Optional Redemption” (as defined in the Indenture), shall notify Dealer in writing of such Repayment Event and (y) in the case of a Repayment Event not described in clause (x) above, may notify Dealer of such Repayment Event, in each case, including the aggregate principal amount of Convertible Notes subject to such Repayment Event (any such notice, a “**Repayment Notice**”); *provided* that no such Repayment Notice described in clause (x)(2) or (y) above shall be effective unless it contains the representation by Counterparty set forth in Section 8(f) as of the date of such Repayment Notice; *provided further* that any “Repayment Notice” as defined in, and delivered to Dealer pursuant to, the Base Call Option Confirmation shall be deemed to be a Repayment Notice pursuant to this Confirmation and the terms of such “Repayment Notice” shall apply, *mutatis mutandis*, to this Confirmation]⁵⁴. The receipt by Dealer from Counterparty of any Repayment Notice shall constitute an Additional Termination Event as provided in this Section 9(h)(ii). Upon receipt of any such Repayment Notice, Dealer shall designate an Exchange Business Day following receipt of such Repayment Notice as an Early Termination Date with respect to the portion of the Transaction corresponding to a number of Options (the “**Repayment Options**”) equal to the lesser of (A) [(x)]⁵⁵ the aggregate principal amount of such Convertible Notes specified in such Repayment Notice, *divided by* USD 1,000, [minus (y) the number of “Repayment Options” (as defined in the Base Call Option Confirmation), if any, that relate to such Convertible Notes (and for the purposes of determining whether any Options under this Confirmation or under, and as defined in, the Base Call Option Confirmation will be among the Repayment Options hereunder or under, and as defined in, the Base Call Option Confirmation, the Convertible Notes specified in such Repayment Notice shall be allocated first to the Base Call Option Confirmation until all Options thereunder are exercised or terminated)]⁵⁶ and (B) the Number of Options as of the date Dealer designates such Early Termination Date and, as of such date, the Number of Options shall be reduced by the number of Repayment Options. Any payment hereunder with respect to such termination (the “**Repayment Unwind Payment**”) shall be calculated pursuant to Section 6 of the Agreement as if (1) an Early Termination Date had been designated in respect of a Transaction having terms identical to the Transaction and a Number of Options equal to the number of Repayment Options, (2) Counterparty were the sole Affected Party with respect to such Additional Termination Event and (3) the terminated portion of the Transaction were the sole Affected Transaction; *provided* that, in the event of a Repayment Event resulting from a “Fundamental Change” (as defined in the Indenture) or in connection with an “Optional Redemption” (as defined in the Indenture), the Repayment Unwind Payment shall not be greater than (x) the number of Repayment Options *multiplied by* (y) the product of (A) the Applicable Percentage and (B) the excess of (I) the amount paid by Counterparty per Convertible Note in connection with such Repayment Event pursuant to the relevant sections of the Indenture over (II) the Synthetic Instrument Adjusted Issue Price per Convertible Note determined by the Calculation Agent by reference to the Synthetic Instrument AIP Table based on the date of the Repayment Event (the “**Repayment Unwind Date**”) as if such Repayment Unwind Date were the Unwind Date. If the Repayment Unwind Date is not listed in the Synthetic Instrument AIP Table, the amount in clause (II) of the preceding sentence shall be determined by the Calculation Agent by reference to the Synthetic Instrument AIP Table, using a linear interpolation between the lower and higher Synthetic Instrument Adjusted Issue Prices per Convertible Note for the dates immediately preceding and immediately following the Repayment Unwind Date. For the avoidance of doubt, any payment pursuant to this paragraph shall be subject to Section 9(k) of this Confirmation. “**Repayment Event**” means that (i) any Convertible Notes are repurchased (whether in connection with or as a result of a fundamental change, howsoever defined, or for any other reason) or redeemed by Counterparty or any of its subsidiaries, (ii) any Convertible Notes are delivered to Counterparty or any of its subsidiaries in exchange for delivery of any property or assets of such party (howsoever described), (iii) any principal of any of the Convertible Notes is repaid prior to the final maturity date of the Convertible Notes (for any reason other than as a result of an acceleration of the Convertible Notes that results in an Additional Termination Event pursuant to the following Section 9(h)(iii)), or (iv) any Convertible Notes are exchanged by or for the benefit of the “Holders” (as defined in the Indenture) thereof for any other securities of Counterparty or any of its subsidiaries (or any other property, or any combination thereof) pursuant to any exchange offer or similar transaction. For the avoidance of doubt, any conversion of Convertible Notes (whether into cash, Shares, “Reference Property” (as defined in the Indenture) or any combination thereof) pursuant to the terms of the Indenture shall not constitute a Repayment Event.
- (iii) Notwithstanding anything to the contrary in this Confirmation, if an event of default with respect to Counterparty occurs under the terms of the Convertible Notes as set forth in Section [7.01]⁵⁷ of the Indenture and such event of default results in the Convertible Notes becoming or being declared due and payable pursuant to the terms of the Indenture, then such event of default shall constitute an Additional Termination Event applicable to the Transaction and, with respect to such Additional Termination Event, (A) Counterparty shall be deemed to be the sole Affected Party, (B) the Transaction shall be the sole Affected Transaction and (C) Dealer shall be the party entitled to designate an Early Termination Date pursuant to Section 6(b) of the Agreement.

⁵⁴ Insert for Additional Call Option Confirmation.

⁵⁵ Insert for Additional Call Option Confirmation.

⁵⁶ Insert for Additional Call Option Confirmation.

⁵⁷ Include cross-reference to the Indenture section containing events of default.

(i) Amendments to Equity Definitions.

- (i) Section 11.2(e)(v) of the Equity Definitions is hereby amended by adding the phrase “, *provided* that, notwithstanding this Section 11.2(e)(v), the parties hereto agree that, with respect to the Transaction, the following repurchases of Shares by the Issuer or any of its subsidiaries shall not be considered Potential Adjustment Events: any repurchases of Shares in open-market transactions at prevailing market prices or privately negotiated accelerated Share repurchase (or similar) transactions that are entered into at prevailing market prices and in accordance with customary market terms for transactions of such type to repurchase the Shares, in each case, to the extent that, after giving effect to such transactions, the aggregate number of Shares repurchased during the term of the Transaction pursuant to all transactions described in this proviso would not exceed 20% of the number of Shares outstanding as of the Trade Date, as determined by the Calculation Agent” at the end of such Section.
- (ii) Section 11.2(e)(vii) of the Equity Definitions is hereby amended by deleting the words “that may have a diluting or concentrative effect on the theoretical value of the relevant Shares” and replacing them with the words “that is the result of a corporate event involving the Issuer or its securities that has, in the commercially reasonable judgment of the Calculation Agent, a material economic effect on the Shares or options on the Shares; *provided* that such event is not based on (a) an observable market, other than the market for the Issuer’s own stock or (b) an observable index, other than an index calculated and measured solely by reference to the Issuer’s own operations.”
- (iii) Section 12.1(d) of the Equity Definitions is hereby amended by replacing “10%” with “20%”.
- (iv) Section 12.6(a)(ii) of the Equity Definitions is hereby amended by (1) deleting from the fourth line thereof the word “or” after the word “official” and inserting a comma therefor, and (2) deleting the semi-colon at the end of subsection (B) thereof and inserting the following words therefor: “or (C) at Dealer’s option, the occurrence of any of the events specified in Section 5(a)(vii) (1) through (9) of the ISDA Master Agreement with respect to that Issuer;”.
- (v) Section 12.9(b)(i) of the Equity Definitions is hereby amended by (1) replacing “either party may elect” with “Dealer may elect” and (2) replacing “notice to the other party” with “notice to Counterparty” in the first sentence of such section.
- (j) No Collateral or Setoff. Notwithstanding any provision of the Agreement or any other agreement between the parties to the contrary, the obligations of Counterparty hereunder are not secured by any collateral. Obligations under the Transaction shall not be set off by either party against any other obligations of the parties, whether arising under the Agreement, this Confirmation or any other agreement between the parties hereto, by operation of law or otherwise. For the avoidance of doubt and notwithstanding anything to the contrary provided in this Section 9(j), in the event of bankruptcy or liquidation of either party, neither party shall have the right to set off any obligation that it may have to the other party under the Transaction against any obligation such other party may have to it, whether arising under the Agreement, this Confirmation or any other agreement between the parties hereto, by operation of law or otherwise.
- (k) Alternative Calculations and Payment on Early Termination and on Certain Extraordinary Events. If (a) an Early Termination Date (whether as a result of an Event of Default or a Termination Event) occurs or is designated with respect to the Transaction or (b) the Transaction is cancelled or terminated upon the occurrence of an Extraordinary Event (except as a result of (i) a Nationalization, Insolvency or Merger Event in which the consideration to be paid to holders of Shares consists solely of cash, (ii) an Announcement Event, a Merger Event or Tender Offer that is within Counterparty’s control, or (iii) an Event of Default in which Counterparty is the Defaulting Party or a Termination Event in which Counterparty is the Affected Party other than an Event of Default of the type described in Section 5(a)(iii), (v), (vi), (vii) or (viii) of the Agreement or a Termination Event of the type described in Section 5(b) of the Agreement, in each case that resulted from an event or events outside Counterparty’s control), and if Dealer would owe any amount to Counterparty pursuant to Section 6(d)(ii) and Section 6(e) of the Agreement or any Cancellation Amount pursuant to Article 12 of the Equity Definitions (any such amount, a “**Payment Obligation**”), then Dealer shall satisfy the Payment Obligation by the Share Termination Alternative (as defined below), unless (a) Counterparty gives irrevocable telephonic notice to Dealer, confirmed in writing within one Scheduled Trading Day, no later than 12:00 p.m. (New York City time) on the date of the Announcement Event, Merger Date, Tender Offer Date, Announcement Date (in the case of a Nationalization, Insolvency or Delisting), Early Termination Date or date of cancellation, as applicable, of its election that the Share Termination Alternative shall not apply, (b) Counterparty remakes the representation set forth in Section 8(f) as of the date of such election and (c) Dealer agrees, in its sole discretion, to such election, in which case the provisions of Section 12.7 or Section 12.9 of the Equity Definitions, or the provisions of Section 6(d)(ii) and Section 6(e) of the Agreement, as the case may be, shall apply.

Share Termination Alternative:	If applicable, Dealer shall deliver to Counterparty the Share Termination Delivery Property on, or within a commercially reasonable period of time after, the date when the Payment Obligation would otherwise be due pursuant to Section 12.7 or 12.9 of the Equity Definitions or Sections 6(d)(ii) and 6(e) of the Agreement, as applicable, in satisfaction of the Payment Obligation in the manner reasonably requested by Counterparty free of payment.
Share Termination Delivery Property:	A number of Share Termination Delivery Units, as calculated by the Calculation Agent, equal to the Payment Obligation <i>divided by</i> the Share Termination Unit Price. The Calculation Agent shall adjust the Share Termination Delivery Property by replacing any fractional portion of a security therein with an amount of cash equal to the value of such fractional security based on the values used to calculate the Share Termination Unit Price.
Share Termination Unit Price:	The value to Dealer of property contained in one Share Termination Delivery Unit, as determined by the Calculation Agent in its discretion by commercially reasonable means and notified by the Calculation Agent to Dealer at the time of notification of the Payment Obligation. For the avoidance of doubt, the parties agree that in determining the Share Termination Unit Price the Calculation Agent may consider the purchase price paid in connection with the purchase of Share Termination Delivery Property.
Share Termination Delivery Unit:	One Share or, if all of the Shares have changed into cash or any other property or the right to receive solely cash or any other property as the result of a Nationalization, Insolvency or Merger Event (any such cash or other property, the “ Exchange Property ”), a unit consisting of the type and amount of such Exchange Property received by a holder of one Share (without consideration of any requirement to pay cash or other consideration in lieu of fractional amounts of any securities) in such Nationalization, Insolvency or Merger Event, as determined by the Calculation Agent.

Failure to Deliver: Applicable

Other Applicable Provisions: If Share Termination Alternative is applicable, the provisions of Sections 9.8, 9.9 and 9.11 (as modified above) of the Equity Definitions and the provisions set forth opposite the caption “Representation and Agreement” in Section 2 will be applicable, except that all references in such provisions to “Physically-settled” shall be read as references to “Share Termination Settled” and all references to “Shares” shall be read as references to “Share Termination Delivery Units”. “Share Termination Settled” in relation to the Transaction means that Share Termination Alternative is applicable to the Transaction.

- (l) Registration. Counterparty hereby agrees that if, in the good faith, reasonable judgment of Dealer based on the advice of counsel, the Shares (“**Hedge Shares**”) acquired by Dealer for the purpose of hedging its obligations pursuant to the Transaction cannot be sold in the public market by Dealer without registration under the Securities Act of 1933, as amended (the “**Securities Act**”), Counterparty shall, at its election, either (i) in order to allow Dealer to sell the Hedge Shares in a registered offering, make available to Dealer an effective registration statement under the Securities Act and (A) enter into an agreement, in form and substance reasonably satisfactory to Dealer, substantially in the form of an underwriting agreement for a registered secondary offering as is customary for registered secondary offerings of substantially similar size, (B) acting in good faith, use its commercially reasonable efforts to provide accountant’s “comfort” letters customary in form for registered offerings of equity securities, (C) provide disclosure opinions of nationally recognized outside counsel to Counterparty reasonably acceptable to Dealer, (D) provide other customary opinions, certificates and closing documents customary in form for registered offerings of equity securities and (E) afford Dealer a reasonable opportunity to conduct a due diligence investigation with respect to Counterparty customary in scope for underwritten offerings of equity securities; *provided, however*, that if Dealer, in its sole reasonable discretion, is not satisfied with access to due diligence materials, the results of its due diligence investigation, or the procedures and documentation for the registered offering referred to above, then clause (ii) or clause (iii) of this paragraph shall apply at the election of Counterparty, (ii) in order to allow Dealer to sell the Hedge Shares in a private placement, enter into and comply with a private placement agreement substantially similar to private placement purchase agreements customary for private placements of equity securities of substantially similar size by similar issuers, in form and substance reasonably satisfactory to Dealer (in which case, the Calculation Agent in good faith and in a commercially reasonable manner shall make any adjustments to the terms of the Transaction that are necessary, in its reasonable judgment, to compensate Dealer for any discount from the public market price of the Shares incurred on the sale of Hedge Shares in a private placement), or (iii) purchase the Hedge Shares from Dealer at the Relevant Price on such Exchange Business Days, and in the amounts, requested by Dealer.
- (m) Notice of Certain Other Events. Counterparty covenants and agrees that:
- (i) promptly following the public announcement of the results of any election by the holders of Shares with respect to the consideration due upon consummation of any Merger Event, Counterparty shall give Dealer written notice of the weighted average of the types and amounts of consideration actually received by holders upon consummation of such Merger Event (the date of such notification, the “**Consideration Notification Date**”); *provided* that in no event shall the Consideration Notification Date be later than the date on which such Merger Event is consummated; and

- (ii) promptly following any adjustment to the Convertible Notes in connection with any Potential Adjustment Event, Merger Event or Tender Offer, Counterparty shall give Dealer written notice of the details of such adjustment.
- (n) Tax Disclosure. Effective from the date of commencement of discussions concerning the Transaction, Counterparty and each of its employees, representatives, or other agents may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the Transaction and all materials of any kind (including opinions or other tax analyses) that are provided to Counterparty relating to such tax treatment and tax structure.
- (o) Right to Extend. Dealer may postpone or add, in whole or in part, any Valid Day or Valid Days during the Settlement Averaging Period or any other date of valuation, payment or delivery by Dealer, with respect to some or all of the Options hereunder, if Dealer reasonably determines, based on advice of counsel, that such action is reasonably necessary or appropriate to preserve Dealer's commercially reasonable hedging or hedge unwind activity hereunder in light of existing liquidity conditions or to enable Dealer to effect transactions with respect to Shares in connection with its commercially reasonable hedging, hedge unwind or settlement activity hereunder in a manner that would, if Dealer were Counterparty or an affiliated purchaser of Counterparty, be in compliance with applicable legal, regulatory or self-regulatory organization requirements, or with related policies and procedures applicable to Dealer; *provided* that no such Valid Day or other date of valuation, payment or delivery may be postponed or added more than [90] Valid Days after the original Valid Day or other date of valuation, payment or delivery, as the case may be.
- (p) Status of Claims in Bankruptcy. Dealer acknowledges and agrees that this Confirmation is not intended to convey to Dealer rights against Counterparty with respect to the Transaction that are senior to the claims of common stockholders of Counterparty in any United States bankruptcy proceedings of Counterparty; *provided* that nothing herein shall limit or shall be deemed to limit Dealer's right to pursue remedies in the event of a breach by Counterparty of its obligations and agreements with respect to the Transaction; *provided, further*, that nothing herein shall limit or shall be deemed to limit Dealer's rights in respect of any transactions other than the Transaction.
- (q) Securities Contract; Swap Agreement. The parties hereto agree and acknowledge that Dealer is a "financial institution," "swap participant" and "financial participant" within the meaning of Sections 101(22), 101(53C) and 101(22A) of the Bankruptcy Code. The parties hereto further agree and acknowledge (A) that this Confirmation is (i) a "securities contract," as such term is defined in Section 741(7) of the Bankruptcy Code, with respect to which each payment and delivery hereunder or in connection herewith is a "termination value," "payment amount" or "other transfer obligation" within the meaning of Section 362 of the Bankruptcy Code and a "settlement payment" or a "transfer" within the meaning of Section 546 of the Bankruptcy Code, and (ii) a "swap agreement," as such term is defined in Section 101(53B) of the Bankruptcy Code, with respect to which each payment and delivery hereunder or in connection herewith is a "termination value," a "payment amount" or "other transfer obligation" within the meaning of Section 362 of the Bankruptcy Code and a "transfer" within the meaning of Section 546 of the Bankruptcy Code, and (B) that Dealer is entitled to the protections afforded by, among other sections, Section 362(b)(6), 362(b)(17), 362(b)(27), 362(o), 546(e), 546(g), 546(j), 548(d)(2), 555, 560 and 561 of the Bankruptcy Code.
- (r) Waiver of Jury Trial. Each party waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect of any suit, action or proceeding relating to the Transaction. Each party (i) certifies that no representative, agent or attorney of either party has represented, expressly or otherwise, that such other party would not, in the event of such a suit, action or proceeding, seek to enforce the foregoing waiver and (ii) acknowledges that it and the other party have been induced to enter into the Transaction, as applicable, by, among other things, the mutual waivers and certifications provided herein.
- (s) Wall Street Transparency and Accountability Act. In connection with Section 739 of the Wall Street Transparency and Accountability Act of 2010 ("WSTAA"), the parties hereby agree that neither the enactment of WSTAA or any regulation under the WSTAA, nor any requirement under WSTAA or an amendment made by WSTAA, shall limit or otherwise impair either party's otherwise applicable rights to terminate, renegotiate, modify, amend or supplement this Confirmation or the Agreement, as applicable, arising from a termination event, force majeure, illegality, increased costs, regulatory change or similar event under this Confirmation, the Equity Definitions incorporated herein, or the Agreement (including, but not limited to, rights arising from Change in Law, Hedging Disruption, an Excess Ownership Position, or Illegality (as defined in the Agreement)).

- (t) Agreements and Acknowledgements Regarding Hedging. Counterparty understands, acknowledges and agrees that: (A) at any time on and prior to the Expiration Date, Dealer and its affiliates may buy or sell Shares or other securities or buy or sell options or futures contracts or enter into swaps or other derivative securities in order to adjust its hedge position with respect to the Transaction; (B) Dealer and its affiliates also may be active in the market for Shares other than in connection with hedging activities in relation to the Transaction; (C) Dealer shall make its own determination as to whether, when or in what manner any hedging or market activities in securities of Counterparty shall be conducted and shall do so in a manner that it deems appropriate to hedge its price and market risk with respect to the Relevant Prices; and (D) any market activities of Dealer and its affiliates with respect to Shares may affect the market price and volatility of Shares, as well as the Relevant Prices, each in a manner that may be adverse to Counterparty.
- (u) Early Unwind. In the event the sale of the ["Firm Securities"]⁵⁸["Additional Securities"]⁵⁹ (as defined in the Purchase Agreement) is not consummated with the Initial Purchasers for any reason, or Counterparty fails to deliver to Dealer the opinion of counsel required pursuant to Section 9(a), in each case, by 5:00 p.m. (New York City time) on the Premium Payment Date, or such later date as agreed upon by the parties (the Premium Payment Date or such later date, the "**Early Unwind Date**"), the Transaction shall automatically terminate (the "**Early Unwind**") on the Early Unwind Date and (i) the Transaction and all of the respective rights and obligations of Dealer and Counterparty under the Transaction shall be cancelled and terminated and (ii) each party shall be released and discharged by the other party from and agrees not to make any claim against the other party with respect to any obligations or liabilities of the other party arising out of and to be performed in connection with the Transaction either prior to or after the Early Unwind Date. Each of Dealer and Counterparty represents and acknowledges to the other that, upon an Early Unwind, all obligations with respect to the Transaction shall be deemed fully and finally discharged.
- (v) Payment by Counterparty. In the event that, following payment of the Premium, (i) an Early Termination Date occurs or is designated with respect to the Transaction as a result of a Termination Event or an Event of Default (other than an Event of Default arising under Section 5(a)(ii) or 5(a)(iv) of the Agreement) and, as a result, Counterparty owes to Dealer an amount calculated under Section 6(e) of the Agreement, or (ii) Counterparty owes to Dealer, pursuant to Section 12.7 or Section 12.9 of the Equity Definitions, an amount calculated under Section 12.8 of the Equity Definitions, such amount shall be deemed to be zero.
- (w) Other Adjustments Pursuant to the Equity Definitions. Notwithstanding anything to the contrary in this Confirmation, solely for purposes of this Section 9(w), the terms "Potential Adjustment Event," "Merger Event," and "Tender Offer" shall each have the meanings assigned to such term in the Equity Definitions (as amended by Section 9(i)(i), (ii) and (iii)), and upon the occurrence of a Merger Date, the occurrence of a Tender Offer Date, or declaration by Counterparty of the terms of any Potential Adjustment Event, respectively, as such terms are defined in the Equity Definitions (as amended by Section 9(i)(i), (ii) and (iii)), the Calculation Agent shall, acting in good faith and in a commercially reasonable manner, adjust the Cap Price as appropriate to account for the economic effect on the Transaction of such event, without duplication of any other adjustment hereunder or under the Agreement or the Equity Definitions in respect of such event; *provided* that in no event shall the Cap Price be less than the Strike Price. For purposes of this Section 9(w), the term "Extraordinary Dividend" means any cash dividend on the Shares.

⁵⁸ Include in Base Call Option Confirmation only. To be conformed to defined term in purchase agreement.

⁵⁹ Include in Additional Call Option Confirmation only. To be conformed to defined term in purchase agreement.

- (x) Conduct Rules. Each party acknowledges and agrees to be bound by the Conduct Rules of the Financial Industry Regulatory Authority, Inc. applicable to transactions in options, and further agrees not to violate the position and exercise limits set forth therein.
- (y) Risk Disclosure Statement. Counterparty represents and warrants that it has received, read and understands the OTC Options Risk Disclosure Statement provided by Dealer and a copy of the most recent disclosure pamphlet prepared by The Options Clearing Corporation entitled “Characteristics and Risks of Standardized Options”.⁶⁰
- (z) Counterparts. This Confirmation may be executed in several counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.
- (aa) Tax Matters.

- (i) *Payer Tax Representations*. For the purpose of Section 3(e) of the Agreement, each of Dealer and Counterparty makes the following representation:

It is not required by any applicable law, as modified by the practice of any relevant governmental revenue authority, of any Relevant Jurisdiction to make any deduction or withholding for or on account of any Tax from any payment (other than any amounts treated as interest under Section 9(h) of the Agreement) to be made by it to the other party under the Agreement. In making this representation, it may rely on (i) the accuracy of any representations made by the other party pursuant to Section 3(f) of the Agreement, (ii) the satisfaction of the agreement contained in Section 4(a)(i) or 4(a)(iii) of the Agreement and the accuracy and effectiveness of any document provided by the other party pursuant to Section 4(a)(i) or 4(a)(iii) of the Agreement and (iii) the satisfaction of the agreement of the other party contained in Section 4(d) of the Agreement, except that it will not be a breach of this representation where reliance is placed on clause (ii) above and the other party does not deliver a form or document under Section 4(a)(iii) of the Agreement by reason of material prejudice to its legal or commercial position.

- (ii) *Payee Tax Representations*:

- (A) For the purpose of Section 3(f) of the Agreement, Counterparty makes the following representation to Dealer:

Counterparty is a corporation and a “U.S. person” (as that term is used in Section 1.1441-4(a)(3)(ii) of the United States Treasury Regulations) for U.S. federal income tax purposes and is “exempt” within the meaning of Sections 1.6041-3(p) and 1.6049-4(c) of the United States Treasury Regulations from information reporting on U.S. Internal Revenue Service Form 1099 and backup withholding.

- (B) For the purpose of Section 3(f) of the Agreement, Dealer makes the following representations to Counterparty:

*[Insert Dealer tax rep provided by Dealer.]*⁶¹

- (iii) *Tax Documentation*. For the purpose of Sections 4(a)(i) and (ii) of the Agreement, Counterparty agrees to deliver to Dealer one duly executed and completed U.S. Internal Revenue Service Form W-9 (or successor thereto) and Dealer agrees to deliver to Counterparty one duly executed and completed U.S. Internal Revenue Service Form [W-9][*insert applicable W-8*] (or successor thereto). Such forms or documents shall be delivered (i) on or before the date of execution of this Confirmation, (ii) upon Counterparty or Dealer, as applicable, learning that any such tax form previously provided by it has become obsolete or incorrect and (iii) upon reasonable request of the other party.

⁶⁰ Include for relevant Dealers.

⁶¹ Insert appropriate Dealer-specific payee tax representation. If Dealer provides an IRS Form W-8BEN-E, Dealer to provide a standard tax treaty representation. If Dealer provides an IRS Form W-8IMY, the Dealer should be acting solely on behalf of a U.S. person delivering an IRS Form W-9.

(iv) *Withholding Tax Imposed on Payments to Non-U.S. Counterparties under the United States Foreign Account Tax Compliance.* “Tax” as used in Section 9(aa)(i) above (*Payer Tax Representations*) and “Indemnifiable Tax”, as defined in Section 14 of the Agreement, shall not include any U.S. federal withholding tax imposed or collected pursuant to Sections 1471 through 1474 of the Code, any current or future regulations or official interpretations thereof, any agreement entered into pursuant to Section 1471(b) of the Code, or any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement entered into in connection with the implementation of such Sections of the Code (a “**FATCA Withholding Tax**”). For the avoidance of doubt, a FATCA Withholding Tax is a Tax the deduction or withholding of which is required by applicable law for the purposes of Section 2(d) of the Agreement.

- (bb) *Section 871(m) Protocol.* “Tax” as used in Section 9(aa)(i) above (*Payer Tax Representations*) and “Indemnifiable Tax”, as defined in Section 14 of the Agreement, shall not include any tax imposed on payments treated as dividends from sources within the United States under Section 871(m) of the Code or any regulations issued thereunder. For the avoidance of doubt, any such tax imposed under Section 871(m) of the Code is a Tax the deduction or withholding of which is required by applicable law for the purposes of Section 2(d) of the Agreement.
- (cc) *Hedging Adjustment.* For the avoidance of doubt, whenever Dealer, the Determining Party or the Calculation Agent makes an adjustment or calculation, or the Determining Party or the Calculation Agent makes a determination, in each case, permitted or required to be made pursuant to the terms of this Confirmation or the Equity Definitions to take into account the effect of any event (other than an adjustment, calculation or determination made by reference to the Indenture), the Calculation Agent, the Determining Party or Dealer, as the case may be, shall make such adjustment, calculation or determination in a commercially reasonable manner and by reference to the effect of such event on Dealer assuming that Dealer maintains a commercially reasonable hedge position.
- (dd) *Electronic Signatures.* Delivery of an executed signature page by facsimile or electronic transmission (e.g., “pdf” or “tif”), or any electronic signature complying with the U.S. federal ESIGN Act of 2000, Uniform Electronic Transactions Act or other applicable law, e.g., www.docusign.com, shall be effective as delivery of a manually executed counterpart hereof.
- (ee) *[Insert Dealer boilerplate, including applicable resolution stay protocol language, provided by Dealer.]*

[Signature Pages Follow]

Counterparty hereby agrees to check this Confirmation and to confirm that the foregoing correctly sets forth the terms of the Transaction by signing in the space provided below and returning to Dealer the fully-executed Confirmation.

Very truly yours,

[_____]

By: _____

Name:

Title:

[By: _____

Name:

Title:]

[[_____]

as Agent

By: _____

Name:

Title:

[By: _____

Name:

Title:]]

Accepted and confirmed
as of the Trade Date:

PROPETRO HOLDING CORP.

By: _____
Name:
Title:

AMENDMENT NO. 4 to AMENDED AND RESTATED CREDIT AGREEMENT

This Amendment No. 4 (this "Amendment"), dated as of May 4, 2026, is entered into by and among PROPETRO HOLDING CORP., a Delaware corporation ("Holdings"), PROPETRO SERVICES, INC., a Texas corporation (the "Borrower"), each Guarantor, each Lender party hereto (including the New Lenders and the Replacement Lender (each as defined below)) and BARCLAYS BANK PLC, in its capacity as administrative agent for the Lenders (in such capacity, the "Agent") and collateral agent for the Secured Parties (in such capacity, the "Collateral Agent"). This Amendment amends that certain Amended and Restated Credit Agreement, dated as of April 13, 2022 (as amended prior to the date hereof, the "Credit Agreement"), entered into by and among Holdings, the Borrower, the institutions from time to time party thereto as Lenders (the "Lenders") and Letter of Credit Issuers, the Agent, the Collateral Agent and the other parties named therein. Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to them in the Credit Agreement as amended by this Amendment (including, for the avoidance of doubt, Exhibit A to this Amendment) (the "Amended Credit Agreement").

WITNESSETH:

WHEREAS, the Borrower wishes to extend the maturity date of the Revolving Credit Commitments under, and make other certain amendments to, the Credit Agreement on the terms set forth herein;

WHEREAS, in accordance with Section 12.1 of the Credit Agreement, the Credit Agreement may be amended, supplemented or modified in writing signed by the requisite Lenders, the Agent and the Borrower;

WHEREAS, each Lender hereby agrees to the amendments to the Credit Agreement set forth in this Amendment and each New Lender (as defined below) hereby agrees to provide the Revolving Credit Commitment as set forth herein; and

WHEREAS, on the Amendment No. 4 Effective Date, those existing Lenders that have not consented to this Amendment and fail to execute and deliver a counterpart to this Amendment (each a "Non-Consenting Lender") by 12:00 p.m. (New York City time), on May 1, 2026 shall transfer and assign, without recourse (in accordance with and subject to the restrictions contained in Section 5.8 and Section 12.1(b) of the Credit Agreement), all of its interests, rights and obligations under the Credit Agreement and the related Loan Documents in respect of its Loans and Commitments, as applicable, in accordance with Section 5.8 and Section 12.1(b) of the Credit Agreement and as set forth in this Amendment, to Morgan Stanley Senior Funding, Inc. (in such capacity, the "Replacement Lender") who shall assume such obligations as further set forth in this Amendment and (ii) the Borrower and the Replacement Lender shall pay to each Non-Consenting Lender in immediately available funds an amount equal to the sum of the principal of and interest accrued to, but not including, the date of such payment on the outstanding Loans and Commitments, as applicable, of such Non-Consenting Lender, plus all fees specified in Section 3.5 and Section 3.6 of the Credit Agreement and other amounts specifically accrued for the account of such Non-Consenting Lender.

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the parties hereto hereby agree as follows:

Section 1. New Lenders. Each Lender party hereto that was not a Lender immediately prior to the Amendment No. 4 Effective Date (each such Lender, a “New Lender”) agrees (i) that effective on and at all times after the Amendment No. 4 Effective Date, such New Lender will be bound by all of the obligations of a Lender under the Credit Agreement, (ii) to provide its Revolving Credit Commitment in the amount set forth opposite its name on Schedule 1.1 under the heading “Revolving Credit Commitment”, which shall be added to and constitute a part of the Revolving Credit Commitments existing under the Credit Agreement immediately prior to giving effect to this Amendment and (iii) to assume a portion of each existing Lender’s participations in outstanding Letters of Credit and Swingline Loans such that, after giving effect to this Amendment, the percentage of the aggregate outstanding (A) participations under the Credit Agreement in Letters of Credit and (B) participations under the Credit Agreement in Swingline Loans held by each Lender (including each New Lender) will equal the percentage of the aggregate Revolving Credit Commitments represented by such Lender’s Revolving Credit Commitment.

Section 2. Non-Consenting Lenders; Other Terms and Agreements.

(a) **Non-Consenting Lenders.** The Borrower hereby gives notice to each Non-Consenting Lender that, upon receipt of executed counterparts to this Amendment from the Required Lenders (immediately prior to the Amendment No. 4 Effective Date), such Non-Consenting Lender shall have, by the execution hereof of the Borrower and the Agent, in accordance with Section 5.8 and Section 12.1(b) of the Credit Agreement, upon receipt of an amount equal to the sum of the principal of and interest accrued to, but not including, the date of such payment of the Loans and Commitments, as applicable, of such Non-Consenting Lender, plus all fees specified in Section 3.5 and Section 3.6 of the Credit Agreement and other amounts specifically accrued for the account of such Non-Consenting Lender, assigned pursuant to Section 5.8 and Section 12.1(b) of the Credit Agreement, all of its interests, rights and obligations under the Credit Agreement and the related Loan Documents in respect of its Loans and Commitments, as applicable, to the Replacement Lender. The Agent's and the Borrower's execution of this Amendment shall be deemed to be the execution of an Assignment and Assumption for purposes of Section 5.8 and Section 12.1(b) of the Credit Agreement.

(b) **Replacement Lender.** The Replacement Lender agrees to purchase Loans and Commitments, as applicable, from the Non-Consenting Lenders on the Amendment No. 4 Effective Date in an aggregate principal amount equal to the aggregate principal amount of the Loans and Commitments, as applicable, held by Non-Consenting Lenders immediately prior to, but not including, the Amendment No. 4 Effective Date in accordance with Section 5.8 and Section 12.1(b) of the Credit Agreement. The Replacement Lender's execution of this Amendment shall be deemed to be the execution of an Assignment and Assumption by the Replacement Lender (and the execution of this Amendment by the Agent, the Borrower, the Swingline Lender and the Letter of Credit Issuers shall be deemed to be the consent of the Agent, the Borrower, the Swingline Lender and the Letter of Credit Issuers (to the extent such consent is required under the Credit Agreement) thereto) which assignment shall be effective upon receipt by each such Non-Consenting Lender of an amount equal to the sum of the principal of and interest accrued to, but not including, the date of such payment on the outstanding Loans and Commitments, as applicable, of such Non-Consenting Lender, plus all fees specified in Section 3.5 and Section 3.6 of the Credit Agreement and other amounts specifically accrued for the account of such Non-Consenting Lender, required by Section 5.8 and Section 12.1(b) of the Credit Agreement. The Replacement Lender, by delivering its signature page to this Amendment, shall be deemed to have acknowledged receipt of, and consented to and approved, this Amendment, each Loan Document and each other document required to be delivered to, or be approved by or satisfactory to, the Agent on the Amendment No. 4 Effective Date.

Section 3. Amendments to the Credit Agreement.

(a) On the Amendment No. 4 Effective Date, the Credit Agreement is hereby amended to delete the stricken text (indicated textually in the same manner as the following example: ~~stricken text~~) and to add the double-underlined text (indicated textually in the same manner as the following example: double-underlined text) as set forth in Exhibit A hereto.

(b) Schedule 1.1, Schedule 1.6, Schedule 6.4, Schedule 7.9, Schedule 8.12 and Schedule 8.16 to the Credit Agreement are hereby replaced in their entirety with Schedule 1.1, Schedule 1.6, Schedule 6.4, Schedule 7.9, Schedule 8.12 and Schedule 8.16 attached hereto, respectively.

(c) The Schedules to the Credit Agreement are hereby amended by adding the new Schedule 1.1(B) attached hereto.

(d) Exhibit A to the Credit Agreement is hereby replaced in its entirety and attached as Exhibit B hereto.

Section 4. Conditions Precedent to the Effectiveness of this Amendment.

This Amendment shall become effective as of the date when, and only when, the following conditions precedent have been satisfied (such date, the “Amendment No. 4 Effective Date”):

(a) The Agent shall have received counterparts of this Amendment duly executed by (1) the Borrower, (2) Holdings, (3) each Guarantor, (4) the Agent, (5) the Collateral Agent, (6) the Swingline Lender, (7) the Letter of Credit Issuers, (8) the Required Lenders (immediately prior to the Amendment No. 4 Effective Date) and (9) each Lender (including the New Lenders and the Replacement Lender after giving effect to the replacement of the Non-Consenting Lender).

(b) The Agent shall have received payment of all unpaid fees and expenses owing in connection with this Amendment, including, without limitation, (i) an upfront fee for the account of each Lender (but, for the avoidance of doubt, not any Non-Consenting Lender) equal to (x) 0.15% of the aggregate principal amount of such Lender’s Revolving Credit Commitments as of the Amendment No. 4 Effective Date up to the amount of such Lender’s Revolving Credit Commitments immediately prior to the Amendment No. 4 Effective Date and (y) 0.25% of the aggregate principal amount of such Lender’s Revolving Credit Commitments as of the Amendment No. 4 Effective Date in excess of such Lender’s Revolving Credit Commitments immediately prior to the Amendment No. 4 Effective Date, (ii) the reasonable and documented fees, disbursements and other charges of Cahill Gordon & Reindel LLP, counsel to the Agent and (iii) to the extent not set forth herein, any other fees set forth in the engagement letter, dated as of May 3, 2026, between Barclays Bank PLC, as arranger of this Amendment, and the Borrower; provided, that, to the extent that the pricing of the Convertible Notes occurs subsequent to 12:00 p.m. (New York City time) on the Amendment No. 4 Effective Date then the deadline for the Agent receiving the payment of fees and expenses pursuant to this subclause (b) shall be extended until 12:00 p.m. (New York City time) on the Business Day immediately following the Amendment No. 4 Effective Date; provided, further, that, any failure to make such payments pursuant to the extended deadline contemplated by the immediately preceding proviso shall be considered an Event of Default under Section 10.1(a)(ii) of the Credit Agreement (disregarding the five Business Day grace period set forth therein).

(c) Immediately prior to and immediately after the Amendment No. 4 Effective Date, no Default or Event of Default shall have occurred and be continuing or shall result from the effectiveness of this Amendment.

(d) The representations and warranties of the Obligor contained in Section 5 hereof shall be true and correct in all material respects (and any representation and warranty that is qualified as to materiality or Material Adverse Effect shall be true and correct in all respects) on and as of the Amendment No. 4 Effective Date, 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 (and in all respects if any such representation or warranty is already qualified by materiality) as of such earlier date.

(e) The Agent shall have received a certificate signed by a Responsible Officer of the Borrower certifying as to the satisfaction of the conditions set forth in paragraphs (c) and (d) of this Section 4.

(f) The Agent shall have received a legal opinion of Vinson & Elkins LLP, counsel to the Borrower, addressed to the Agent, the Collateral Agent, the Lenders and the Letter of Credit Issuers, in form and substance reasonably satisfactory to the Agent.

(g) The Agent shall have received a certificate executed by a Responsible Officer of the Borrower, of Holdings and of each Guarantor, substantially in the form delivered on the Closing Date, which attaches (A) resolutions or other equivalent action documentation authorizing the Amendment, (B) an incumbency certificate, (C) Organization Documents of the Borrower and of Holdings and (D) good standing certificates of the Borrower, of Holdings and of each Guarantor.

(h) The Agent shall have received a certificate executed by the Chief Financial Officer of Holdings as of the Amendment No. 4 Effective Date, substantially in the form of Exhibit G to the Credit Agreement, attesting to the Solvency of Holdings and its Subsidiaries (on a consolidated basis) immediately after giving effect to this Amendment.

(i) The Borrower shall have provided to the Lenders (x) the documentation and other information that such Lender reasonably determines is required by United States regulatory authorities under applicable “know your customer” and anti-money laundering rules and regulations, including without limitation the USA PATRIOT Act and (y) if the Borrower qualifies as a “legal entity customer” under 31 C.F.R. § 1010.230, a Beneficial Ownership Certification in relation to the Borrower, in each case, that is reasonably requested by any Lender.

(j) The Borrower shall have provided to any requesting Lender a Revolving Note (if any).

(k) The Agent shall have received lien searches reasonably satisfactory to the Agent.

(l) The Borrower shall have prepaid all Revolving Loans outstanding as of the Amendment No. 4 Effective Date including all accrued interest and fees and shall have delivered a notice of prepayment as required pursuant to Section 4.1 of the Credit Agreement (provided, however, that the Agent and the Lenders hereby agree that any such notice of prepayment need only be delivered one (1) Business Day prior to the date of such prepayment).

(m) The Borrower shall have delivered a Notice of Borrowing with respect to any Borrowing on the Amendment No. 4 Effective Date in accordance with Section 2.4 of the Credit Agreement (provided, however, that the Agent and the Lenders hereby agree that any such Notice of Borrowing need only be delivered one (1) Business Day prior to the date of such Borrowing).

(n) The Agent shall have received a Perfection Certificate with respect to each of the Obligor as of the Amendment No. 4 Effective Date.

(o) The Agent shall have received a (i) Supplement to the Guarantee Agreement executed by Holdings, (ii) an amended and restated Security Agreement in the form attached hereto as Exhibit C, (iii) a UCC-3 amendment to the existing UCC-1 for Holdings that has been duly filed in the appropriate jurisdiction with respect to Holdings in a form reasonably satisfactory to the Agent and (iv) to the extent not set forth herein, other documents and deliverables of Holdings required for Holdings to satisfy the Collateral and Guarantee Requirement under the Credit Agreement.

(p) Substantially contemporaneously with the Amendment No. 4 Effective Date, a purchase agreement with respect to Convertible Notes in an aggregate principal amount of at least \$350,000,000 shall have been executed.

Section 5. Representations and Warranties.

On and as of the Amendment No. 4 Effective Date, after giving effect to this Amendment, each Obligor hereby represents and warrants to the Agent, the Collateral Agent and each of the Lenders as follows:

(a) Each Obligor has the power and authority to execute, deliver and perform this Amendment. Each Obligor has taken all necessary corporate action (including obtaining approval of its shareholders, if necessary) to authorize its execution, delivery and performance of this Amendment. This Amendment has been duly executed and delivered by each Obligor, and constitutes the legal, valid and binding obligations of each of such Obligor, enforceable against it in accordance with its terms, subject to the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization, winding up, moratorium and other similar Laws relating to or affecting creditors' rights generally and general equitable principles (whether considered in a proceeding in equity or at Law) and an implied covenant of good faith and fair dealing. Each Obligor's execution, delivery and performance of this Amendment does not (x) conflict with, or constitute a violation or breach of, the terms of (a) any contract, mortgage, lease, agreement, indenture, or instrument to which such Obligor is a party or which is binding upon it, (b) any Requirement of Law applicable to an Obligor, or (c) any Organization Document of an Obligor in any respect that would reasonably be expected to have a Material Adverse Effect or (y) result in the imposition of any Lien upon the property of an Obligor by reason of any of the foregoing;

(b) The representations and warranties contained in Article VII of the Amended Credit Agreement and the other Loan Documents are true and correct in all material respects (and any representation and warranty that is qualified as to materiality or Material Adverse Effect is true and correct in all respects) on and as of the Amendment No. 4 Effective Date as though made on and as of such date, other than any such representation or warranty which relates to a specified prior date, in which case such representations and warranties were true and correct in all material respects as of such prior date; and

(c) No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or other Person is necessary or required in connection with the execution, delivery or performance by, or enforcement against, the Obligors of this Amendment, other than (i) those that have been obtained or made and are in full force and effect and (ii) where failure to obtain, effect or make any such approval, consent, exemption, authorization, or other action, notice or filing would not reasonably be expected to have a Material Adverse Effect.

Section 6. Reference to and Effect on the Loan Documents.

(a) As of the Amendment No. 4 Effective Date, each reference in the Credit Agreement to “this Agreement,” “hereunder,” “hereof,” “herein,” or words of like import, and each reference in the other Loan Documents to the Credit Agreement (including, without limitation, by means of words like “thereunder,” “thereof” and words of like import), shall mean and be a reference to the Amended Credit Agreement, and this Amendment and the Amended Credit Agreement shall be read together and construed as a single instrument.

(b) Except as expressly amended hereby, all of the terms and provisions of the Credit Agreement and all other Loan Documents are and shall remain in full force and effect and are hereby ratified and confirmed. This Amendment shall not constitute a novation of the Credit Agreement, of any of the other Loan Documents or of any Obligations or Guaranteed Obligations (as defined in the Guarantee Agreement).

(c) The execution, delivery and effectiveness of this Amendment shall not operate as a waiver of any right, power or remedy of the Lenders, the Obligors, the Agent or the Collateral Agent under any of the Loan Documents, nor constitute a waiver or amendment of any other provision of any of the Loan Documents or for any purpose except as expressly set forth herein.

(d) This Amendment shall constitute a Loan Document under the terms of the Amended Credit Agreement.

(e) Each Obligor, by its signature below, (i) hereby affirms and confirms its Guaranty of the Guaranteed Obligations (as defined in the Guarantee Agreement) pursuant to the Guarantee Agreement and acknowledges and agrees that such Guaranty shall continue in full force and effect in respect of, and to secure, such Guaranteed Obligations under the Guarantee Agreement and the other Loan Documents and (ii) hereby affirms and confirms the pledge of and/or grant of a security interest in its assets which are Collateral to secure the Obligations, all as provided in the Security Documents, and acknowledges and agrees that such pledge and/or grant shall continue in full force and effect in respect of, and to secure, such Obligations under the Amended Credit Agreement and the other Loan Documents, in each case of the foregoing clauses (i) and (ii), after giving effect to this Amendment and the amendments, restatements, amendments and restatements, supplements and other modifications, as applicable, to the Guarantee Agreement and the Security Documents on the date hereof.

Section 7. Fees and Expenses.

The Borrower agrees to pay all reasonable and documented or invoiced out-of-pocket costs and expenses of the Agent, the Collateral Agent and the Lenders in connection with this Amendment to the extent required by Section 14.7 of the Amended Credit Agreement.

Section 8. Counterparts.

This Amendment may be executed in any number of counterparts, and by the Agent, the Collateral Agent, the Lenders and the Obligors in separate counterparts, each of which shall be an original, but all of which shall together constitute one and the same agreement; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document. This Amendment may be executed by facsimile or other electronic communication and the effectiveness of this Amendment and the signatures thereon shall have the same force and effect as manually signed originals and shall be binding on all parties thereto. The Agent may require that any such signatures be confirmed by a manually-signed original thereof, provided that the failure to request or deliver the same shall not limit the effectiveness of any facsimile or other electronic signature. The words “execution,” “signed,” “signature,” “delivery,” and words of like import in or relating to any document to be signed in connection with this Amendment and the transactions contemplated hereby shall be deemed to include electronic signatures, deliveries or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act; provided that nothing herein shall require Barclays to accept electronic signatures in any form or format without its prior written consent.

Section 9. Governing Law.

The governing law, choice of forum and service of process provisions of Section 14.3 of the Amended Credit Agreement shall apply to this Amendment *mutatis mutandis*.

Section 10. Notices.

All communications and notices hereunder shall be given as provided in Section 14.8 of the Amended Credit Agreement.

Section 11. Waiver of Jury Trial.

The waiver of jury trial provisions of Section 14.4 of the Amended Credit Agreement shall apply to this Amendment *mutatis mutandis*.

Section 12. Indemnification of the Agent, the Collateral Agent and the Lenders; Limitation of Liability

The indemnification provisions of Section 14.10 of the Amended Credit Agreement and the limitation of liability provisions of Section 14.11 of the Amended Credit Agreement shall apply to this Amendment *mutatis mutandis*.

[Signature pages follow.]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed by their respective officers thereunto duly authorized, as of the date first written above.

PROPETRO SERVICES, INC., as the Borrower

By: /s/ Caleb Weatherl
Name: Caleb Weatherl
Title: Chief Financial Officer

[ProPetro – Amendment No. 4]

PROPETRO HOLDING CORP., as Holdings

By: /s/ Caleb Weatherl

Name: Caleb Weatherl

Title: Chief Financial Officer

SILVERTIP COMPLETION SERVICES OPERATING, LLC

AQUA PROP LLC

PROPETRO ENERGY SOLUTIONS, LLC, as Guarantors

By: /s/ Caleb Weatherl

Name: Caleb Weatherl

Title: Chief Financial Officer

[ProPetro – *Amendment No. 4*]

BARCLAYS BANK PLC, as Agent, Collateral Agent, a Lender, Swingline Lender and
a Letter of Credit Issuer

By: /s/ Joseph Jordan

Name: Joseph Jordan

Title: Managing Director

[ProPetro – Amendment No. 4]

GOLDMAN SACHS BANK USA, as a Lender and a Letter of Credit Issuer

By: /s/ Rebecca Kratz

Name: Rebecca Kratz

Title: Authorized Signatory

[ProPetro – *Amendment No. 4*]

BANK OF AMERICA, N.A., as a Lender and a Letter of Credit Issuer

By: /s/ Jason Stowe

Name: Jason Stowe

Title: Vice President

[ProPetro – *Amendment No. 4*]

MORGAN STANLEY SENIOR FUNDING, INC., as a Lender and a Letter of Credit
Issuer

By: /s/ Michael King

Name: Michael King

Title: Vice President

[ProPetro – *Amendment No. 4*]

THE BANK OF NOVA SCOTIA, HOUSTON BRANCH, as a Lender and a Letter of
Credit Issuer

By: /s/ Priyanka MacRae
Name: Priyanka MacRae
Title: Director

[ProPetro – Amendment No. 4]

Exhibit A

Amended Credit Agreement

AMENDED AND RESTATED CREDIT AGREEMENT

Dated as of April 13, 2022 and

as amended by Amendment No. 1, dated as of June 2, 2023, Amendment No. 2, dated as of June 26, 2024, ~~and~~ Amendment No. 3, dated as of December 26, 2025 and
Amendment No. 4, dated as of May 4, 2026

among

PROPETRO HOLDING CORP.,
as Holdings,

PROPETRO SERVICES, INC.,
as the Borrower,

THE SEVERAL LENDERS
FROM TIME TO TIME PARTY HERETO,

BARCLAYS BANK PLC,
as the Agent, the Collateral Agent, a Letter of Credit Issuer and the Swingline Lender,

~~and~~

~~JPMORGAN CHASE BANK, N.A.,
as a Letter of Credit Issuer~~

BARCLAYS BANK PLC,
~~JPMORGAN CHASE~~ GOLDMAN SACHS BANK USA, ~~N.A. and~~
BANK OF AMERICA, N.A.,
MORGAN STANLEY SENIOR FUNDING, INC.
and
THE BANK OF NOVA SCOTIA, HOUSTON BRANCH
as the Joint Lead Arrangers and Joint Bookrunners

TABLE OF CONTENTS

	Page
ARTICLE I	
DEFINITIONS	
1.1	Defined Terms
1.2	Accounting Terms
1.3	Interpretive Provisions
1.4	Classification of Loans and Borrowings
1.5	[Reserved]
1.6	Rounding
1.7	Times of Day
1.8	Timing of Payment or Performance
1.9	Currency Equivalents Generally
1.10	Divisions
1.11	Rates
ARTICLE II	
LOANS AND LETTERS OF CREDIT	
2.1	Credit Facilities
2.2	Revolving Loans
2.3	Letters of Credit
2.4	Loan Administration
2.5	Reserves
2.6	Incremental Credit Extension
2.7	Extensions of Revolving Loans and Revolving Credit Commitments
2.8	Defaulting Lenders
ARTICLE III	
INTEREST AND FEES	
3.1	Interest
3.2	Continuation and Conversion Elections
3.3	Maximum Interest Rate
3.4	Closing Fees and Other Fees
3.5	Unused Line Fee
3.6	Letter of Credit Fees
ARTICLE IV	
PAYMENTS AND PREPAYMENTS	
4.1	Payments and Prepayments
4.2	Out-of-Formula Condition
4.3	Mandatory Prepayments

4.4	Termination or Reductions of Facilities	~~92~~ <u>95</u>
4.5	Term SOFR Loan Prepayments	~~92~~ <u>95</u>
4.6	Payments by the Borrower	~~93~~ <u>95</u>
4.7	Apportionment, Application and Reversal of Payments	~~93~~ <u>96</u>
4.8	Indemnity for Returned Payments	~~93~~ <u>96</u>
4.9	Agent's and Lenders' Books and Records	~~94~~ <u>96</u>

ARTICLE V

TAXES, YIELD PROTECTION AND ILLEGALITY

5.1	Taxes	~~94~~ <u>97</u>
5.2	Inability to Determine Rates; Illegality	~~97~~ <u>99</u>
5.3	Increased Costs and Reduction of Return	~~98~~ <u>100</u>
5.4	Funding Losses	~~98~~ <u>101</u>
5.5	Benchmark Replacement Setting	~~99~~ <u>101</u>
5.6	Certificates of Agent	~~100~~ <u>103</u>
5.7	Survival	~~100~~ <u>103</u>
5.8	Assignment of Commitments Under Certain Circumstances	~~100~~ <u>103</u>

ARTICLE VI

BOOKS AND RECORDS; FINANCIAL INFORMATION; NOTICES

6.1	Books and Records	~~101~~ <u>104</u>
6.2	Financial Information	~~101~~ <u>104</u>
6.3	Notices to the Agent	~~104~~ <u>106</u>
6.4	Collateral Reporting	~~105~~ <u>108</u>

ARTICLE VII

GENERAL WARRANTIES AND REPRESENTATIONS

7.1	Authorization, Validity, and Enforceability of this Agreement and the Loan Documents	~~106~~ <u>108</u>
7.2	Validity and Priority of Security Interest	~~106~~ <u>109</u>
7.3	Organization and Qualification	~~106~~ <u>109</u>
7.4	Subsidiaries	~~107~~ <u>109</u>
7.5	Financial Statements and Borrowing Base Certificate	~~107~~ <u>109</u>
7.6	Solvency	~~107~~ <u>110</u>
7.7	Property	~~107~~ <u>110</u>
7.8	Intellectual Property	~~107~~ <u>110</u>
7.9	Litigation	~~108~~ <u>110</u>
7.10	Labor Disputes	~~108~~ <u>110</u>
7.11	Environmental Laws	~~108~~ <u>111</u>
7.12	No Violation of Law	~~109~~ <u>111</u>
7.13	No Default	~~109~~ <u>111</u>
7.14	ERISA Compliance	~~109~~ <u>111</u>
7.15	Taxes	~~109~~ <u>112</u>
7.16	Investment Company Act	~~109~~ <u>112</u>
7.17	Use of Proceeds	~~109~~ <u>112</u>
7.18	Margin Regulations	~~109~~ <u>112</u>

7.19	No Material Adverse Change	~~++0~~ <u>112</u>
7.20	Full Disclosure	~~++0~~ <u>112</u>
7.21	Government Authorization	~~++0~~ <u>113</u>
7.22	Anti-Terrorism Laws	~~++0~~ <u>113</u>
7.23	FCPA	~~+++~~ <u>113</u>
7.24	Sanctioned Persons	~~+++~~ <u>113</u>
7.25	Designation of Senior Debt	~~+++~~ <u>113</u>
7.26	Compliance with Cash Management Provisions	~~+++~~ <u>114</u>

ARTICLE VIII

AFFIRMATIVE AND NEGATIVE COVENANTS

8.1	Taxes	~~+++~~ <u>114</u>
8.2	Legal Existence and Good Standing	~~+++~~ <u>114</u>
8.3	Compliance with Law; Maintenance of Licenses	~~++2~~ <u>114</u>
8.4	Maintenance of Property, Inspection; Field Examinations and Appraisals	~~++2~~ <u>114</u>
8.5	Insurance	~~++3~~ <u>115</u>
8.6	Environmental Laws	~~++4~~ <u>116</u>
8.7	Compliance with ERISA	~~++4~~ <u>116</u>
8.8	Dispositions	~~++4~~ <u>116</u>
8.9	Mergers, Consolidations, etc.	~~++4~~ <u>117</u>
8.10	Distributions	~~++6~~ <u>119</u>
8.11	Investments	~~++9~~ <u>122</u>
8.12	Debt	~~++9~~ <u>122</u>
8.13	Prepayments of Debt	~~++22~~ <u>126</u>
8.14	Transactions with Affiliates	~~++22~~ <u>126</u>
8.15	Business Conducted	~~++24~~ <u>128</u>
8.16	Liens	~~++24~~ <u>128</u>
8.17	Restrictive Agreements	~~++24~~ <u>129</u>
8.18	Sale and Leaseback Transactions	~~++26~~ <u>130</u>
8.19	Fiscal Year	~~++26~~ <u>130</u>
8.20	Fixed Charge Coverage Ratio	~~++26~~ <u>131</u>
8.21	[Reserved]	~~++26~~ <u>131</u>
8.22	Additional Obligors; Covenant to Give Security	~~++26~~ <u>131</u>
8.23	Cash Management; Cash Dominion	~~++28~~ <u>132</u>
8.24	Use of Proceeds	~~++29~~ <u>134</u>
8.25	Further Assurances	~~++29~~ <u>134</u>
8.26	Designation of Subsidiaries	~~++29~~ <u>134</u>
8.27	~~Passive Holding Company; Etc.~~	~~++30~~ <u>[Reserved]</u> <u>134</u>
8.28	Amendments to Certain Documents	~~++31~~ <u>135</u>

ARTICLE IX

CONDITIONS OF LENDING

9.1	Conditions Precedent to Effectiveness of Agreement and Making of Loans on the Closing Date	~~++31~~ <u>136</u>
9.2	Conditions Precedent to Restatement Effective Date	~~++33~~ <u>138</u>
9.3	Conditions Precedent to Each Loan	~~++33~~ <u>138</u>

ARTICLE X

DEFAULT; REMEDIES

10.1	Events of Default	~~+34~~ <u>138</u>
10.2	Remedies	~~+37~~ <u>141</u>
10.3	Application of Funds	~~+38~~ <u>142</u>
10.4	Permitted Holders' Right to Cure	~~+39~~ <u>143</u>

ARTICLE XI

TERM AND TERMINATION

11.1	Term and Termination	~~+40~~ <u>144</u>

ARTICLE XII

AMENDMENTS; WAIVERS; PARTICIPATIONS; ASSIGNMENTS; SUCCESSORS

12.1	Amendments and Waivers	~~+40~~ <u>145</u>
12.2	Assignments; Participations	~~+42~~ <u>147</u>

ARTICLE XIII

THE APPOINTED AGENTS

13.1	Appointment and Authorization	~~+44~~ <u>149</u>
13.2	Delegation of Duties	~~+45~~ <u>149</u>
13.3	Liability of Appointed Agents	~~+45~~ <u>149</u>
13.4	Reliance by Appointed Agent	~~+45~~ <u>150</u>
13.5	Notice of Default	~~+46~~ <u>150</u>
13.6	Credit Decision	~~+46~~ <u>150</u>
13.7	Indemnification	~~+46~~ <u>151</u>
13.8	Appointed Agents in Individual Capacity	~~+47~~ <u>151</u>
13.9	Successor Agents	~~+47~~ <u>151</u>
13.10	Collateral Matters	~~+47~~ <u>152</u>
13.11	Restrictions on Actions by Lenders; Sharing of Payments	~~+49~~ <u>153</u>
13.12	Agency for Perfection	~~+49~~ <u>154</u>
13.13	Payments by Agent to Lenders	~~+50~~ <u>154</u>
13.14	Settlement	~~+50~~ <u>154</u>
13.15	Letters of Credit; Intra-Lender Issues	~~+52~~ <u>157</u>
13.16	Concerning the Collateral and the Related Loan Documents	~~+54~~ <u>158</u>
13.17	Field Examination and Appraisal; Disclaimer by Lenders	~~+54~~ <u>159</u>
13.18	Relation Among Lenders	~~+55~~ <u>159</u>
13.19	Arrangers	~~+55~~ <u>159</u>
13.20	The Register	~~+55~~ <u>160</u>
13.21	Secured Cash Management Agreements and Secured Hedge Agreements	~~+56~~ <u>160</u>
13.22	Withholding Taxes	~~+56~~ <u>161</u>
13.23	Erroneous Payment.	~~+57~~ <u>161</u>

ARTICLE XIV

MISCELLANEOUS

14.1	No Waivers; Cumulative Remedies	+58162
14.2	Severability	+58162
14.3	Governing Law; Choice of Forum; Service of Process	+58162
14.4	WAIVER OF JURY TRIAL	+59163
14.5	Survival of Representations and Warranties	+59163
14.6	Other Security and Guarantees	+59163
14.7	Fees and Expenses	+59164
14.8	Notices	+60164
14.9	Binding Effect	+60165
14.10	Indemnity of the Agent, the Collateral Agent and the Lenders	+60165
14.11	Limitation of Liability	+61166
14.12	Final Agreement	+62166
14.13	Counterparts; Facsimile Signatures	+62166
14.14	Captions	+62166
14.15	Right of Setoff	+62166
14.16	Confidentiality	+62167
14.17	Conflicts with Other Loan Documents	+63168
14.18	No Fiduciary Relationship	+63168
14.19	Judgment Currency	+64168
14.20	USA PATRIOT Act	+64169
14.21	Acknowledgement and Consent to Bail-In of EEA Financial Institutions	+64169
14.22	Acknowledgement Regarding any Supported QFCs	+65169
14.23	Certain ERISA Matters	+65170

EXHIBITS AND SCHEDULES

EXHIBIT A	FORM OF BORROWING BASE CERTIFICATE
EXHIBIT B	FORM OF NOTICE OF BORROWING
EXHIBIT C	FORM OF NOTICE OF CONTINUATION/CONVERSION
EXHIBIT D	FORM OF COMPLIANCE CERTIFICATE
EXHIBIT E	FORM OF ASSIGNMENT AND ACCEPTANCE AGREEMENT
EXHIBIT F	PERFECTION CERTIFICATE
EXHIBIT G	FORM OF SOLVENCY CERTIFICATE
EXHIBIT H	FORM OF CLOSING CERTIFICATE
EXHIBIT I	FORM OF NO INTEREST AGREEMENT
EXHIBIT J-1	FORM OF U.S. TAX COMPLIANCE CERTIFICATE (For Foreign Lenders That Are Not Partnerships For U.S. Federal Income Tax Purposes)
EXHIBIT J-2	FORM OF U.S. TAX COMPLIANCE CERTIFICATE (For Foreign Participants That Are Not Partnerships For U.S. Federal Income Tax Purposes)
EXHIBIT J-3	FORM OF U.S. TAX COMPLIANCE CERTIFICATE (For Foreign Participants That Are Partnerships For U.S. Federal Income Tax Purposes)
EXHIBIT J-4	FORM OF U.S. TAX COMPLIANCE CERTIFICATE (For Foreign Lenders That Are Partnerships For U.S. Federal Income Tax Purposes)
EXHIBIT K	FORM OF REVOLVING NOTE
EXHIBIT L	FORM OF INTERCREDITOR AGREEMENT
SCHEDULE 1.1	LENDERS' COMMITMENTS
<u>SCHEDULE 1.1(B)</u>	<u>ELIGIBLE POWER GENERATION EQUIPMENT</u>

SCHEDULE 1.2	GUARANTORS
SCHEDULE 1.4	UNRESTRICTED SUBSIDIARIES
SCHEDULE 1.5	[RESERVED]
SCHEDULE 1.6	INVESTORS
SCHEDULE 6.4	COLLATERAL REPORTING
SCHEDULE 7.4	SUBSIDIARIES
SCHEDULE 7.9	LITIGATION
SCHEDULE 7.11	ENVIRONMENTAL LAW
SCHEDULE 7.15	TAXES
SCHEDULE 8.11	PERMITTED INVESTMENTS
SCHEDULE 8.12	DEBT
SCHEDULE 8.14	AFFILIATE TRANSACTIONS
SCHEDULE 8.16	LIENS
SCHEDULE 8.23	DEPOSIT ACCOUNTS
SCHEDULE 8.29	CERTAIN POST-CLOSING OBLIGATIONS

AMENDED AND RESTATED CREDIT AGREEMENT

AMENDED AND RESTATED CREDIT AGREEMENT, dated as of April 13, 2022, among **PROPETRO HOLDING CORP.**, a Delaware corporation (“**Holdings**,” as hereinafter further defined), **PROPETRO SERVICES, INC.**, a Texas corporation (the “**Borrower**,” as hereinafter further defined) and the Lenders (as hereinafter defined) and Letter of Credit Issuers (as hereinafter defined) from time to time party hereto and **BARCLAYS BANK PLC**, as the Agent, the Collateral Agent and the Swingline Lender.

RECITALS:

WHEREAS, capitalized terms used and not defined in the preamble and these recitals shall have the respective meanings set forth for such terms in Section 1.1 hereof;

WHEREAS, Holdings, the Borrower, certain Lenders, the Letter of Credit Issuers, the Agent, the Collateral Agent and the Swingline Lender entered into that certain Credit Agreement, dated as of March 22, 2017 (as amended, supplemented or otherwise modified prior to the Restatement Effective Date, the “Original Credit Agreement”);

WHEREAS, the Borrower has requested that, immediately upon the satisfaction in full (or waiver) of the conditions precedent set forth in Section 9.2 below, this Agreement and the asset-based revolving credit facility hereunder (the “Revolving Credit Facility”) be amended and restated in its entirety pursuant to that certain Restatement Agreement, dated as of April 13, 2022, among the Borrower, the Guarantors, the Lenders, the Letter of Credit Issuers, the Agent, the Collateral Agent and the Swingline Lender (the “Restatement Agreement”);

WHEREAS, pursuant to the Restatement Agreement, the Lenders have consented to the amendment and restatement of the Original Credit Agreement as provided in this Agreement;

WHEREAS, it is the intent of the parties to the Restatement Agreement that neither this Agreement nor the Restatement Agreement shall constitute a novation of the obligations and liabilities existing under the Original Credit Agreement or evidence a repayment of any of such obligations and liabilities and that this Agreement and the Restatement Agreement amend and restate in its entirety the Original Credit Agreement and re-evidence the obligations of the Borrower outstanding thereunder;

WHEREAS, the Lenders have indicated their willingness to extend such credit and the Letter of Credit Issuers have indicated their willingness to issue Letters of Credit, in each case on the terms and subject to the conditions set forth below;

WHEREAS, in connection with the foregoing and as an inducement for the Lenders and the Letter of Credit Issuers to extend the credit contemplated hereunder, the Borrower has agreed to secure all of its Obligations by granting to the Collateral Agent, for the benefit of the Secured Parties, a first priority lien (such priority subject to certain Liens permitted hereunder) on substantially all of its assets (except as otherwise set forth in the definition of “Collateral and Guarantee Requirement” or in the Loan Documents), including a pledge of all of the Stock of each of its Subsidiaries (other than any Excluded Stock); and

WHEREAS, in connection with the foregoing and as an inducement for the Lenders and the Letter of Credit Issuers to extend the credit contemplated hereunder, each Guarantor has agreed to guarantee all of its Obligations and to secure its guarantees by granting to the Collateral Agent, for the benefit of the Secured Parties, a first priority lien (such priority subject to certain Liens permitted hereunder) on substantially all of its assets (except as otherwise set forth in the definition of “Collateral and Guarantee Requirement” or in the Loan Documents), including a pledge of all of the Stock of each of their respective Subsidiaries (other than any Excluded Stock).

AGREEMENT:

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

ARTICLE I

DEFINITIONS

1.1 Defined Terms. As used in this Agreement, the following terms shall have the meanings specified below unless the context otherwise requires:

“Account Debtor” means each Person obligated in any way on or in connection with an Account.

“Accounts” means, with respect to each Obligor, all of such Obligor’s now owned or hereafter acquired or arising accounts, as defined in the UCC, including any rights to payment of a monetary obligation for the sale or lease of goods or rendition of services, whether or not they have been earned by performance.

“Acquired EBITDA” means, with respect to any Acquired Entity or Business or any Converted Restricted Subsidiary for any period, the amount for such period of Consolidated EBITDA of such Acquired Entity or Business or any Converted Restricted Subsidiary (determined as if references to ~~the Borrower~~ Holdings and the Restricted Subsidiaries in the definition of the term “Consolidated EBITDA” were references to such Acquired Entity or Business or any Converted Restricted Subsidiary and its subsidiaries that will become Restricted Subsidiaries), all as determined on a consolidated basis for such Acquired Entity or Business or any Converted Restricted Subsidiary in accordance with GAAP.

“Acquired Entity or Business” has the meaning specified in the definition of the term “Consolidated EBITDA.”

“Additional Lender” has the meaning specified in Section 2.6(d).

“Adjustment Date” means the first day of each April, July, October and January, as applicable.

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

“Affiliate” means, as to any Person, any other Person which, directly or indirectly, is in control of, is controlled by, or is under common control with, such Person. A Person shall be deemed to control another Person if the controlling Person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other Person, whether through the ownership of voting securities, by contract, or otherwise. The terms “controlling” and “controlled” shall have meanings correlative thereto.

“Agent” means Barclays, in its capacity as the administrative agent for the Lenders under this Agreement, or any successor agent appointed in accordance with this Agreement and the other Loan Documents.

“Agent Advances” has the meaning specified in Section 2.4(g).

“Agent-Related Persons” means the Agent and the Collateral Agent, together with their respective Affiliates, and the respective officers, directors, employees, agents, controlling persons, advisors and other representatives, successors and permitted assigns of the Agent and the Collateral Agent and their respective Affiliates.

“Aggregate Revolver Outstandings” means, at any date of determination and without duplication, the sum of (a) the unpaid principal balance of Revolving Loans, (b) one hundred percent (100%) of the aggregate undrawn face amount of all outstanding Letters of Credit and (c) the aggregate amount of any Unpaid Drawings in respect of Letters of Credit.

“Agreement” means this Credit Agreement.

“Amendment No. 1” means Amendment No. 1 to Amended and Restated Credit Agreement, dated as of June 2, 2023, by and among the Borrower, the Agent, certain Incremental Lenders (as defined therein) and the Consenting Lenders (as defined therein).

“Amendment No. 1 Effective Date” has the meaning set forth in Amendment No. 1.

“Amendment No. 2” means Amendment No. 2 to Amended and Restated Credit Agreement, dated as of June 26, 2024, by and among the Borrower, the Agent and each Lender party thereto.

“Amendment No. 3” means Amendment No. 3 to Amended and Restated Credit Agreement, dated as of December 26, 2025, by and among the Borrower, the Agent and the Consenting Lenders (as defined therein).

“Amendment No. 3 Effective Date” has the meaning set forth in Amendment No. 3.

“Amendment No. 4” means Amendment No. 4 to Amended and Restated Credit Agreement, dated as of May 4, 2026, by and among the Borrower, the Agent and the Lenders.

“Amendment No. 4 Effective Date” has the meaning set forth in Amendment No. 4.

“Anti-Terrorism Laws” means the USA PATRIOT Act and any Executive Order administered by the U.S. Treasury Department Office of Foreign Assets Control (OFAC), and other laws and regulations relating to anti-money laundering or economic sanctions, including without limitation all published economic sanctions imposed, administered or enforced from time to time by the U.S. Department of State and OFAC.

“Applicable Entities” has the meaning specified in Section 14.18.

“Applicable Margin” means the following percentages per annum, based upon Average Historical Availability as of the most recent Adjustment Date:

Average Historical Availability	Applicable Margin for Term SOFR Loans and Daily Simple SOFR Loans	Applicable Margin for Base Rate Loans
> 66.7%	~~1.75~~ 1.50%	~~0.75~~ 0.50%
≤ 66.7% but ≥ 33.3%	~~2.00~~ 1.75%	~~1.00~~ 0.75%
< 33.3%	~~2.25~~ 2.00%	~~1.25~~ 1.00%

The Applicable Margin shall be adjusted quarterly in accordance with the table above on each Adjustment Date for the period beginning on such Adjustment Date based upon the Average Historical Availability as the Agent shall determine in good faith within ten (10) Business Days after such Adjustment Date (with any such change, for the avoidance of doubt, being given retroactive effect to the Adjustment Date) and the Agent shall notify the Borrower promptly after such determination. Any increase or decrease in the Applicable Margin resulting from a change in the Average Historical Availability shall become effective on the Adjustment Date.

“Applicable Unused Line Fee Margin” means, for any day, the following percentages per annum, based upon Average Revolving Loan Utilization as of the most recent Adjustment Date:

Average Revolving Loan Utilization	Applicable Unused Line Fee Margin
≤ 50%	~~0.50~~ 0.375%
> 50%	~~0.375~~ 0.250%

“Appointed Agents” has the meaning specified in Section 13.1.

“Appraisal” means an appraisal, prepared by an appraiser reasonably acceptable to the Agent, on a basis reasonably satisfactory to the Agent, setting forth the Net Orderly Liquidation Value of any Equipment, which appraisal shall be prepared in accordance with Section 8.4(b) or the definition of “Eligible Power Generation Equipment.”

“Approved Account Bank” means a financial institution at which any Obligor maintains an Approved Deposit Account.

“Approved Deposit Account” means each Deposit Account in respect of which an Obligor shall have entered into a Deposit Account Control Agreement, other than with respect to any Designated Account.

“Approved Fund” means any Person (other than a natural person) that is engaged in making, holding or investing in extensions of credit in its ordinary course of business and is administered or managed by a Lender, an entity that administers or manages a Lender, or an Affiliate of either.

“Approved Securities Account” means each Securities Account in respect of which any Obligor shall have entered into a Securities Account Control Agreement.

“Approved Securities Intermediary” means a securities intermediary at which any Obligor maintains an Approved Securities Account.

“Arrangers” means (~~xw~~) Barclays, JPMorgan, Goldman Sachs Bank USA and Bank of America, N.A. in their capacities as joint lead arrangers and joint bookrunners of the Revolving Credit Facility, (~~yx~~) Barclays, JPMorgan and Bank of America, N.A. in their capacities as joint lead arrangers and joint bookrunners in respect of Amendment No. 1 ~~and~~, (~~zy~~) Barclays, JPMorgan and Bank of America, N.A. in their capacities as joint lead arrangers and joint bookrunners in respect of Amendment No. 3 ~~and~~ (~~z~~) Barclays, Bank of America, N.A., Morgan Stanley Senior Funding, Inc. and The Bank of Nova Scotia, Houston Branch, in their capacities as joint lead arrangers and joint bookrunners in respect of Amendment No. 4.

“Assignee” has the meaning specified in Section 12.2(a).

“Assignment and Acceptance” means an assignment and acceptance agreement entered into by one or more Lenders and Eligible Assignees (with the consent of any party whose consent is required by Section 12.2(a)), and accepted by the Agent, in substantially the form of Exhibit E or any other form approved by the Agent.

“Attorney Costs” means and includes all reasonable and documented or invoiced fees, expenses and other charges of Cahill Gordon & Reindel LLP and, if necessary, a single firm of local counsel in each relevant jurisdiction or otherwise retained with the Borrower’s consent (such consent not to be unreasonably withheld, conditioned or delayed).

“Availability” means, at any time (a) the lesser of (i) the Maximum Revolver Amount and (ii) the Borrowing Base, minus (b) the sum of the Aggregate Revolver Outstandings.

“Available Equity Amount” means, at any time (the “Available Equity Amount Reference Time”), an amount equal to, without duplication, (a) the amount of any capital contributions or other equity issuances (or issuances of Debt that have been converted into or exchanged for Qualified Stock) received as cash equity by ~~the BorrowerHoldings~~ and applied for usage no later than 270 days after receipt of such amounts (or, in the case of a conversion of Debt, no later than 270 days after such conversion), but excluding all proceeds from the issuance of Disqualified Stock and Cure Amounts, plus (b) the aggregate amount of all dividends, returns, interests, profits, distributions, income and similar amounts (in each case, to the extent made in cash or Cash Equivalents) received by ~~the BorrowerHoldings~~ or any Restricted Subsidiary on Investments made using the Available Equity Amount during the period from and including the Business Day immediately following the Restatement Effective Date through and including the Available Equity Amount Reference Time, minus (c) the sum, without duplication, and, without taking into account the proposed portion of the Available Equity Amount calculated above to be used at the applicable Available Equity Amount Reference Time, of:

(i) the aggregate amount of any Investments made by ~~the BorrowerHoldings~~ or any Restricted Subsidiary using the Available Equity Amount after the Restatement Effective Date and prior to the Available Equity Amount Reference Time;

(ii) the aggregate amount of any Distributions made by ~~the BorrowerHoldings~~ using the Available Equity Amount after the Restatement Effective Date and prior to the Available Equity Amount Reference Time; and

(iii) the aggregate amount expended on prepayments, purchases, redemptions, defeasements and satisfaction in respect of Junior Debt made by ~~the BorrowerHoldings~~ or any Restricted Subsidiary using the Available Equity Amount after the Restatement Effective Date and prior to the Available Equity Amount Reference Time;

provided that during a Cash Dominion Period (A) the Available Equity Amount shall not be available to be used and (B) the period of time for use set forth in clause (a) above shall be tolled until after such Cash Dominion Period.

“Available Equity Amount Reference Time” has the meaning specified in the definition of “Available Equity Amount.”

“Available Tenor” means, as of any date of determination and with respect to the then-current Benchmark, as applicable, (x) if such Benchmark is a term rate, any tenor for such Benchmark (or component thereof) that is or may be used for determining the length of an interest period pursuant to this Agreement or (y) otherwise, any payment period for interest calculated with reference to such Benchmark (or component thereof) that is or may be used for determining any frequency of making payments of interest calculated with reference to such Benchmark, in each case, as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of “Interest Period” pursuant to Section 5.5(d).

“Average Historical Availability” means, at any Adjustment Date, the average daily Availability for the three-month period immediately preceding such Adjustment Date, divided by the Maximum Credit at such time.

“Average Revolving Loan Utilization” means, at any Adjustment Date, the average daily Aggregate Revolver Outstandings (excluding any Aggregate Revolver Outstandings resulting from any outstanding Swingline Loans) for the three-month period immediately preceding such Adjustment Date (or, if less, the period from the Restatement Effective Date to such Adjustment Date), divided by the Maximum Revolver Amount at such time.

“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 Product Reserve” means a reserve equal to the aggregate amount of Obligations in respect of any Noticed Hedge, up to the Swap Termination Value thereunder, as specified by the applicable Hedge Bank in writing to the Agent and acknowledged by the Borrower, which amount may be increased with respect to any existing Secured Hedge Agreement at any time by further written notice from such Hedge Bank to the Agent and acknowledged by the Borrower (which shall at all times include a reserve for the aggregate Swap Termination Values for all Noticed Hedges outstanding at that time).

“Bankruptcy Code” means Title 11 of the United ~~State~~States Code, as amended, or any similar federal or state law for the relief of debtors.

“Barclays” means Barclays Bank PLC and its successors.

“Base Rate” means for any day a fluctuating rate per annum equal to the highest of (a) the Federal Funds Rate (which, if negative, shall be deemed to be 0.00%) plus ½ of 1%, (b) the rate of interest quoted in the print edition of *The Wall Street Journal*, Money Rates Section, as the prime rate in effect from time to time and (c) Term SOFR published on such day (or if such day is not a Business Day the next previous Business Day) for an Interest Period of one month (taking into account any “floor” under the definition of “Term SOFR”) plus 1.0%. The “prime rate” means the rate of interest last quoted by The Wall Street Journal as the “Prime Rate” in the U.S. or, if The Wall Street Journal ceases to quote such rate, the highest per annum interest rate published by the Federal Reserve Board in Federal Reserve Statistical Release H.15 (519) (Selected Interest Rates) as the “bank prime loan” rate or, if such rate is no longer quoted therein, any similar rate quoted therein (as determined by the Agent) or any similar release by the Federal Reserve Board (as determined by the Agent).

“Base Rate Loan” means any Loan during any period for which it bears interest based on the Base Rate, and all Agent Advances and Swingline Loans.

“Base Rate Term SOFR Determination Day” has the meaning assigned to such term in the definition of “Term SOFR”.

“Basel III” means, collectively, those certain agreements on capital requirements, leverage ratios and liquidity standards contained in “Basel III: A Global Regulatory Framework for More Resilient Banks and Banking Systems,” “Basel III: International Framework for Liquidity Risk Measurement, Standards and Monitoring,” and “Guidance for National Authorities Operating the Countercyclical Capital Buffer,” each as published by the Basel Committee on Banking Supervision in December 2010 (as revised from time to time), and as implemented by a Lender’s primary U.S. federal banking regulatory authority or primary non-U.S. financial regulatory authority, as applicable.

“Benchmark” means, initially, Term SOFR; provided that if a Benchmark Transition Event has occurred with respect to Term SOFR or the then-current Benchmark, then “Benchmark” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to Section 5.5.

“Benchmark Replacement” means with respect to any Benchmark Transition Event, the first alternative set forth in the order below that can be determined by the Agent for the applicable Benchmark Replacement Date:

(a) with respect to Term SOFR Loans, Daily Simple SOFR; or

(b) the sum of: (i) the alternate benchmark rate that has been selected by the Agent and the Borrower giving due consideration to (A) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (B) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement to the then-current Benchmark for dollar-denominated syndicated credit facilities and (ii) the related Benchmark Replacement Adjustment;

provided, that if the Benchmark Replacement would be less than the 0.00%, the Benchmark Replacement will be deemed to be 0.00% for the purposes of this Agreement and the other Loan Documents.

“Benchmark Replacement Adjustment” means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement, the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Agent and the Borrower giving due consideration to (a) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body or (b) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for dollar-denominated syndicated credit facilities.

“Benchmark Replacement Date” means the earliest to occur of the following events with respect to the then-current Benchmark:

(a) in the case of clause (a) or (b) of the definition of “Benchmark Transition Event”, the later of (i) the date of the public statement or publication of information referenced therein and (ii) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof); or

(b) in the case of clause (c) of the definition of “Benchmark Transition Event”, the first date on which such Benchmark (or the published component used in the calculation thereof) has been determined and announced by or on behalf of the administrator of such Benchmark (or such component thereof) or the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be non-representative or non-compliant with or non-aligned with the International Organization of Securities Commissions (IOSCO) Principles for Financial Benchmarks; provided that such non-representativeness, non-compliance or non-alignment will be determined by reference to the most recent statement or publication referenced in such clause (c) and even if any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date.

For the avoidance of doubt, the “Benchmark Replacement Date” will be deemed to have occurred in the case of clause (a) or (b) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

“Benchmark Transition Event” means the occurrence of one or more of the following events with respect to the then-current Benchmark:

(a) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof);

(b) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Federal Reserve Board, the Federal Reserve Bank of New York, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); or

(c) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) or the regulatory supervisor for the administrator of such Benchmark (or such component thereof) announcing that all Available Tenors of such Benchmark (or such component thereof) are not, or as of a specified future date will not be, representative or in compliance with or aligned with the International Organization of Securities Commissions (IOSCO) Principles for Financial Benchmarks.

For the avoidance of doubt, a “Benchmark Transition Event” will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to each then-current Available Tenor of such Benchmark (or the published component used in the calculation thereof).

“Benchmark Unavailability Period” means, the period (if any) (a) beginning at the time that a Benchmark Replacement Date has occurred if, at such time, no Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 5.5 and (b) ending at the time that a Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 5.5.

“Beneficial Ownership Certification” means a certification regarding beneficial ownership as required by the Beneficial Ownership Regulation and, in any event, 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 and subject to Section 4975 of the Code or (c) any Person whose assets include (for purposes of Section 3(42) of ERISA 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” shall have the meaning assigned to such term in Section 14.22.

“Book Value” means book value as determined in accordance with GAAP.

“Borrower” means ProPetro Services, Inc. and any Successor Borrower, if applicable.

“Borrowing” means a borrowing hereunder consisting of Loans of one Type and Class made on the same day by Lenders to the Borrower (or by the Swingline Lender, in the case of a Borrowing consisting of Swingline Loans, or by the Agent, in the case of a Borrowing consisting of an Agent Advance, by a Letter of Credit Issuer, in the case of the issuance of a Letter of Credit hereunder).

“Borrowing Base” means, at any time, an amount in Dollars equal to:

- (a) 90% of the Book Value of all Eligible Investment Grade Accounts of the Obligors; plus
- (b) 85% of the Book Value of all Eligible Accounts (other than Eligible Investment Grade Accounts) of the Obligors; plus
- (c) 80% of the Book Value of all Eligible Unbilled Accounts of the Obligors; *provided* that the portion of the Borrowing Base attributable to Eligible Unbilled Accounts pursuant to this clause (c) shall not exceed 25% of the Borrowing Base; ~~minus~~plus

(d) the Eligible Power Generation Equipment Component; provided that the portion of the Borrowing Base attributable to the Eligible Power Generation Equipment Component pursuant to this clause (d) shall not exceed 35% of the Borrowing Base in the aggregate, minus

(de) the amount of all Reserves from time to time established by the Agent in accordance with Section 2.5.

The Borrowing Base as of the Amendment No. 1 Effective Date shall be as set forth in the Borrowing Base Certificate delivered on the Amendment No. 1 Effective Date.

The Borrowing Base at any time shall be determined by reference to the most recent Borrowing Base Certificate delivered to the Agent pursuant to Section 6.4, as adjusted to give effect to Reserves following such delivery established pursuant to Section 2.5.

For the avoidance of doubt, no Equipment shall be included in the Borrowing Base on or after the Amendment No. 4 Effective Date, until delivery of an initial Appraisal (the "Initial Appraisal").

"Borrowing Base Certificate" means a certificate by a Responsible Officer of the Borrower, substantially in the form of Exhibit A (or another form reasonably acceptable to the Agent) setting forth the calculation of the Borrowing Base, including a calculation of each component thereof, all in such detail as shall be reasonably satisfactory to the Agent, as adjusted pursuant to Section 2.5 of this Agreement. All calculations of the Borrowing Base in connection with the preparation of any Borrowing Base Certificate shall originally be made by the Borrower and certified to the Agent; provided, that the Agent shall have the right to review and adjust, in the exercise of its Reasonable Credit Judgment, any such calculation to the extent that such calculation is not in accordance with this Agreement; provided, further, that the Agent shall provide the Borrower prior written notice of any such adjustment.

"Business Day" means any day that is not a Saturday, Sunday, or a day on which banks in New York, New York are required or permitted to be closed.

"Capital Adequacy Regulation" means any guideline, request or directive of any central bank or other Governmental Authority, or any other Law, whether or not having the force of law, in each case, regarding capital adequacy of any bank or of any corporation controlling a bank.

"Capital Expenditures" means, with respect to any Person for any period, the sum of (a) the aggregate of all expenditures incurred by such Person and its consolidated Subsidiaries during such period for purchases of property, plant and equipment or similar items which, in accordance with GAAP (other than repairs in the ordinary course), are or should be included in the statement of cash flows of such Person and its consolidated Subsidiaries during such period, net of (b) proceeds received by ~~the Borrower~~ Holdings or its Restricted Subsidiaries from dispositions of property, plant and equipment or similar items reflected in the statement of cash flows of such Person and its consolidated Subsidiaries during such period; provided that the term "Capital Expenditures" shall not include:

(i) expenditures made in connection with the replacement, substitution, restoration or repair of assets to the extent financed from insurance proceeds or compensation awards paid on account of a Casualty Event,

(ii) the purchase price of equipment that is purchased simultaneously with the trade-in of existing equipment to the extent that the gross amount of such purchase price is reduced by the credit granted by the seller of such equipment for the equipment being traded in at such time,

- (iii) the purchase of property, plant or equipment to the extent financed with the proceeds of dispositions of assets outside the ordinary course of business,
- (iv) expenditures that constitute any part of consolidated lease expense to the extent relating to operating leases,
- (v) any expenditures made as payments of the consideration for a Permitted Acquisition (or Investments similar to those made for a Permitted Acquisition) and expenditures made in connection with the Transactions, and
- (vi) expenditures to the extent ~~the Borrower~~Holdings or any of its Restricted Subsidiaries has received reimbursement in cash from a Person that is not an Affiliate of any of the Obligors and for which neither ~~the Borrower~~Holdings nor any of its Restricted Subsidiaries has provided or is required to provide or incur, directly or indirectly, any consideration or obligation to such Person or any other Person.

“Capital Lease” means, as applied to any Person, all leases of property that have been or should be, in accordance with GAAP, recorded as capitalized leases on the balance sheet of such Person.

“Capital Lease Obligation” means, with respect to any Capital Lease of any Person, the amount of the obligation of the lessee thereunder that, in accordance with GAAP, would appear on a balance sheet of such lessee in respect of such Capital Lease.

“Cash Dominion Period” means (a) any period commencing from the date that Availability shall have been less than the greater of (i) 10.0% of the Maximum Credit and (ii) \$15,000,000, for five (5) consecutive Business Days and ending on the date on which Availability shall have been at least the greater of (i) 10.0% of the Maximum Credit and (ii) \$15,000,000 for twenty (20) consecutive calendar days or (b) upon the occurrence of a Specified Event of Default, the period that such Specified Event of Default shall be continuing.

“Cash Equivalents” means:

- (1) United States dollars or Canadian dollars;
- (2) (a) euro, pounds sterling or any national currency of any participating member state of the EMU or (b) other currencies held by ~~the Borrower~~Holdings and its Restricted Subsidiaries from time to time in the ordinary course of business;
- (3) securities issued or directly and fully and unconditionally guaranteed or insured by the U.S. federal government or any country that is a member state of the EMU or any agency or instrumentality thereof the securities of which are unconditionally guaranteed as a full faith and credit obligation of such government with maturities of 12 months or less from the date of acquisition;
- (4) certificates of deposit, time deposits and eurodollar time deposits with maturities of one year or less from the date of acquisition, bankers’ acceptances with maturities not exceeding one year and overnight bank deposits, in each case with any commercial bank having capital and surplus of not less than \$100.0 million in the case of U.S. banks or other U.S. financial institutions and \$100.0 million (or the U.S. dollar equivalent as of the date of determination) in the case of non-U.S. banks or other non-U.S. financial institutions;

- (5) repurchase obligations for underlying securities of the types described in clauses (3) and (4) entered into with any financial institution meeting the qualifications specified in clause (4) above;
- (6) commercial paper rated at least P-2 by Moody's or at least A-2 by S&P and in each case maturing within 12 months after the date of creation thereof;
- (7) marketable short-term money market and similar securities having a rating of at least P-2 or A-2 from either Moody's or S&P, respectively and in each case maturing within 12 months after the date of creation thereof;
- (8) investment funds investing 90% of their assets in securities of the types described in clauses (1) through (7) above and (9) through (12) below;
- (9) securities issued or directly and fully and unconditionally guaranteed by any state, commonwealth or territory of the United States or any political subdivision or taxing authority of any such state, commonwealth or territory or any public instrumentality thereof or any political subdivision or taxing authority of any such state, commonwealth or territory or any public instrumentality thereof having maturities of not more than 12 months from the date of acquisition thereof and, at the time of acquisition;
- (10) readily marketable direct obligations issued or directly and fully and unconditionally guaranteed by any foreign government or any political subdivision or public instrumentality thereof, in each case (other than in the case of such securities issued or guaranteed by any participating member state of the EMU) having a rating equal to or higher than Baa3 (or the equivalent) by Moody's and BBB- (or the equivalent) by S&P with maturities of 12 months or less from the date of acquisition;
- (11) Debt or Preferred Stock issued by Persons with a rating of "A" or higher from S&P or "A2" or higher from Moody's with maturities of 12 months or less from the date of acquisition; and
- (12) Investments with average maturities of 12 months or less from the date of acquisition in money market funds rated AAA- (or the equivalent thereof) or better by S&P or Aaa3 (or the equivalent thereof) or better by Moody's.

Notwithstanding the foregoing, Cash Equivalents shall include amounts denominated in currencies other than those set forth in clauses (1) and (2) above, provided that such amounts are converted into any currency listed in clauses (1) and (2) as promptly as practicable and in any event within ten Business Days following the receipt of such amounts.

"Cash Management Bank" means any Person that was a Lender, the Agent, any Arranger or any Affiliate of the foregoing at the time it provided or incurred any Cash Management Obligations or any Person that shall have become a Lender, the Agent or an Affiliate of a Lender, the Agent at any time after it has provided or incurred any Cash Management Obligations.

"Cash Management Document" means any certificate, agreement or other document executed by any Obligor or any of its Restricted Subsidiaries in respect of the Cash Management Obligations of any such Person.

“Cash Management Obligation” means, as applied to any Person, any direct or indirect liability, contingent or otherwise, of such Person in respect of cash management or related services (including treasury, depository, return item, overdraft, controlled disbursement, credit, merchant store value or debit card, purchase card, e-payables services, electronic funds transfer, interstate depository network, automatic clearing house transfer (including the ACH processing of electronic funds transfers through the Federal Reserve Fedline system) and other cash management arrangements) provided by any Cash Management Bank, including obligations for the payment of fees, interest, charges, expenses, attorneys’ fees and disbursements in connection therewith.

“Cash Receipts” has the meaning specified in Section 8.23(c).

“Casualty Event” means any event that gives rise to the receipt by ~~the Borrower~~Holdings or any Restricted Subsidiary of any insurance proceeds or condemnation awards in respect of any equipment, fixed assets or Real Estate (including any improvements thereon) to replace or repair such equipment, fixed assets or Real Estate.

“CFC” means a “controlled foreign corporation” within the meaning of Section 957 of the Code.

“Change in Law” means the occurrence, after the Restatement Effective Date, of any of the following: (a) the adoption of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration or interpretation 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 (but solely to the extent the relevant increased costs would have been included if they had been imposed under applicable increased cost provisions) and (y) Basel III and all requests, rules, guidelines or directives thereunder or issued in connection therewith (but solely to the extent the relevant increased costs would have been included if they had been imposed under applicable increased cost provisions), shall in each case be deemed to be a “Change in Law,” regardless of the date enacted, adopted or issued.

“Change of Control” means and will be deemed to have occurred if:

(a) any Person, entity or “group” (within the meaning of Section 13(d) or 14(d) of the Exchange Act, but excluding any employee benefit plan of such Person, entity or “group” and their respective Subsidiaries and any Person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan), other than the Permitted Holders, shall at any time have acquired direct or indirect beneficial ownership (as defined in SEC Rules 13(d)-3 and 13(d)-5 under the Exchange Act) of Voting Stock with the power to elect a majority of the members of the Board of Directors of Holdings (or, for the avoidance of doubt, any New Holdings or Successor Holdings); and/or

(b) the failure of Holdings (or, for the avoidance of doubt, any New Holdings or Successor Holdings), directly or indirectly through wholly owned subsidiaries, to own beneficially and of record, all of the Stock of the Borrower; and/or

(c) Continuing Directors shall not constitute at least a majority of the Board of Directors of Holdings; and/or

(d) a “change of control” or any comparable term under any document governing any Material Indebtedness consisting of Debt for Borrowed Money.

“Charter Documents” means, with respect to any Person, the certificate or articles of incorporation or organization, memoranda of association, by-laws or operating agreement, and other organizational or governing documents of such Person.

“Chattel Paper” means all of the Obligors’ now owned or hereafter acquired chattel paper, as defined in the UCC, including electronic chattel paper.

“Class” when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are Revolving Loans, Extended Revolving Loans (of the same Extension Series and any related swing line loans thereunder) or Swingline Loans, and, when used in reference to any Commitment, refers to whether such Commitment is a Revolving Credit Commitment, an Extended Revolving Credit Commitment (of the same Extension Series and any related swing line commitment thereunder) or a Swingline Commitment and when used in reference to any Lender, refers to whether such Lender has a Loan or Commitment of such Class. A FILO Tranche may be treated as a separate Class of Loans or Commitments under this Agreement.

“Closing Date” means the later of the Original Agreement Date and the first date on which all of the applicable conditions set forth in Section 9.1 of the Original Credit Agreement were fulfilled (or waived in writing by the Agent and the Arrangers).

“Code” means the Internal Revenue Code of 1986, as amended.

“Collateral” means the Stock of the Borrower and each directly wholly-owned Restricted Subsidiary of the Borrower or any Guarantor, all of the Obligors’ personal property, the Mortgaged Properties, if any, and all other assets of any Person, in each case from time to time subject to the Collateral Agent’s Liens securing payment or performance of any Obligations; provided, however, that at no time shall the term “Collateral” include any Excluded Assets.

“Collateral Agent” means Barclays, in its capacity as the collateral agent for the Secured Parties, or any successor collateral agent appointed in accordance with this Agreement and the other Loan Documents.

“Collateral Agent’s Liens” means the Liens on the Collateral granted to the Collateral Agent, for the benefit of the Secured Parties, pursuant to the Security Documents and securing the Obligations.

“Collateral and Guarantee Requirement” means, at any time, the requirement that:

(a) the Collateral Agent shall have received each Security Document required to be delivered on the Closing Date pursuant to Section 9.1(a)(ii) or, after the Closing Date, pursuant to Sections 8.22, 8.23 and 8.29 at such time required by such Security Documents or such section to be delivered in each case, duly executed by each Obligor thereto;

(b) all Obligations shall have been unconditionally guaranteed by Holdings and each Restricted Subsidiary (other than any Excluded Subsidiary) including as of the Restatement Effective Date those that are listed on Schedule 1.2;

(c) the Obligations and the Guarantees shall have been secured pursuant to the Security Agreement by a security interest in (i) all the Stock of the Borrower and (ii) all Stock (other than Excluded Stock) held directly by the Borrower or any Guarantor in any Wholly Owned Subsidiary (and, in each case, the Collateral Agent shall have received certificates or other instruments representing all such Stock (if any), together with undated stock powers or other instruments of transfer with respect thereto endorsed in blank, if applicable);

(d) except to the extent otherwise provided hereunder or under any Security Document, the Obligations and the Guarantees shall have been secured by a perfected security interest (to the extent such security interest may be perfected by (v) delivering certificated securities or instruments, (w) filing personal property financing statements, (x) making any necessary filings with the United States Patent and Trademark Office or United States Copyright Office and (y) control (to the extent required by [Section 8.23](#))) in substantially all tangible and intangible personal property of the Borrower and each Guarantor (including, without limitation, accounts receivable, inventory, equipment, investment property, Intellectual Property, intercompany notes, contracts, instruments, chattel paper and documents, letter of credit rights, commercial tort claims, cash, deposit accounts, securities and commodity accounts, other General Intangibles, books and records related to the foregoing and, in each case, proceeds of the foregoing), in each case to the extent, and with the priority, required by the Security Documents and in the event the Borrower incurs any secured Debt in the form of a term loan or notes pursuant to [Section 8.12\(q\)\(x\)](#) (but not, for the avoidance of doubt, any Debt constituting Capital Leases, Specified Capital Leases or purchase money Debt), (A) any such security interests in the Collateral shall be subject to the terms of the Intercreditor Agreement, (B) the Obligations and the Guarantees shall be secured by second-priority Mortgages on any Real Estate pledged or mortgaged to secure such Debt (solely to the extent such Real Estate is pledged as “collateral” to secure such Debt) and (C) the priority of the Collateral Agent’s security interest on the Current Asset Collateral and the Fixed Asset Collateral, respectively, shall be as set forth in the Intercreditor Agreement;

(e) none of the Collateral shall be subject to any Liens other than Permitted Liens;

(f) solely to the extent (i) the Borrower has incurred secured Debt in the form of a term loan or notes pursuant to [Section 8.12\(q\)\(x\)](#) (but not, for the avoidance of doubt, any Debt constituting Capital Leases, Specified Capital Leases or purchase money Debt) and (ii) such Real Estate is pledged as “collateral” to secure such Debt, the Collateral Agent shall have received, subject to clause (i) of the last paragraph of this definition, (i) counterparts of a Mortgage with respect to any Real Estate required to be delivered pursuant to [Section 8.22](#) (the “Mortgaged Properties”) duly executed and delivered by the record owner of such property, (ii) a title insurance policy for such property or the equivalent or other form (if applicable) available in each applicable jurisdiction insuring the Lien of each such Mortgage as a valid Lien on the property described therein, free of any other Liens except Permitted Liens, together with such endorsements, coinsurance and reinsurance as the Collateral Agents may reasonably request, (iii) either an existing survey together with a no change affidavit sufficient for the title insurance company to remove the standard survey exception and issue the survey related endorsements or a new ALTA survey in form and substance reasonably acceptable to the Collateral Agent, (iv) existing abstracts and existing appraisals, (v) opinions addressed to the Collateral Agent and the Secured Parties from (a) local counsel in each jurisdiction where the Mortgaged Property is located with respect to the enforceability and perfection of the Mortgages and other matters customarily included in such opinions and (b) counsel for the Borrower regarding due authorization, execution and delivery of the Mortgages, in each case, in form and substance reasonably satisfactory to the Collateral Agent, (vi) a “Life-of Loan” Federal Emergency Management Agency Standard Flood Hazard Determination with respect to each Mortgaged Property (together with a notice about special flood hazard area status and flood disaster assistance duly executed by the Borrower and the applicable Obligor) and, if the area in which any improvements located on any Mortgaged Property is designated a “flood hazard area” in any Flood Insurance Rate Map published by the Federal Emergency Management Agency (or any successor agency), copies of (a) the insurance policies required by [Section 8.5](#), (b) declaration pages relating thereto, (c) flood insurance in an amount and form that would be considered sufficient under the Flood Insurance Laws and otherwise, in form and substance reasonably satisfactory to the Collateral Agent and each Lender and (vii) such other documents as the Collateral Agent may reasonably request with respect to such Mortgaged Property; and

(g) (i) except with respect to intercompany Debt, if any, Debt for Borrowed Money in a principal amount in excess of \$2,500,000 (individually) is owing to any Obligor and such Debt is evidenced by a promissory note, the Collateral Agent shall have received such promissory note, together with undated instruments of transfer with respect thereto endorsed in blank and (ii) with respect to intercompany Debt, all Debt of ~~the Borrower~~ Holdings and each of its Restricted Subsidiaries that is owing to any Obligor (or Person required to become an Obligor) shall be evidenced by the Subordinated Intercompany Note, and the Collateral Agent shall have received such Subordinated Intercompany Note duly executed by Holdings, the Borrower, each such Restricted Subsidiary and each such other Obligor, together with undated instruments of transfer with respect thereto endorsed in blank.

The foregoing definition shall not require the creation or perfection of pledges of, or security interests in, or the obtaining of title insurance or surveys with respect to, particular assets if and for so long as the Agent and the Borrower agree in writing that the cost of creating or perfecting such pledges or security interests in such assets or obtaining title insurance or surveys in respect of such assets shall be excessive in view of the benefits to be obtained by the Secured Parties therefrom.

The Agent may grant extensions of time for the provision or perfection of security interests in, or the obtaining of title insurance and surveys with respect to, particular assets (including extensions beyond the Restatement Effective for the perfection of security interests in the assets of the Obligors on such date) where it reasonably determines, in consultation with the Borrower, that provision or perfection cannot be accomplished without undue effort or expense by the time or times at which it would otherwise be required by this Agreement or the Security Documents.

Notwithstanding the foregoing provisions of this definition or anything in this Agreement or any other Loan Document to the contrary, (a) with respect to leases of Real Estate entered into by any Obligor, such Obligor shall not be required to take any action with respect to creation or perfection of security interests with respect to such leases (including requirements to deliver landlord lien waivers, estoppel and collateral access letters), (b) Liens required to be granted from time to time pursuant to the Collateral and Guarantee Requirement shall be subject to exceptions and limitations set forth in the Security Documents, (c) the Collateral and Guarantee Requirement shall not apply to any of the following assets: (i) any fee-owned Real Estate (unless, in each case, it has been pledged or mortgaged as Fixed Asset Collateral) and any leasehold interests in Real Estate; *provided* that no Equipment attached or affixed to or located on such Real Estate to the extent such Equipment constitutes a fixture shall be excluded from Collateral, unless such Equipment otherwise constitutes an Excluded Asset under any other subclause of this clause (c), (ii) any governmental licenses or state or local franchises, charters or authorizations, to the extent a security interest in any such licenses, franchise, charter or authorization would be prohibited or restricted thereby (including any legally effective prohibition or restriction) after giving effect to the applicable anti-assignment clauses of the UCC and applicable Laws, other than the proceeds and receivables thereof the assignment of which is expressly deemed effective under the UCC or any similar applicable laws notwithstanding such prohibition, (iii) assets and personal property for which a pledge thereof or a security interest therein is prohibited by applicable Laws (including any legally effective requirement to obtain the consent of any Governmental Authority), (iv) Excluded Stock (other than Stock that are Excluded Stock solely as a result of having been issued by Immaterial Subsidiaries), (v) assets and personal property to the extent a security interest in such assets would result in material adverse tax consequences as reasonably determined, in writing, by the Borrower in consultation with the Agent, (vi) any intent-to-use trademark application prior to the filing and acceptance of a "Statement of Use" or "Amendment to Allege Use" with respect thereto, 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 such intent-to-use trademark application under applicable federal Law, (vii) any lease, license, contract or other agreements or any property (including personal property) subject to a purchase money security interest, Capital Lease Obligation or similar arrangements (including, to the extent applicable, any pledges and deposits of cash in furtherance thereof and rights against the seller pursuant to any purchase agreements, purchase orders, equipment supply agreements, or similar agreements or documents in each case with respect to such personal property to the extent a security interest in such rights is granted to the provider of the applicable purchase money security interest, Capital Lease Obligation, Equipment financing or similar arrangement), in each case to the extent permitted under the Loan Documents, to the extent that a pledge thereof or a security interest therein would violate or invalidate such lease, license, contract or agreement, purchase money, Capital Lease, Equipment financing or similar arrangement, or create a right of termination in favor of any other party thereto (other than the Borrower or a Guarantor) after giving effect to the applicable anti-assignment clauses of the UCC and applicable Laws, other than the proceeds and receivables thereof the assignment of which is expressly deemed effective under the UCC or any similar applicable Laws notwithstanding such prohibition, (viii) (A) the Specified Capital Lease Subject Accounts owing to the Specified Capital Lease Subsidiary (including, for the avoidance of doubt, amounts representing the identifiable cash proceeds of Specified Capital Lease Subject Accounts owing to the Specified Capital Lease Subsidiary) and (B) any rights and interests of the Specified Capital Lease Subsidiary with respect to the underlying contractual arrangements giving rise to any Specified Capital Lease Subject Accounts owing to the Specified Capital Lease Subsidiary, and (ix) any assets as to which the Agent and the Borrower reasonably agree in writing that the cost of obtaining a security interest or perfection thereof is excessive in relation to the benefit to the Lenders of the security to be afforded thereby (the assets excluded pursuant to this clause (c), collectively, the "Excluded Assets"; *provided* that notwithstanding anything herein to the contrary, Excluded Assets shall not include any proceeds, replacements or substitutions of Collateral (unless such proceeds, replacements or substitutions otherwise constitute Excluded Assets)), (d) control agreements shall not be required with respect to any deposit accounts, securities accounts or commodities accounts except to the extent set forth in Section 8.23, (e) share certificates of Immaterial Subsidiaries and non-Subsidiaries shall not be required to be delivered, (f) no perfection actions shall be required with respect to (i) motor vehicles and other Titled Goods and letter of credit rights, except to the extent perfection is accomplished solely by the filing of a UCC financing statement (it being understood that no actions shall be required to perfect a security interest in letter of credit rights, other than the filing of a UCC financing statement) and (ii) commercial tort claims with an individual value of less than \$2,500,000, (g) promissory notes to the extent evidencing Debt in a principal amount less than \$2,500,000, (h) no actions in any non-U.S. jurisdiction or required by the Laws of any non-U.S. jurisdiction shall be required to be taken to create any security interests in assets located or titled outside of the U.S. or to perfect or make enforceable any security interests in any such assets (it being understood that there shall be no Security Document (or other security agreements or pledge agreements) governed under the laws of any non-U.S. jurisdiction), (i) no Real Estate shall be taken as Collateral unless the Lenders receive 45 days advance notice and each Lender confirms to the Agent in writing that it has completed all flood due diligence, received copies of all flood insurance documentation and confirmed flood insurance compliance as required by the Flood Insurance Laws or as otherwise satisfactory to such Lender and (j) at any time that any Real Estate constitutes Collateral, no modification of a Loan Document shall add, increase, renew or extend any loan, commitment or credit line hereunder until each Lender confirms to Agent in writing that it has completed all flood insurance due diligence and flood insurance compliance required by the Flood Insurance Laws or as otherwise satisfactory to all Lenders.

“Commitment” means, (a) with respect to each Lender (to the extent applicable), such Lender’s Revolving Credit Commitment, Extended Revolving Credit Commitment or a Revolving Credit Commitment Increase or any combination thereof (as the context requires), (b) with respect to the applicable Swingline Lender, or swingline lender under any Extended Revolving Credit Commitments, its Swingline Commitment or swingline commitment, as applicable and (c) with respect to each Letter of Credit Issuer, such Letter of Credit Issuer’s L/C Commitment.

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

“Compliance Certificate” means a certificate substantially in the form of Exhibit D or in such other form as may be reasonably satisfactory to the Agent.

“Concentration Account” has the meaning specified in Section 8.23(c).

“Conforming Changes” means, with respect to either the use or administration of Term SOFR or the use, administration, adoption or implementation of any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “Base Rate,” the definition of “Business Day,” the definition of “U.S. Government Securities Business Day,” the definition of “Interest Period” or any similar or analogous definition (or the addition of a concept of “interest period”), timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, the applicability and length of lookback periods, the applicability of Section 5.4 and other technical, administrative or operational matters) that the Agent decides may be appropriate to reflect the adoption and implementation of any such rate or to permit the use and administration thereof by the Agent in a manner substantially consistent with market practice (or, if the Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Agent determines that no market practice for the administration of any such rate exists, in such other manner of administration as the Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

“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 Depreciation and Amortization Expense” means, with respect to any Person for any period, the total amount of depreciation and amortization expense, including the amortization of deferred financing fees or costs, debt issuance costs, commissions, fees and expenses, capitalized expenditures, customer acquisition costs and incentive payments, conversion costs and contract acquisition costs, of such Person and its Restricted Subsidiaries for such period on a consolidated basis and otherwise determined in accordance with GAAP.

“Consolidated EBITDA” means, with respect to any Person for any period, the Consolidated Net Income of such Person and its Restricted Subsidiaries for such period; plus

(a) the following in each case to the extent deducted (and not added back) in computing Consolidated Net Income (other than clause (a)(10) and (a)(13) below), but without duplication:

(1) Distributions made by ~~the Borrower~~Holdings and its Restricted Subsidiaries pursuant to Section 8.10(g)(i) during such period and provision for taxes based on income or profits or capital gains, including, without limitation, foreign, federal, state, provincial, franchise, excise, value added and similar taxes and foreign withholding taxes of such Person paid or accrued during such period, including any penalties and interest relating to such taxes or arising from any tax examinations and any payments to any Parent Entity in respect of such taxes; plus

- (2) total interest expense and other financing expense (including breakage costs, premiums or consent fees and including the amortization of original issue discount); plus
- (3) Consolidated Depreciation and Amortization Expense of such Person for such period; plus
- (4) any fees, expenses or charges incurred in connection with any issuance of debt or equity securities, any refinancing transaction or any amendment or other modification of any debt instrument ~~to the extent~~ (whether or not consummated ~~in accordance with the terms of the Loan Documents)~~, including (i) such fees, expenses or charges related to the Transactions, and (ii) any amendment, modification or waiver in connection with this Agreement or any instrument governing any other Debt; plus
- (5) any fees (including legal and investment banking fees), transfer or mortgage recording Taxes and other out-of-pocket costs and expenses of such Person and its Restricted Subsidiaries (including expenses of third parties paid or reimbursed such Person and its Restricted Subsidiaries) incurred as a result of the transactions contemplated by the Loan Documents or any Disposition of Property permitted hereunder (whether or not consummated); plus
- (6) any fees and expenses incurred by such Person or any of its Restricted Subsidiaries solely in connection with any Permitted Acquisition or other Investment permitted by the Loan Documents (whether or not consummated); plus
- (7) any impairment charge or asset write-off pursuant to GAAP and the amortization of intangibles arising pursuant to GAAP; plus
- (8) payments made or accrued in such period pursuant to Section 8.14(i); plus
- (9) any losses from the early extinguishment of Debt (including Hedge Agreements or other derivative instruments); plus
- (10) the amount of “run rate” cost savings, operating expense reductions and other synergies (x) projected by the Borrower in good faith to be realized as a result of specified actions taken, actions with respect to which substantial steps have been taken or actions that are expected to be taken (which cost savings, operating expense reductions or synergies shall be calculated on a Pro Forma Basis as though such cost savings, operating expense reductions or synergies had been realized on the first day of the applicable Test Period), net of the amount of actual benefits realized during such period from such actions; provided that (A) such cost savings, operating expense reductions or synergies are reasonably identifiable and factually supportable, (B) such cost savings, operating expense reductions or synergies do not exceed, when combined with the amount of any Pro Forma Adjustment made pursuant to clause (d) below, ~~20~~ 25% of Consolidated EBITDA for such Test Period (~~prior to~~ after giving effect to any increase in Consolidated EBITDA pursuant to this clause (10) or clause (d) below) and (C) such actions have been taken, such actions with respect to which substantial steps have been taken or such actions are expected to be taken within twelve (12) months after the date of determination to take such action; provided, further, that the adjustments pursuant to this clause (10) may be incremental to (but not duplicative of) Pro Forma Adjustments made pursuant to clause (d) below; or (y) that would be permitted to be included in pro forma financial statements prepared in accordance with Regulation S-X under the Securities Act of 1933, as amended; plus

(11) any non-cash compensation expense recorded from grants of stock appreciation or similar rights, stock options, restricted stock or other rights to officers, directors or employees; plus

(12) any non-cash losses or charges, including any write offs, write downs, expenses, losses or items for such period decreasing Consolidated Net Income for such period; plus

(13) proceeds from property or business interruption insurance received or reasonably expected to be received (to the extent not reflected as revenue or income in Consolidated Net Income and to the extent that the related loss was deducted in the determination of Consolidated Net Income); plus

(14) all Restructuring Costs and any other extraordinary, unusual or non-recurring expenses, losses or charges incurred; plus

(15) any non-cash loss attributable to the mark-to-market movement in the valuation of Hedge Agreements (to the extent the cash impact resulting from such loss has not been realized) or other derivative instruments pursuant to GAAP;

minus

(b) the sum of the amounts for such period, solely to the extent included in Consolidated Net Income, without duplication,

(1) any non-cash gain increasing Consolidated Net Income of such Person for such period, other than the accrual of revenues in the ordinary course of business;

(2) any non-cash gain attributable to the mark-to-market movement in the valuation of Hedge Agreements (to the extent the cash impact resulting from such gain has not been realized) or other derivative instruments pursuant to GAAP;

(3) any gains from the early extinguishment of Debt (including Hedge Agreements or other derivative instruments); and

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

provided that, to the extent non-cash gains are deducted pursuant to this clause (b) for any previous period and not otherwise added back to Consolidated EBITDA, Consolidated EBITDA shall be increased by the amount of any cash receipts (or any netting arrangements resulting in reduced cash expenses) in respect of such non-cash gains received in subsequent periods to the extent not already included therein;

plus or minus, as applicable, without duplication

(c) any net gain or loss resulting in such period from currency translation gains or losses related to currency remeasurements of Debt, intercompany balances and other balance sheet items, plus or minus, as the case may be; and

plus

(d) in accordance with the definition of “Pro Forma Basis,” an adjustment equal to the amount, without duplication of any amount otherwise included in any other clause of the definition of “Consolidated EBITDA,” of the Pro Forma Adjustment shall be added to (or subtracted from) Consolidated EBITDA (including the portion thereof occurring prior to the relevant Specified Transaction and/or Specified Restructuring) as specified in a certificate from a Responsible Officer of the Borrower delivered to the Agent (for further delivery to the Lenders),

in each case, as determined on a consolidated basis for Holdings, the Borrower and its Restricted Subsidiaries in accordance with GAAP; provided that,

(i) there shall be included in determining Consolidated EBITDA for any period, without duplication, the Acquired EBITDA of any Person, property, business or asset acquired by ~~the Borrower~~Holdings or any Restricted Subsidiary during such period (other than any Unrestricted Subsidiary) to the extent not subsequently sold, transferred or otherwise Disposed of during such period (but not including the Acquired EBITDA of any related Person, property, business or assets to the extent not so acquired) (each such Person, property, business or asset acquired, including pursuant to the Transactions or pursuant to a transaction consummated prior to the Restatement Effective Date, and not subsequently so Disposed of, an “Acquired Entity or Business”), and the Acquired EBITDA of any Unrestricted Subsidiary that is converted into a Restricted Subsidiary during such period (each, a “Converted Restricted Subsidiary”), in each case based on the Acquired EBITDA of such Acquired Entity or Business or any Converted Restricted Subsidiary for such period (including the portion thereof occurring prior to such acquisition or conversion) determined on a historical Pro Forma Basis; and

(ii) there shall be excluded in determining Consolidated EBITDA for any period the Disposed EBITDA of any Person, property, business or asset sold, transferred or otherwise Disposed of, closed or classified as discontinued operations by Holdings, the Borrower or any Restricted Subsidiary to the extent not subsequently reacquired, reclassified or continued, in each case, during such period (each such Person (other than an Unrestricted Subsidiary), property, business or asset so sold, transferred or otherwise Disposed of, closed or classified, a “Sold Entity or Business”), and the Disposed EBITDA of any Restricted Subsidiary that is converted into an Unrestricted Subsidiary during such period (each, a “Converted Unrestricted Subsidiary”), in each case based on the Disposed EBITDA of such Sold Entity or Business or Converted Unrestricted Subsidiary for such period (including the portion thereof occurring prior to such sale, transfer, disposition, closure, classification or conversion) determined on a historical Pro Forma Basis.

“Consolidated Interest Expense” means cash interest expense (including that attributable to Capital Leases and Specified Capital Leases), net of cash interest income of Holdings, the Borrower and its Restricted Subsidiaries with respect to all outstanding Debt of Holdings, the Borrower and its Restricted Subsidiaries, including all commissions, discounts and other fees and charges owed with respect to letters of credit and bankers’ acceptance financing and net cash costs (less net cash payments) under Hedge Agreements, but excluding, for the avoidance of doubt:

(a) capitalized interest whether paid or accrued and the amortization of original issue discount resulting from the issuance of Debt at less than par;

- (b) amortization of deferred financing costs, debt issuance costs, commissions, fees and expenses;
- (c) any expenses resulting from discounting of Debt in connection with the application of recapitalization accounting or purchase accounting;
- (d) penalties or interest related to taxes and any other amounts of non-cash interest resulting from the effects of acquisition method accounting or pushdown accounting;
- (e) the accretion or accrual of, or accrued interest on, discounted liabilities during such period;
- (f) non-cash interest expense attributable to the movement of the mark-to-market valuation of obligations under Hedge Agreements or other derivative instruments pursuant to FASB Accounting Standards Codification No. 815-Derivatives and Hedging;
- (g) any one-time cash costs associated with breakage in respect of Hedge Agreements for interest rates;
- (h) all non-recurring interest expense consisting of liquidated damages for failure to timely comply with registration rights obligations;
- (i) expensing of bridge, arrangement, structuring, commitment or other financing fees; and
- (j) any other non-cash interest expense,

all calculated on a consolidated basis in accordance with GAAP.

“Consolidated Net Income” means, with respect to any Person for any period, without duplication, the aggregate of (a) the Net Income, attributable to such Person and its Restricted Subsidiaries for such period, on a consolidated basis, and otherwise determined in accordance with GAAP (adjusted to exclude the equity interests in any Unrestricted Subsidiary owned by such Person or any of its Restricted Subsidiaries); *plus* (b) the amount of distributions received in cash or Cash Equivalents by such Person or any of its Restricted Subsidiaries from any Subsidiary (including any Unrestricted Subsidiary) for such period, to the extent not already included in clause (a) above *minus* (c) (i) the cumulative effect of a change in accounting principles and changes as a result of the adoption or modification of accounting policies during such period, (ii) the income (or loss) of any Person (other than a Restricted Subsidiary of such Person) in which any other Person (other than such Person or any of its Restricted Subsidiaries) has a joint interest, except to the extent of the amount of dividends or other distributions actually paid to such Person or any of its Restricted Subsidiaries by such Person during such period, (iii) the income (or loss) of any Person accrued prior to the date it becomes a Restricted Subsidiary of such Person or is merged into or consolidated with such Person or any of its Restricted Subsidiaries or that Person’s assets are acquired by such Person or any of its Restricted Subsidiaries (except as may be required in connection with the calculation of a covenant or test on a *pro forma* basis), (iv) the income of any Restricted Subsidiary of such Person to the extent that the declaration or payment of dividends or similar distributions by that Restricted Subsidiary of that income is not at the time permitted by operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to that Restricted Subsidiary, (v) any after-Tax gains or losses attributable to Dispositions of property permitted under this Agreement, in each case other than in the ordinary course of business (as determined in good faith by the Borrower) or returned surplus assets of any Pension Plan, (vi) any net after-Tax gains or losses from disposed, abandoned, transferred, closed or discontinued operations and any net after-Tax gains or losses on disposal of disposed, abandoned, transferred, closed or discontinued operations, (vii) any losses and expenses with respect to liability or casualty events to the extent covered by insurance or indemnification and actually reimbursed or so long as the Borrower has made a determination that there exists reasonable evidence that such amount will in fact be reimbursed by the insurer or indemnifying party and only to the extent that such amount is (a) not denied by the applicable carrier or indemnifying party in writing within 180 days and (b) in fact reimbursed within 365 days of the date of such evidence (with a deduction for any amount so added back to the extent not so reimbursed within 365 days) and (viii) (to the extent not included in sub-clauses (i) through (vii) above) any net extraordinary gains or net extraordinary losses.

In addition, to the extent not already accounted for in the Consolidated Net Income of such Person and its Restricted Subsidiaries, notwithstanding anything to the contrary in the foregoing, Consolidated Net Income shall include (without duplication) (i) the amount of proceeds received during such period from business interruption insurance in respect of insured claims for such period, (ii) the amount of proceeds as to which the Borrower has determined there is reasonable evidence it will be reimbursed by the insurer in respect of such period from business interruption insurance (with a deduction for any amounts so added back to the extent denied by the applicable carrier in writing within 180 days or not so reimbursed within 365 days) and (iii) reimbursements received of any expenses and charges that are covered by indemnification or other reimbursement provisions in connection with any Permitted Investment or any sale, conveyance, transfer or other disposition of assets permitted hereunder.

“Consolidated Parties” means Holdings, the Borrower and each of its Subsidiaries whose financial statements are consolidated with the Borrower’s financial statements in accordance with GAAP.

“Consolidated Total Assets” means, as of any date of determination, the total amount of all assets of Holdings, the Borrower and the Restricted Subsidiaries, determined on a consolidated basis in accordance with GAAP as of such date.

“Consolidated Total Debt” means, as of any date of determination, the aggregate principal amount of indebtedness of Holdings, the Borrower and its Restricted Subsidiaries outstanding on such date, determined on a consolidated basis in accordance with GAAP (but excluding the effects of any discounting of indebtedness resulting from the application of purchase accounting in connection with the Transactions, any Permitted Acquisition or Investments similar to those made for Permitted Acquisitions), consisting of Debt for Borrowed Money, Unpaid Drawings, Capital Lease Obligations and third party debt obligations evidenced by promissory notes or similar instruments.

“Consolidated Total Net Debt” means, as of any date of determination, (a) Consolidated Total Debt, minus (b) the aggregate amount of domestic cash and Cash Equivalents on the consolidated balance sheet of Holdings, the Borrower and its Restricted Subsidiaries on such date, excluding cash and Cash Equivalents that are listed as “restricted” on the consolidated balance sheet of Holdings, the Borrower and its Restricted Subsidiaries as of such date. It is understood that to the extent the Borrower or any Restricted Subsidiary incurs any Debt and receives the proceeds of such Debt, for purposes of determining any incurrence test under this Agreement and whether the Borrower is in compliance on a Pro Forma Basis with any such test, the proceeds of such incurrence shall not be considered cash or Cash Equivalents for purposes of any “netting” pursuant to clause (b) of this definition.

“Contaminant” means any waste, pollutant, hazardous substance, toxic substance, hazardous waste, special waste, petroleum or petroleum-derived substance or waste, friable asbestos, polychlorinated biphenyls (“PCBs”), or any other substance, waste or material regulated under Environmental Law.

“Continuation/Conversion Date” means the date on which a Loan is converted into or continued as a Term SOFR Loan.

“Continuing Director” means, at any date, an individual (a) who is a member of the Board of Directors of Holdings on the Restatement Effective Date, (b) who, as at such date, has been a member of such Board of Directors for at least the 12 preceding months, (c) who has been nominated or designated to be a member of such Board of Directors, directly or indirectly, by the Permitted Holders or Persons nominated or designated by the Permitted Holders or (d) who has been nominated or designated to be, or designated as, a member of such Board of Directors by a majority of the other Continuing Directors then in office.

“Converted Restricted Subsidiary” has the meaning specified in the definition of “Consolidated EBITDA.”

“Converted Unrestricted Subsidiary” has the meaning specified in the definition of “Consolidated EBITDA.”

“Convertible Indebtedness” means Indebtedness of Holdings permitted to be incurred under the terms of this Agreement that is either (a) convertible or exchangeable into common stock of Holdings (and cash in lieu of fractional shares) (or other securities or property following a merger event or other change of the common stock of Holdings) and/or cash (in an amount determined by reference to the price of such common stock or such other securities) or (b) sold as units with call options, warrants or rights to purchase (or substantially equivalent derivative transactions) that are in each case exercisable for common stock of Holdings (and cash in lieu of fractional shares) (or other securities or property following a merger event or other change of the common stock of Holdings) and/or cash (in an amount determined by reference to the price of such common stock or such other securities).

“Convertible Notes” means the \$690 million aggregate principal amount of 0% Convertible Notes due November 15, 2031 of Holdings.

“Corrective Extension Agreement” has the meaning specified in Section 2.7(e).

“Covered Entity” shall have the meaning assigned to such term in Section 14.22.

“Covered Party” shall have the meaning assigned to such term in Section 14.22.

“Covenant Trigger Period” means any period (a) commencing on the date upon which Availability is less than the greater of (i) ~~+0.0~~10% of the Maximum Credit and (ii) \$15,000,000 and (b) ending on the date upon which Availability shall have been at least equal to the greater of (i) ~~+0.0~~10% of the Maximum Credit and (ii) \$15,000,000 for a period of ~~thirty~~twenty (~~30~~20) consecutive calendar days.

“Credit Card Accounts Receivables” means each “payment intangible” (as defined in the UCC) together with all income, payments and proceeds thereof, owed by a Credit Card Issuer or Credit Card Processor to an Obligor resulting from charges by a customer of an Obligor on credit or debit cards issued by such Credit Card Issuer in connection with the sale of Inventory by an Obligor, or services performed by an Obligor, in each case in the ordinary course of its business.

“Credit Card Issuer” shall mean any person who issues or whose members issue credit or debit cards, including, without limitation, MasterCard or VISA bank credit or debit cards or other bank credit or debit cards issued through MasterCard International, Inc., Visa, U.S.A., Inc. or Visa International and American Express, Discover, Diners Club, Carte Blanche and other non-bank credit or debit cards, including, without limitation, credit or debit cards issued by or through American Express Travel Related Services Company, Inc., and Novus Services, Inc. and other issuers approved by the Collateral Agent.

“Credit Card Processor” shall mean any servicing or processing agent or any factor or financial intermediary who facilitates, services, processes or manages the credit authorization, billing transfer and/or payment procedures with respect to any Obligor’s sales transactions involving credit card or debit card purchases by customers using credit cards or debit cards issued by any Credit Card Issuer.

“Cure Amount” has the meaning specified in Section 10.4(a).

“Cure Deadline” has the meaning specified in Section 10.4(a).

“Cure Right” has the meaning specified in Section 10.4(a).

“Current Asset Collateral” means (i) Accounts and Chattel Paper (in each case, other than to the extent constituting identifiable proceeds of Fixed Asset Collateral), and Credit Card Accounts Receivables; (ii) Deposit Accounts (and all balances, cash, checks and other negotiable instruments, funds and other evidences of payment held therein) and Securities Accounts (and all balances, cash, checks, securities, securities entitlements, financial assets and instruments (whether negotiable or otherwise), funds and other evidences of payment held therein), other than a Deposit Account or Securities Account containing exclusively identifiable proceeds of Fixed Asset Collateral; (iii) all Inventory; (iv) to the extent evidencing, governing, securing or otherwise reasonably related to any of the foregoing assets described in clauses (i) through (iii), all Documents, General Intangibles, Instruments, Investment Property (other than equity interests in Subsidiaries), Commercial Tort Claims, Letters of Credit, Letter-of-Credit Rights and Supporting Obligations; *provided*, however, that to the extent any of the foregoing also evidence, govern, secure or otherwise reasonably relate to any Fixed Asset Collateral only that portion that evidences, governs, secures or primarily relates to Current Asset Collateral shall constitute Current Asset Collateral; *provided, further*, that the foregoing shall not include any Intellectual Property; (v) all books, records and documents related to the foregoing (including databases, customer lists and other records, whether tangible or electronic, which contain any information relating to any of the foregoing); and (vi) all Proceeds and products of any or all of the foregoing in whatever form received, including proceeds of business interruption and other insurance and claims against third parties. For purposes of this definition, capitalized terms used but not defined elsewhere in this Agreement shall have the meanings set forth in Articles 8 or 9 of the UCC.

“Daily Simple SOFR” means, for any day (a “SOFR Rate Day”), a rate per annum equal to the greater of (a) ~~(i) SOFR~~ SOFR for the day (such day “i”) that is five U.S. Government Securities Business Days prior to (A) if such SOFR Rate Day is a U.S. Government Securities Business Day, such SOFR Rate Day or (B) if such SOFR Rate Day is not a U.S. Government Securities Business Day, the U.S. Government Securities Business Day immediately preceding such SOFR Rate Day, in each case, as such SOFR is published by the SOFR Administrator on the SOFR Administrator’s Website ~~plus (ii) the Applicable SOFR Adjustment and~~ (b) 0.00%. If by 5:00 pm (New York City time) on the second (2nd) U.S. Government Securities Business Day immediately following any day “i”, the SOFR in respect of such day “i” has not been published on the SOFR Administrator’s Website and a Benchmark Replacement Date with respect to the Daily Simple SOFR has not occurred, then the SOFR for such day “i” will be the SOFR as published in respect of the first preceding U.S. Government Securities Business Day for which such SOFR was published on the SOFR Administrator’s Website; provided that any SOFR determined pursuant to this sentence shall be utilized for purposes of calculation of Daily Simple SOFR for no more than three (3) consecutive SOFR Rate Days. Any change in Daily Simple SOFR due to a change in SOFR shall be effective from and including the effective date of such change in SOFR without notice to the Borrower.

“Daily Simple SOFR Interest Payment Date” means, with respect to any Daily Simple SOFR Loan, each date that is on the numerically corresponding day in each calendar month that is three months after the date of the Borrowing of which such Loan is a part.

“Daily Simple SOFR Loan” means a Loan that bears interest at a rate based on Daily Simple SOFR.

“Debt” means, without duplication, all

(a) indebtedness for borrowed money (excluding any obligations arising from warranties as to inventory in the ordinary course of business) and all obligations evidenced by bonds, debentures, notes, loan agreements or other similar instruments;

(b) the deferred purchase price of property or services (other than trade accounts payable, liabilities or accrued expenses in the ordinary course of business) to the extent the same would be required to be shown as a long-term liability on a balance sheet prepared in accordance with GAAP;

(c) all obligations and liabilities of any Person secured by any Lien on an Obligor’s or any of its Restricted Subsidiaries’ property, even if such Obligor or Restricted Subsidiary shall not have assumed or become liable for the payment thereof; provided, however, that all such obligations and liabilities which are limited in recourse to such property shall be included in Debt only to the extent of the book value of such property as would be shown on a balance sheet of the Consolidated Parties prepared in accordance with GAAP or, if higher, the Fair Market Value of such property;

(d) all obligations or liabilities created or arising under any Capital Lease or conditional sale or other title retention agreement with respect to property used or acquired by ~~a Borrower~~ Holdings or any of its Restricted Subsidiaries, even if the rights and remedies of the lessor, seller or lender thereunder are limited to repossession of such property; provided, however, that all such obligations and liabilities which are limited in recourse to such property shall be included in Debt only to the extent of the book value of such property as would be shown on a balance sheet of the Consolidated Parties prepared in accordance with GAAP or, if higher, the Fair Market Value of such property;

- (e) the present value (discounted at the Base Rate) of lease payments due under synthetic leases;
- (f) the maximum amount (after giving effect to any prior drawings or reductions which may have been reimbursed) of all letters of credit (including standby and commercial), banker's acceptances, bank guaranties, surety bonds, performance bonds and similar instruments issued or created by or for the account of such Person;
- (g) all net obligations of any Person in respect of Hedge Agreements;
- (h) all obligations of such Person in respect of Disqualified Stock; and
- (i) all obligations and liabilities under Guaranties in respect of obligations of the type described in any of clauses (a) through (g) above;

provided that Debt shall not include (i) prepaid or deferred revenue arising in the ordinary course of business, (ii) purchase price holdbacks in respect of Permitted Acquisitions (or Investments similar to Permitted Acquisitions) arising in the ordinary course of business in respect of a portion of the purchase prices of an asset to satisfy unperformed obligations of the seller of such asset, (iii) earn out obligations in connection with a Permitted Acquisition (or an Investment similar to a Permitted Acquisition) unless such obligations become a liability on the balance sheet of such Person in accordance with GAAP and are not paid after becoming due and payable and (iv) Guaranties incurred (other than with respect to Debt) in the ordinary course of business.

For all purposes hereof, the Debt of any Person shall (A) include the Debt 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, except to the extent such Person's liability for such Debt is otherwise limited and only to the extent such Debt would be included in the calculation of Consolidated Total Debt and (B) in the case of Holdings, the Borrower and its Restricted Subsidiaries, exclude all intercompany Debt having a term not exceeding 364 days (inclusive of any roll-over or extensions of terms) and made in the ordinary course of business consistent with past practice. The amount of any net obligation under any Hedge Agreement on any date shall be deemed to be the Swap Termination Value thereof as of such date.

"Debt for Borrowed Money" of any Person at any time means, on a consolidated basis, the sum of all debt for borrowed money of such Person at such time.

"Default" means any event or circumstance which, with the giving of notice, the lapse of time, or both, would (if not cured, waived, or otherwise remedied during such time) constitute an Event of Default.

"Default Rate" means a fluctuating per annum interest rate at all times equal to the sum of (a) the otherwise applicable Interest Rate plus (b) two percent (2.00%) per annum. Each Default Rate shall be adjusted simultaneously with any change in the applicable Interest Rate.

"Default Right" shall have the meaning assigned to such term in Section 14.22.

"Defaulting Lender" means any Lender whose acts or failure to act, whether directly or indirectly, cause it to meet any part of the definition of "Lender Default."

"Deposit Account Control Agreement" has the meaning specified in Section 8.23(a).

“Deposit Accounts” means all “deposit accounts” as such term is defined in the UCC and all accounts with a deposit function maintained at a financial institution, now or hereafter held in the name of the Borrower or any Guarantor.

“Designated Account” has the meaning specified in Section 2.4(b).

“Designated Non-Cash Consideration” means the Fair Market Value of non-cash consideration received by ~~the Borrower~~Holdings or its Restricted Subsidiaries in connection with a Disposition pursuant to clause (t) of the definition of “Permitted Dispositions” that is designated as “Designated Non-Cash Consideration” pursuant to a certificate of a Responsible Officer of the Borrower delivered to the Agent, setting forth the basis of such valuation (which amount will be reduced by (i) the Fair Market Value of the portion of the non-cash consideration converted to cash within 180 days following the consummation of the applicable Disposition and (ii) the amount of Cash Equivalents received in connection with a subsequent sale of such Designated Non-Cash Consideration).

“Disposed EBITDA” means, with respect to any Sold Entity or Business or any Converted Unrestricted Subsidiary for any period, the amount for such period of Consolidated EBITDA of such Sold Entity or Business or such Converted Unrestricted Subsidiary (determined as if references to ~~the Borrower~~Holdings and the Restricted Subsidiaries in the definition of the term “Consolidated EBITDA” (and in the component financial definitions used therein) were references to such Sold Entity or Business and its Subsidiaries or to such Converted Unrestricted Subsidiary and its Subsidiaries), all as determined on a consolidated basis for such Sold Entity or Business or such Converted Unrestricted Subsidiary.

“Disposition” or “Dispose” means the sale, lease, assignment, transfer or other disposition (including any transaction contemplated by Section 8.18 and any sale of Stock) of any property by any Person; provided that “Disposition” and “Dispose” shall not be deemed to include any Casualty Event or any issuance by Holdings (or any Parent Entity) of any of its Stock to another Person.

“Disqualified Lenders” means (a) such Persons that have been specified in writing to the Agent and the Arrangers (i) on or prior to the Restatement Effective Date or (ii) after the Restatement Effective with the consent of the Agent as being “Disqualified Lenders,” (b) those Persons who are competitors of the Borrower and its Subsidiaries that are separately identified in writing by the Borrower from time to time to the Agent and (c) in the case of each of clauses (a) and (b), any of their Affiliates (which, for the avoidance of doubt, shall not include any bona fide debt investment funds that are affiliates of the Persons referenced in clause (b) above) that are either (i) identified in writing to the Agent by the Borrower from time to time or (ii) readily identifiable solely on the basis of such Affiliate’s name; provided that no such updates to the list shall be deemed to retroactively disqualify any parties that have previously acquired an assignment or participation interest in respect of Loans from continuing to hold or vote such previously acquired assignments and participations on the terms set forth herein for Lenders that are not Disqualified Lenders.

“Disqualified Stock” means that portion of any Stock which, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable at the option of the holder thereof), or upon the happening of any event (other than an event which would constitute a Change of Control or as a result of a Disposition of assets or Casualty Event), matures (excluding any maturity as the result of an optional redemption by the issuer thereof) or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or is redeemable at the sole option of the holder thereof (except, in each case, upon the occurrence of a Change of Control or as a result of a Disposition of assets or Casualty Event) on or prior to the six-month anniversary of the Stated Termination Date; provided that, if such Stock is issued pursuant to any plan for the benefit of employees of Holdings (or any Parent Entity thereof), the Borrower or any of its Subsidiaries or by any such plan to such employees, such Stock shall not constitute Disqualified Stock solely because it may be required to be repurchased by Holdings (or any Parent Entity thereof), the Borrower or any of its Subsidiaries in order to satisfy applicable statutory or regulatory obligations.

“Distressed Person” has the meaning specified in the definition of “Lender-Related Distress Event.”

“Distribution” means (a) the payment or making of any dividend or other distribution of property in respect of Stock or other Stock (or any options or warrants for, or other rights with respect to, such stock or other Stock) of any Person, other than distributions in Stock or other Stock (or any options or warrants for such stock or other Stock) of any class other than Disqualified Stock, or (b) the direct or indirect redemption or other acquisition by any Person of any Stock or other Stock (or any options or warrants for such stock or other Stock) of such Person or any direct or indirect shareholder or other equity holder of such Person.

“Documents” means all “documents” as such term is defined in the UCC, including bills of lading, warehouse receipts or other documents of title, now owned or hereafter acquired by any Obligor.

“DOL” means the United States Department of Labor or any successor department or agency.

“Dollar” and “\$” mean dollars in the lawful currency of the United States. Unless otherwise specified, all payments under this Agreement shall be made in Dollars.

“Domestic Subsidiary” means any Subsidiary of ~~the Borrower~~ Holdings that is organized under the laws of the United States, any State of the United States or the District of Columbia.

“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.

“Eligible Accounts” means, as of any date of determination, the aggregate amount of all Accounts created by the Obligors in the ordinary course of the Obligors’ business, and in any event including rights to payment, that arise out of each Obligor’s sale of goods or rendition of services or the lease or rental of goods by such Obligor, that comply with each of the representations and warranties respecting Eligible Accounts made in the Loan Documents, and that are not excluded as ineligible by virtue of one or more of the excluding criteria set forth below. In determining the amount to be included, Eligible Accounts shall be calculated net of customer deposits, finance charges, and unapplied cash. Eligible Accounts shall not include the following:

- (a) Accounts that are past due for more than 60 days or that the Account Debtor has failed to pay within 90 days of original invoice date,
- (b) Accounts owed by an Account Debtor (or its Affiliates) where 50% or more of all Accounts owed by that Account Debtor (or its Affiliates) are deemed ineligible under clause (a) above,

(c) Accounts with respect to which the Account Debtor is an Affiliate of an Obligor or an employee or agent of BorrowerHoldings or any Affiliate of BorrowerHoldings, except for an Account Debtor (x) that is a portfolio company owned by Sponsor or (y) that has appointed (or has the right to appoint) less than one third of the Board of Directors of the Borrower; provided that (i) in each case, such Account is on arm's-length terms and arises in the ordinary course of business of such Obligor and such Affiliate and is administered in accordance with the customary collection and credit policies of Borrower and (ii) the aggregate amount of all such Accounts included in the calculation of Eligible Accounts pursuant to clauses (x) and (y) above shall not exceed (A) to the extent that the applicable Account Debtors are rated by both of Moody's and S&P as Investment Grade, 35% of the aggregate Eligible Accounts and Eligible Unbilled Accounts or (B) to the extent that the applicable Account Debtors are not rated by both of Moody's and S&P as Investment Grade, 25% of the aggregate Eligible Accounts and Eligible Unbilled Accounts,

(d) Accounts arising in a transaction wherein goods are placed on consignment or are sold pursuant to a guaranteed sale, a sale or return, a sale on approval, a bill and hold, or any other terms by reason of which the payment by the Account Debtor may be conditional,

(e) Accounts that are not payable in Dollars,

(f) Accounts with respect to which the Account Debtor either (i) does not maintain its chief executive office in the United States, or (ii) is not organized under the laws of the United States or any state or territory thereof, or (iii) is the government of any foreign country or sovereign state, or of any state, province, municipality, or other political subdivision thereof, or of any department, agency, public corporation, or other instrumentality thereof, unless (A) the Account is supported by an irrevocable letter of credit reasonably satisfactory to the Agent (as to form, substance, and issuer or domestic confirming bank) that has been delivered to the Agent and is directly drawable by the Agent, or (B) the Account is covered by credit insurance in form, substance, and amount, and by an insurer, reasonably satisfactory to the Agent,

(g) Accounts with respect to which the Account Debtor is (i) the United States or any department, agency, or instrumentality of the United States (exclusive, however, of Accounts with respect to which the Obligors have complied, to the reasonable satisfaction of the Agent, with the Assignment of Claims Act, 31 USC §3727) or (ii) any State (or political subdivision) of the United States,

(h) Accounts with respect to which the Account Debtor is a creditor of Borrower an Obligor, has or has asserted a right of setoff, or has disputed its obligation to pay all or any portion of the Account, to the extent of such claim, right of setoff, or dispute,

(i) Accounts with respect to an Account Debtor whose total obligations owing to Borrower the Obligors exceed (w) in the case of Pioneer, ~~45%~~; ~~provided that Pioneer is Exxon Mobil Corp., (i) if~~ rated by both of Moody's and S&P as Investment Grade; ~~provided, further, that if Pioneer is directly or indirectly acquired by Exxon Mobil Corp., this subclause (w) shall cease to apply; (x) in the case of XTO Energy Inc., (A) other than in the event described in the ensuing subclause clause (B), 35%, or (B) solely in the event that Pioneer is directly or indirectly acquired by Exxon Mobil Corp., 50%; provided that, in the case of each of the foregoing subclauses (A) and (B), XTO Energy Inc., 50% or (ii) if otherwise, 35%; (y) in the case of any other Account Debtor that is rated by both of Moody's and S&P as Investment Grade; (y) in the case of Endeavor Energy Resources, LP, 35%; provided that Endeavor Energy Resources, LP is rated at least Ba1 by Moody's and BB+ by S&P, 35%; and (z) in the case of any other Account Debtor, 25% (in each case, such percentage, as applied to a particular Account Debtor, being subject to reduction by the Agent in its Reasonable Credit Judgment if the creditworthiness of such Account Debtor deteriorates), of the aggregate amount of all Eligible Accounts and Eligible Unbilled Accounts, to the extent of the obligations owing by such Account Debtor in excess of such percentage.~~

- (j) Accounts with respect to which the Account Debtor is subject to an Insolvency Proceeding, is not Solvent, has gone out of business, or as to which ~~Borrower~~ an Obligor has received notice of an imminent Insolvency Proceeding or a material impairment of the financial condition of such Account Debtor,
- (k) Accounts, the collection of which, the Agent, in its Reasonable Credit Judgment, believes to be doubtful by reason of the Account Debtor's financial condition,
- (l) Accounts that are not subject to a first priority perfected Lien in favor of the Collateral Agent,
- (m) Accounts that are subject to a Lien other than the Lien of the Collateral Agent (except for Permitted Liens that do not have priority over the Lien in favor of the Collateral Agent),
- (n) Accounts with respect to which (i) the goods giving rise to such Account have not been shipped and billed to the Account Debtor, or (ii) the services giving rise to such Account have not been performed and billed to the Account Debtor,
- (o) Accounts with respect to which the Account Debtor is a Sanctioned Person or Sanctioned Entity,
- (p) Accounts that represent the right to receive progress payments or other advance billings that are due prior to the completion of performance by ~~Borrower~~ the applicable Obligor of the subject contract for goods or services,
- (q) Accounts with respect to which the Account Debtor's obligation does not constitute its legal, valid and binding obligation, enforceable against it in accordance with its terms, except as enforcement may be limited by equitable principles or by bankruptcy, insolvency, reorganization, moratorium, or similar laws relating to or limiting creditors' rights generally,
- (r) Accounts owned or generated by any Person or business which is acquired by an Obligor in connection with a Permitted Acquisition (or similar Investment), until such time as the Agent has either (i) completed a customary due diligence investigation as to such Accounts and such Person, which investigation may, at the discretion of the Agent, include a Field Examination and must be commenced no later than 15 days after a request by the Borrower is made to so undertake such investigation to the Agent and completed no later than 30 days after such commencement, and the Agent are satisfied with the results thereof in its Reasonable Credit Judgment or (ii) determined that such a due diligence investigation is not necessary, except, that, up to \$5,000,000 of such Accounts that are otherwise Eligible Accounts may be considered Eligible Accounts, and
- (s) Accounts which are Specified Capital Lease Subject Accounts; provided that the Agent has received written notice from the Borrower identifying any such Specified Capital Lease Subject Accounts in such detail as shall be reasonably satisfactory to the Agent.

“Eligible Assignee” means (a) a commercial bank, commercial finance company or other asset based lender, having total assets in excess of \$2,000,000,000 and that extends credit or buys commercial loans in the ordinary course of business; (b) any Lender listed on the signature page of this Agreement; (c) any Affiliate of any Lender and (d) any Approved Fund; provided, that, in any event, “Eligible Assignee” shall not include (i) any natural Person, (ii) Holdings or the Borrower or any Affiliate thereof, or (iii) so long as the list of Disqualified Lenders (including any updates thereto) has been made available to all Lenders, any Disqualified Lender (other than any Disqualified Lender otherwise agreed to by the Borrower in a writing delivered to the Agent).

“Eligible Investment Grade Accounts” means, at any time, any Eligible Account for which the Account Debtor in respect thereof is an Investment Grade Account Debtor.

“Eligible Power Generation Equipment” means the Equipment owned by an Obligor and described on Schedule 1.1(B) (as such Schedule may, at the Borrower’s election, be supplemented by the Borrower from time to time concurrently with the delivery of a Borrowing Base Certificate pursuant to Section 6.4(g)) and meeting each of the following requirements:

(a) such Equipment is part of the (i) Solar Turbine power generation packages, (ii) Caterpillar reciprocating engine packages or (iii) INNIO reciprocating engine packages;

(b) such Obligor has good title to such Equipment;

(c) (i) such Obligor has the right to subject such Equipment to a Lien in favor of the Agent, (ii) such Equipment is subject to a first priority perfected Lien in favor of the Agent and is free and clear of all other Liens of any nature whatsoever (except for Permitted Encumbrances which do not have priority over the Lien in favor of the Agent); provided that no Equipment (x) that has a certificate of title and (y) the perfection of a security interest in which requires notation of the Agent’s Lien on such certificate of title, shall constitute Eligible Power Generation Equipment, and (iii) if reasonably requested by the Agent, an opinion of counsel in form and substance reasonably satisfactory to the Agent shall be delivered by the Borrower to the Agent with respect to, without limitation, the validity and perfection of such Lien in favor of the Agent and to the effect that the granting of such Lien does not breach or result in a default under any applicable Obligor customer contract that utilizes such Equipment;

(d) the full purchase price for such Equipment has been paid by such Obligor;

(e) such Equipment is located on premises (i) in the continental United States and owned by such Obligor, which premises are subject to a first priority perfected Lien in favor of the Agent (subject to Permitted Liens), (ii) in the continental United States and leased by such Obligor where (x) the lessor has delivered to the Agent a collateral access letter in form and substance reasonably satisfactory to the Agent or (y) a Reserve for rent, charges, and other amounts due or to become due for three (3) months (in addition to in respect of any past due amounts) with respect to such facility has been established by the Agent in its Reasonable Credit Judgment, or (iii) owned or leased by such Obligor’s customers, and with respect to which (x) the Agent has an express right to access and take possession of such Equipment or (y) the Agent does not have an express right to access and take possession of such Equipment but such Obligor has access and the right to take possession of such Equipment; provided that in the case of this clause (e)(iii)(y), the Agent shall have the right to implement a Reserve in its Reasonable Credit Judgment;

(f) such Equipment is not located on premises that are otherwise serviced by equipment subject to a Specified Capital Lease;

(g) such Equipment is in good working order and condition (ordinary wear and tear excepted) and is used or held for use by such Obligor in the ordinary course of business of such Obligor;

(h) such Equipment (i) is not subject to any agreement which restricts the ability of such Obligor to use, sell, transport or dispose of such Equipment or which restricts the Agent's ability to take possession of, sell or otherwise dispose of such Equipment and (ii) has not been purchased from a Sanctioned Person;

(i) such Equipment is covered by casualty insurance (subject to customary deductibles);

(j) such Equipment does not constitute "Fixtures" under the applicable laws of the jurisdiction in which such Equipment is located; and

(k) subject to clause (j) of the proviso to the definition of "Eligible Power Generation Equipment Component," the Net Orderly Liquidation Value for such Equipment shall have been established pursuant to an Appraisal, or such Equipment shall be of a substantially similar type to Equipment for which a Net Orderly Liquidation Value was previously established.

In the event that Equipment of an Obligor which was previously Eligible Power Generation Equipment ceases to be Eligible Power Generation Equipment hereunder, such Obligor or the Borrower shall notify the Agent thereof promptly after such Obligor or the Borrower has knowledge such Equipment ceases to be Eligible Power Generation Equipment and this shall be reflected on the next Borrowing Base Certificate.

"Eligible Power Generation Equipment Component" means, at any time, an amount in Dollars equal to the lesser of (x) 90% of the Book Value of the Obligors' Eligible Power Generation Equipment and (y) 80% multiplied by (A) the Net Orderly Liquidation Value (as a percentage of Book Value) of the Obligors' Eligible Power Generation Equipment multiplied by (B) the Book Value of the Obligors' Eligible Power Generation Equipment; provided that (i) the amount included in the Eligible Power Generation Equipment Component shall be reduced, on the date any item of Eligible Power Generation Equipment ceases to be Eligible Power Generation Equipment for any reason (including as a result of any sale, transfer or other disposition therefor or any casualty or condemnation with respect thereto), by the amount then included in the Eligible Power Generation Equipment Component with respect to such item of Eligible Power Generation Equipment and (ii) notwithstanding clause (k) of the definition of Eligible Power Generation Equipment, after delivery of the Initial Appraisal, newly acquired Equipment not subject to an Appraisal may still be included in the Eligible Power Generation Equipment Component but limited to 80% of the Book Value of such Eligible Power Generation Equipment that has not yet been subject to an Appraisal.

"Eligible Unbilled Account" means any Account of the Obligors that does not qualify as an Eligible Account solely because (a) the goods giving rise to such Account have not been shipped and billed to the Account Debtor, or (b) the services giving rise to such Account have not been performed and billed to the Account Debtor; provided that no Account shall constitute an Eligible Unbilled Account if (x) in either case of the foregoing clauses (a) and (b), such Account has been unbilled for more than thirty (30) days following the shipment of the good or performance of the services, as applicable, giving rise to such Account and (y) in the case of the foregoing clause (b), less than 75% (as determined by the Agent in its Reasonable Credit Judgment) of the project as to which the services giving rise to such Account relate shall have been completed. For the avoidance of doubt, at such time as an Account is billed to the Account Debtor it shall no longer be an "Eligible Unbilled Account".

“EMU” means economic and monetary union as contemplated in the Treaty on European Union.

“Engagement Letter” means the Engagement Letter, dated as of March 23, 2022, between Barclays and the Borrower, with respect to the payment of certain fees and other matters in connection with this Agreement and the Restatement Agreement.

“Environment” shall mean ambient air, indoor air, surface water, groundwater, drinking water, land surface, sediments, and subsurface strata and natural resources such as wetlands, flora and fauna.

“Environmental Laws” means all applicable Laws in connection with pollution, protection of the Environment, including Releases, threats of Releases, or to health and safety (to the extent such health and safety laws relate to exposure to Contaminants).

“Equipment” means all of each Obligor’s now owned or hereafter acquired machinery, equipment, furniture, furnishings, fixtures, and other tangible personal property (except Inventory), including embedded software, service and delivery vehicles with respect to which a certificate of title has been issued, aircraft, dies, tools, jigs, molds and office equipment, as well as all of such types of property leased by any Obligor, and all of each Obligor’s rights and interests with respect thereto under such leases (including, without limitation, options to purchase); together with all present and future additions and accessions thereto, replacements therefor, component and auxiliary parts and supplies used or to be used in connection therewith, and all substitutes for any of the foregoing, and all manuals, drawings, instructions, warranties and rights with respect thereto; wherever any of the foregoing is located.

“ERISA” means the Employee Retirement Income Security Act of 1974, as the same may be amended from time to time and any final regulations promulgated and the rulings issued thereunder.

“ERISA Affiliate” means any trade or business (whether or not incorporated) which is a member of a group of trades or businesses under common control with ~~the Borrower~~Holdings or a Restricted Subsidiary within the meaning of Section 414(c) of the Code (or any member of an affiliated service group within the meaning of Sections 414(m) and (o) of the Code of which ~~the Borrower~~Holdings or a Restricted Subsidiary is a member).

“ERISA Event” means (a) a Reportable Event with respect to a Pension Plan; (b) any failure by a Pension Plan to satisfy the minimum funding standard (within the meaning of Section 412 of the Code or Section 302 of ERISA) applicable to such Pension Plan, in each case whether or not waived; (c) the filing pursuant to Section 412(c) of the Code or Section 302(c) of ERISA, of an application for a waiver of the minimum funding standard with respect to a Pension Plan; (d) a determination that a Pension Plan is in “at-risk” status (as defined in Section 303(i)(4) of ERISA or Section 430(i)(4) of the Code); (e) a withdrawal by ~~the Borrower~~Holdings, a Restricted Subsidiary or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations which is treated as such a withdrawal under Section 4062(e) of ERISA; (f) a complete or partial withdrawal by ~~the Borrower~~Holdings, a Restricted Subsidiary or any ERISA Affiliate from a Multi-employer Plan or notification that a Multi-employer Plan is insolvent (within the meaning of Title IV of ERISA) or in “endangered” or “critical” status (within the meaning of Section 432 of the Code or Section 305 of ERISA); (g) the filing of a notice of intent to terminate, the treatment of a Plan amendment as a termination under Section 4041 or 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate a Pension Plan or Multi-employer Plan; (h) the occurrence of an event or condition which would reasonably be expected to constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan or Multi-employer Plan; (i) ~~the Borrower~~Holdings or any of its Subsidiaries engages in a non-exempt “prohibited transaction” with respect to which ~~the Borrower~~Holdings or any of its Subsidiaries is a “disqualified person” (within the meaning of Section 4975 of the Code), or with respect to which ~~the Borrower~~Holdings or any such Subsidiary could otherwise be liable; or (j) the imposition of any Lien under Section 430(k) of the Code or pursuant to Section 303(k) or Section 4068 of ERISA with respect to any Pension Plan, or any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon ~~the Borrower~~Holdings, a Restricted Subsidiary or any ERISA Affiliate.

“EU Bail-In Legislation Schedule” means the document described as such and 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 10.1.

“Exchange Act” means the Securities Exchange Act of 1934, as amended, and regulations promulgated thereunder.

“Excluded Accounts” means all Deposit Accounts into which solely Excluded Funds are deposited, other than any Designated Account.

“Excluded Assets” has the meaning specified in the definition of “Collateral and Guarantee Requirement.”

“Excluded Funds” means all amounts (i) solely for the purpose of payroll, employee wages and benefits, payment of taxes and escrow arrangements and fiduciary arrangements for the benefit of third parties (other than the Obligors and their subsidiaries), (ii) representing the identifiable cash proceeds of Specified Capital Lease Subject Accounts owing to the Specified Capital Lease Subsidiary in connection with a Specified Capital Lease and (iii) other amounts, not to exceed \$2,000,000 in the aggregate.

“Excluded Stock” means:

(a) any Stock with respect to which the Agent and the Borrower agree, in writing (each acting reasonably), that the cost of pledging such Stock shall be excessive in view of the benefits to be obtained by the Secured Parties therefrom,

(b) solely in the case of any pledge of Stock of any CFC or FSHCO to secure the Obligations, any Stock that is Voting Stock of such CFC or FSHCO in excess of 65% of the outstanding Stock that is Voting Stock of such CFC or FSHCO,

(c) any Stock to the extent, and for so long as, the pledge thereof would be prohibited by any applicable Law (including any legally effective requirement to obtain the consent of any Governmental Authority unless such consent has been obtained),

(d) any Margin Stock and Stock of any Person (other than any Wholly Owned Restricted Subsidiary) to the extent, and for so long as, the pledge of such Stock would be prohibited by, or create an enforceable right of termination in favor of any other party thereto (other than Holdings, the Borrower or any Wholly Owned Restricted Subsidiary of ~~the Borrower~~Holdings) under, the terms of any Organization Document, joint venture agreement or shareholders’ agreement applicable to such Person after giving effect to the applicable anti-assignment clauses of the UCC and applicable law,

(e) the Stock of any Immaterial Subsidiary or Unrestricted Subsidiary, and

(f) any Stock of any Subsidiary to the extent that the pledge of such Stock would result in material adverse tax consequences to Holdings, the Borrower or any Subsidiary as reasonably determined by the Borrower in consultation with the Agent, and confirmed in writing by notice to the Agent.

Notwithstanding anything to the contrary herein, the Stock of the Borrower shall not at any time constitute Excluded Stock.

“Excluded Subsidiary” means:

(a) any Subsidiary that is not a Wholly Owned Subsidiary or is a joint venture on any date such Subsidiary would otherwise be required to become a Guarantor pursuant to the requirements of Section 8.22 (for so long as such Subsidiary remains a non-Wholly Owned Subsidiary),

(b) any Subsidiary that is restricted or prohibited by (x) subject to clause (g) below, applicable Law or (y) contractual obligation from guaranteeing the Obligations (and for so long as such restriction or prohibition is in effect); provided that in the case of clause (y), such contractual obligation existed on the Restatement Effective Date or, with respect to any Subsidiary acquired by ~~the Borrower~~Holdings or a Restricted Subsidiary after the Restatement Effective Date (and so long as such contractual obligation was not incurred in contemplation of such acquisition), on the date such Subsidiary is so acquired,

(c) (i) any Foreign Subsidiary, (ii) any Domestic Subsidiary that is (A) a FSHCO or (B) a direct or indirect Subsidiary of a Foreign Subsidiary that is a CFC, or (iii) any other Subsidiary for which the provision of a Guaranty would result in a material adverse tax consequence to Holdings, the Borrower or any Subsidiary (as reasonably determined by the Borrower in writing in consultation with the Agent),

(d) any Immaterial Subsidiary (provided that the Borrower shall not be permitted to exclude Immaterial Subsidiaries from guaranteeing the Obligations to the extent that (i) the aggregate amount of gross revenue for all Immaterial Subsidiaries excluded by this clause (d) exceeds 7.5% of the consolidated gross revenues of ~~the Borrower~~Holdings and its Restricted Subsidiaries that are not otherwise Excluded Subsidiaries by virtue of any other clauses of this definition except for this clause (d) as of the last day of the Test Period most recently ended on or prior to the date of determination or (ii) the aggregate amount of total assets for all Immaterial Subsidiaries excluded by this clause (d) exceeds 7.5% of the aggregate amount of Consolidated Total Assets (measured as of any date of determination based upon the Section 6.2 Financials most recently delivered on or prior to such date) of ~~the Borrower~~Holdings and its Restricted Subsidiaries that are not otherwise Excluded Subsidiaries by virtue of any other clauses of this definition except for this clause (d) as of the last day of the Test Period most recently ended on or prior to the date of determination),

(e) any other Subsidiary with respect to which, in the reasonable judgment of the Agent and the Borrower, the cost of providing a Guaranty shall be excessive in view of the benefits to be obtained by the Lenders therefrom,

(f) each Unrestricted Subsidiary, and

(g) any Subsidiary that would require any consent, approval, license or authorization from any Governmental Authority to provide a Guaranty unless such consent, approval, license or authorization has been received, or is received after commercially reasonable efforts (including if requested by the Agent to do so) by Holdings, the Borrower and/or such Subsidiary to obtain the same.

Notwithstanding anything to the contrary herein, neither the Borrower nor the Specified Capital Lease Subsidiary shall ~~not~~ at any time constitute an Excluded Subsidiary.

“Excluded Swap Obligation” means, with respect to any Obligor or Holdings, (a) any obligation (a “Swap 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, if, and to the extent that, all or a portion of the guarantee of such Obligor of, or the grant by such Obligor or Holdings of a security interest to secure, such Swap Obligation (or any guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation, or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) (i) by virtue of such Obligor’s or Holdings’ failure to constitute an “eligible contract participant,” as defined in the Commodity Exchange Act and the regulations thereunder (determined after giving effect to any applicable keep well, support, or other agreement for the benefit of such Obligor or Holdings and any and all applicable guarantees of such Obligor’s Swap Obligations by other Obligors), at the time the guarantee of (or grant of such security interest by, as applicable) such Obligor or Holdings becomes or would become effective with respect to such Swap Obligation or (ii) in the case of a Swap Obligation that is subject to a clearing requirement pursuant to section 2(h) of the Commodity Exchange Act, because such Obligor or Holdings is a “financial entity,” as defined in section 2(h)(7)(C) of the Commodity Exchange Act, at the time the guarantee of (or grant of such security interest by, as applicable) such Obligor or Holdings becomes or would become effective with respect to such Swap Obligation or (b) any other Swap Obligation designated as an “Excluded Swap Obligation” of such Obligor or Holdings as specified in any agreement between the relevant Obligors and Hedge Bank applicable to such Swap Obligations. If a Swap Obligation arises under a Master Agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to the swap for which such guarantee 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 under any Loan Document, (a) Taxes imposed on (or measured by) the Recipient’s net income (however denominated), franchise Taxes, and branch profits Taxes, in each case (i) imposed as a result of such Recipient being organized under the Laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender pursuant to a law in effect on the date on which (i) such Lender acquired its interest in the applicable Commitment or, in the case of an applicable interest in a Loan not funded pursuant to a prior Commitment, such Lender acquires such interest in such Loan (provided that this clause (b)(i) shall not apply to an assignee pursuant to an assignment request by the Borrower under Section 5.8) or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 5.1, amounts with respect to such Taxes were payable either to such Lender’s assignor immediately before such Lender acquired its interest in the applicable Loan or Commitment or to such Lender immediately before it changed its lending office, (c) Taxes attributable to such Recipient’s failure to comply with Section 5.1(d), and (d) any Taxes imposed under FATCA.

“Existing Revolving Credit Class” has the meaning specified in Section 2.7(a).

“Existing Revolving Credit Commitments” has the meaning specified in Section 2.7(a).

“Existing Revolving Loans” has the meaning specified in Section 2.7(a).

“Extended Revolving Credit Commitments” has the meaning specified in Section 2.7(a).

“Extended Revolving Credit Facility” means each Class of Extended Revolving Credit Commitments established pursuant to Section 2.7.

“Extended Revolving Loans” has the meaning specified in Section 2.7(a).

“Extending Lender” has the meaning specified in Section 2.7(b).

“Extension Agreement” has the meaning specified in Section 2.7(c).

“Extension Date” has the meaning specified in Section 2.7(d).

“Extension Election” has the meaning specified in Section 2.7(b).

“Extension Request” has the meaning specified in Section 2.7(a).

“Extension Series” means all Extended Revolving Credit Commitments that are established pursuant to the same Extension Agreement (or any subsequent Extension Agreement to the extent such Extension Agreement expressly provides that the Extended Revolving Credit Commitments provided for therein are intended to be a part of any previously established Extension Series) and that provide for the same interest margins, extension fees, if any, and amortization schedule.

“Fair Market Value” means, with respect to any asset or group of assets on any date of determination, the value of the consideration obtainable in a sale of such asset at such date of determination assuming a sale by a willing seller to a willing purchaser dealing at arm’s length and arranged in an orderly manner over a reasonable period of time having regard to the nature and characteristics of such asset, as determined in good faith by the Borrower.

“FATCA” means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof and any agreements entered into pursuant to current Section 1471(b)(1) of the Code (or any amended or successor version described above) and any intergovernmental agreements (or related legislation or official administrative rules or practices) implementing the foregoing.

“Federal Funds Rate” means, for any day, the rate calculated by the Federal Reserve Bank of New York based on such day’s federal funds transactions by depository institutions (as determined in such manner as the Federal Reserve Bank of New York shall set forth on its public website from time to time) and published on the next succeeding Business Day by the Federal Reserve Bank of New York as the federal funds effective rate; provided, that if the Federal Funds Rate for any day is less than zero, the Federal Funds Rate for such day will be deemed to be zero.

“Federal Reserve Board” means the Board of Governors of the Federal Reserve System or any successor thereto.

“Field Examination” has the meaning specified in Section 8.4(b).

“FIL O Tranche” has the meaning specified in Section 2.6(c)(ii).

“Financed Capital Expenditures” means, with respect to any Person and for any period, Capital Expenditures made by such Person during such period that are financed with the net proceeds of any incurrence of Debt (other than Loans) or received from any disposition of assets, from any Casualty Event or from any issuance of Stock including the proceeds from the initial public offering by Holdings on or about the Original Agreement Date (other than Disqualified Stock or any other issuance of Stock which increases any available basket hereunder).

“Financial Covenant” means the covenant set forth in Section 8.20.

“Financial Statements” means, according to the context in which it is used, the financial statements referred to in Sections 6.2 and Section 7.5.

“Fiscal Quarter” means the period commencing on January 1 in any Fiscal Year and ending on the next succeeding March 31, the period commencing on April 1 in any Fiscal Year and ending on the next succeeding June 30, the period commencing on July 1 in any Fiscal Year and ending on the next succeeding September 30, or the period commencing on October 1 in any Fiscal Year and ending on the next succeeding December 31, as the context may require.

“Fiscal Year” means Holdings’, the Borrower’s, the Guarantors’ and/or their Subsidiaries’ fiscal year for financial accounting purposes. As of the Restatement Effective Date, the current Fiscal Year of the Consolidated Parties will end on December 31, 2022.

“Fixed Asset Collateral” means (i) Equipment and Fixtures; (ii) Real Estate; (iii) Intellectual Property; (iv) equity interests in all direct and indirect Subsidiaries of the Borrower; (v) all other assets of any Obligor, whether real, personal or mixed not constituting Current Asset Collateral; (vi) to the extent evidencing, governing, securing or otherwise reasonably related to any of the foregoing, all Documents, General Intangibles, Instruments, Commercial Tort Claims, Letters of Credit, Letter of Credit Rights and Supporting Obligations; *provided*, however, that to the extent any of the foregoing also evidence, govern, secure or otherwise reasonably relate to any Current Asset Collateral only that portion that evidences, governs, secures or primarily relates to Fixed Asset Collateral shall constitute Fixed Asset Collateral; (vii) all books, records and documents related to the foregoing (including databases, customer lists and other records, whether tangible or electronic, which contain any information relating to any of the foregoing); and (viii) all Proceeds and products of any or all of the foregoing in whatever form received, including proceeds of business interruption and other insurance and claims against third parties. For purposes of this definition, capitalized terms used but not defined elsewhere in this Agreement shall have the meanings set forth in Articles 8 or 9 of the UCC.

“Fixed Charge Coverage Ratio” means, as of any date of determination, the ratio of (a) (i) Consolidated EBITDA of Holdings, the Borrower and its Restricted Subsidiaries for the Test Period most recently ended on or prior to such date of determination minus (ii) Unfinanced Capital Expenditures made by Holdings, the Borrower and its Restricted Subsidiaries during such Test Period, to (b) the Fixed Charges of Holdings, the Borrower and its Restricted Subsidiaries for such Test Period.

In calculating the Fixed Charge Coverage Ratio for purposes of determining whether the Fixed Charge Coverage Ratio test described in clause (b) of the definition of “Specified Conditions” has been satisfied, as of such date, the amount of Fixed Charges included in clause (b) above shall include, without duplication of any payments already constituting Fixed Charges, the amount of any Specified Payment actually made on such date of determination.

“Fixed Charges” means, as of any date of determination, the sum, determined on a consolidated basis, of (a) the Consolidated Interest Expense of Holdings, the Borrower and its Restricted Subsidiaries paid in the Test Period most recently ended on or prior to such date of determination, plus (b) scheduled payments of principal (including any scheduled payment of principal resulting from the requirement to make a payment as a result of the accumulation of excess cash flow) on Debt for Borrowed Money of Holdings, the Borrower and its Restricted Subsidiaries (other than payments by Holdings, the Borrower or any of its Restricted Subsidiaries to Holdings, Borrower or to any of such Restricted Subsidiaries) paid in cash during such Test Period and the principal component of Debt attributable to Capital Leases or Specified Capital Leases paid in cash during such Test Period, plus (c) cash Taxes actually paid in such Test Period, plus (d) any Distribution made in cash pursuant to Section 8.10(j)(i) during such Test Period.

“Flood Insurance Laws” means, collectively, (i) the National Flood Insurance Act of 1968 as now or hereafter in effect or any successor statute thereto, (ii) the Flood Disaster Protection Act of 1973 as now or hereafter in effect or any successor statute thereto, (iii) the National Flood Insurance Reform Act of 1994 as now or hereafter in effect or any successor statute thereto, (iv) the Flood Insurance Reform Act of 2004 as now or hereafter in effect or any successor statute thereto and (v) Biggert-Waters Flood Insurance Reform Act of 2012 as now or hereafter in effect or any successor statute thereto.

“Foreign Subsidiary” means any Subsidiary of ~~the Borrower~~Holdings that is formed under the laws of a jurisdiction other than the United States, a state of the United States or the District of Columbia.

“FSHCO” means any direct or indirect Subsidiary that has no material assets other than Stock of one or more direct or indirect Foreign Subsidiaries that are CFCs.

“Full Payment” or “Full Payment of the Obligations” means, with respect to any Obligations (other than contingent indemnification obligations or other contingent obligation for which no claim has been made or asserted, Hedge Obligations not then due and payable and Cash Management Obligations not then due and payable), (a) the full and indefeasible cash payment thereof, including any interest, fees and other charges accruing during an Insolvency Proceeding (whether or not allowed in the proceeding), (b) if such Obligations arise from Letters of Credit or if such Obligations consist of indemnification or similar obligations for which a claim has been made or asserted, the cash collateralization thereof as provided herein or otherwise acceptable to the Agent (or delivery of a standby letter of credit reasonably acceptable to the Agent, in the amount of required cash collateral) and (c) the termination or expiration of all Commitments.

“Funding Date” means the date on which a Borrowing occurs.

“GAAP” means generally accepted accounting principles and practices set forth from time to time 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 agencies with similar functions of comparable stature and authority within the U.S. accounting profession), which are applicable to the circumstances from time to time.

“General Intangibles” means all of each Obligor’s now owned or hereafter acquired “general intangibles” as defined in the UCC, choses in action and causes of action and all other intangible personal property of each Obligor of every kind and nature (other than Accounts), including, without limitation, all contract rights, payment intangibles, Intellectual Property, corporate or other business records, blueprints, plans, specifications, registrations, licenses, franchises, Tax refund claims, any funds which may become due to any Obligor in connection with the termination of any Plan or other employee benefit plan or any rights thereto and any other amounts payable to any Obligor from any Plan or other employee benefit plan, rights and claims against carriers and shippers, rights to indemnification, business interruption insurance and proceeds thereof, property, casualty or any similar type of insurance and any proceeds thereof, proceeds of insurance covering the lives of key employees on which any Obligor is beneficiary, rights to receive dividends, distributions, cash, Instruments and other property in respect of or in exchange for pledged Stock or Investment Property and any letter of credit, guarantee, claim, security interest or other security held by or granted to any Obligor.

“Governmental Authority” means any nation or government, any state, territorial or other political subdivision thereof, any central bank (or similar monetary or regulatory authority) thereof and any governmental entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

“Guarantee Agreement” means the Guarantee Agreement, dated as of the Original Agreement Date, among the Guarantors for the benefit of the Secured Parties.

“Guarantors” means (a) the Borrower, other than with respect to its own Obligations, (b) Holdings, (c) each Restricted Subsidiary, whether now existing or hereafter created or acquired (other than any Excluded Subsidiary) that is a party to the Guarantee Agreement and (d) each other Person, who, in a writing accepted by the Agent, guarantees payment or performance in whole or in part of the Obligations. There were no Guarantors as of the Restatement Effective Date (other than the Borrower to the extent set forth in clause (a)). The Borrower (to the extent set forth in clause (a)), ProPetro Energy Solutions, LLC, Aqua Prop LLC and, Silvertip Completion Services Operating, LLC and Holdings are Guarantors as of the Amendment No. ~~3~~4 Effective Date.

“Guaranty” means, with respect to any Person, all obligations of such Person which in any manner directly or indirectly guarantee or assure, or in effect guarantee or assure, the payment or performance of any indebtedness, dividend or other monetary obligations of any other Person (the “guaranteed monetary obligations”), or assure or in effect assure the holder of the guaranteed monetary obligations against loss in respect thereof, including any such obligations incurred through an agreement, contingent or otherwise: (a) to purchase the guaranteed monetary obligations or any property constituting security therefor; (b) to advance or supply funds for the purchase or payment of the guaranteed monetary obligations or to maintain a working capital or other balance sheet condition; or (c) to lease property or to purchase any debt or equity securities or other property or services; provided that the term “Guaranty” shall not include endorsements for collection or deposit, in either case in the ordinary course of business, or customary and reasonable indemnity obligations in effect on the Restatement Effective Date or entered into in connection with any acquisition or Disposition of assets permitted under this Agreement (other than such obligations with respect to Debt). The amount of any Guaranty 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 Guaranty 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.

“Hedge Agreement” 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.

“Hedge Bank” means any Person that that is a counterparty to a Secured Hedge Agreement with an Obligor or one of its Restricted Subsidiaries, in its capacity as such, and that either (i) is a Lender, the Agent, an Arranger or an Affiliate of the foregoing at the time it enters into such a Secured Hedge Agreement, or on the Restatement Effective Date is party to a Hedge Agreement with an Obligor or any Restricted Subsidiary permitted under Section 8.12 on the Restatement Effective Date, in its capacity as a party thereto or (ii) becomes a Lender, the Agent or an Affiliate of a Lender or the Agent after it has entered into a Hedge Agreement permitted by Section 8.12 with any Obligor or any Restricted Subsidiary.

“Hedge Obligations” means, with respect to any Person, the obligations of such Person under Hedge Agreements.

“Historical Financial Statements” means audited consolidated balance sheets of the Borrower and its consolidated subsidiaries as at the end of, and related statements of income and cash flows of the Borrower and its consolidated subsidiaries for, the three most recently completed Fiscal Years ended December 31, 2021.

“Holdings” means (i) Holdings (as defined in the preamble to this Agreement) or (ii) any other Person or Persons (the “New Holdings”) that is a Subsidiary of (or are Subsidiaries of) Holdings or of any Parent Entity of Holdings (or the previous New Holdings, as the case may be) but not the Borrower (the “Previous Holdings”); provided that (a) such New Holdings directly owns 100% of the Stock of the Borrower, (b) the New Holdings shall expressly assume all the obligations of the Previous Holdings under this Agreement and the other Loan Documents pursuant to a supplement hereto or thereto in form and substance reasonably satisfactory to the Agent, (c) the New Holdings shall have delivered to the Agent a certificate of a Responsible Officer stating that such substitution and any supplements to the Loan Documents preserve the enforceability of the Guarantee Agreement and the perfection and priority of the Collateral Agent’s Liens, (d) if reasonably requested by the Agent, an opinion of counsel in form and substance reasonably satisfactory to the Agent shall be delivered by the Borrower to the Agent to the effect that, without limitation, such substitution does not breach or result in a default under this Agreement or any other Loan Document and that the Secured Parties’ security interests in the assets of New Holdings have been created and are perfected, (e) all Stock of the Borrower and substantially all of the other assets of the Previous Holdings are contributed or otherwise transferred to such New Holdings and pledged to secure the Obligations ~~and~~, (f) New Holdings shall execute and deliver to the Collateral Agent such documents and agreements necessary to satisfy the requirements set forth in the definition of “Collateral and Guarantee Requirement” applicable to Holdings and (g) no Default or Event of Default has occurred and is continuing at the time of such substitution and such substitution does not result in any Default or Event of Default or material tax liability to any Lender (including, for the avoidance of doubt, any Letter of Credit Issuer and any Swingline Lender); provided, further, that if each of the foregoing is satisfied, the Previous Holdings shall be automatically released from all its obligations under the Loan Documents and any reference to “Holdings” in the Loan Documents shall be meant to refer to the “New Holdings.”

“Immaterial Subsidiary” means, at any date of determination, any Restricted Subsidiary of ~~the Borrower~~Holdings (a) whose total assets (when combined with the assets of such Restricted Subsidiary’s Subsidiaries, after eliminating intercompany obligations) at the last day of the Test Period most recently ended on or prior to such determination date were an amount equal to or less than 5.0% of Consolidated Total Assets at such date and (b) whose gross revenues (when combined with the revenues of such Restricted Subsidiary’s Subsidiaries, after eliminating intercompany obligations) for such Test Period were an amount equal to or less than 5.0% of the consolidated gross revenues of ~~the Borrower~~Holdings and its Restricted Subsidiaries for such Test Period, in each case determined in accordance with GAAP. Notwithstanding anything to the contrary herein, the Borrower shall not at any time constitute an Immaterial Subsidiary.

“Incremental Agreement” has the meaning specified in Section 2.6(e).

“Incremental Amount” means an aggregate amount not to exceed the greater of (i) \$150,000,000 and (ii) the amount by which the Borrowing Base exceeds the Revolving Credit Commitments.

“Incremental Facility Closing Date” has the meaning specified in Section 2.6(e).

“Incremental Revolving Credit Commitment Increase Lender” has the meaning specified in Section 2.6(f)(ii).

“Indemnified Person” has the meaning specified in Section 14.10.

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

“Initial Appraisal” has the meaning specified in the definition of “Borrowing Base.”

“Insolvency Proceeding” means any proceeding commenced by or against any Person under any provision of the Bankruptcy Code or under any other state, federal or foreign bankruptcy or insolvency law, assignments for the benefit of creditors, formal or informal moratoria, compositions, extensions generally with all or substantially all creditors, or proceedings seeking reorganization, arrangement, or other similar relief.

“Instruments” means all instruments as such term is defined in Article 9 of the UCC, now owned or hereafter acquired by any Obligor.

“Intellectual Property” has the meaning specified in the Security Agreement.

“Intercreditor Agreement” means an intercreditor agreement substantially in the form of Exhibit L hereto.

“Interest Period” means, with respect to any Term SOFR Loan, the period beginning on the date of such Borrowing specified in the applicable Notice of Borrowing or on the date specified in the applicable Notice of Continuation/Conversion and ending on the numerically corresponding day in the calendar month that is one, three or six months thereafter (or such other period as all of the relevant Lenders may agree), as the Borrower may elect; *provided* that (i) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day, (ii) any Interest Period that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period and (iii) no Interest Period shall extend beyond the Stated Termination Date.

“Interest Rate” means each or any of the interest rates, including the Default Rate, set forth in Section 3.1.

“Inventory” means all of each Obligor’s now owned or hereafter acquired “Inventory” as defined in the UCC, and shall also include, without limitation, all: (a) goods which (i) are leased by a Person as lessor, (ii) are held by a Person for sale or lease or to be furnished under a contract of service, (iii) are furnished by a Person under a contract of service, or (iv) consist of raw materials, work in process, or materials used or consumed in a business; (b) goods of said description in transit; (c) goods of said description which are returned, repossessed or rejected; and (d) packaging, advertising and shipping materials related to any of the foregoing.

“Investment” in any Person means (a) the acquisition (whether for cash, property, services, assumption of Debt, securities or otherwise, but exclusive of the acquisition of inventory, supplies, equipment and other assets used or consumed in the ordinary course of business of ~~the Borrower~~Holdings or the applicable Subsidiary and Capital Expenditures) of assets, shares of Stock, bonds, notes, debentures, partnerships, joint ventures or other ownership interests or other securities of such Person, (b) any advance, loan or other extension of credit (other than in connection with leases of Equipment or leases or sales of Inventory on credit in the ordinary course of business and excluding, in the case of ~~the Borrower~~Holdings and its Restricted Subsidiaries, intercompany loans, advances, or Debt having a term not exceeding 364 days (inclusive of any roll-over or extensions of terms) and made in the ordinary course of business) to such Person, or (c) any other capital contribution to, or investment in, such Person, including, without limitation, any obligation incurred for the benefit of such Person, but excluding (i) commission, travel, and similar advances to officers and employees of such Person made in the ordinary course of business, and (ii) bona fide Accounts arising in the ordinary course of business. It is further understood and agreed that for purposes of determining the value of any Investment outstanding for purposes hereof, such amount shall be deemed to be the amount of such Investment when made, purchased or acquired less all dividends, returns, interests, profits, distributions, income and similar amounts received in respect of such Investment (not to exceed the original amount invested).

“Investment Grade” means a rating of Baa3 (with a stable outlook) or better by Moody’s (or its equivalent under any successor rating categories of Moody’s) and a rating of BBB- (with a stable outlook) or better by S&P (or its equivalent under any successor rating categories of S&P).

“Investment Grade Account Debtor” means, at any time, an Account Debtor that has an Investment Grade corporate credit rating from Moody’s or S&P.

“Investment Property” means all of each Obligor’s now owned or hereafter acquired “investment property” as defined in the UCC, and includes all right title and interest of each Obligor in and to any and all: (a) securities whether certificated or uncertificated; (b) securities entitlements; (c) securities accounts; (d) commodity contracts; or (e) commodity accounts.

“Investors” means the Sponsor and the entities designated on Schedule 1.6.

“IRS” means the Internal Revenue Service and any Governmental Authority succeeding to any of its principal functions under the Code.

“JPMorgan” means JPMorgan Chase Bank, N.A. and its successors.

“Junior Debt” means any junior lien secured Debt for Borrowed Money, unsecured Debt for Borrowed Money incurred pursuant to Section 8.12(q)(y) or subordinated Debt for Borrowed Money, in each case incurred by an Obligor and owing to a Person that is not Holdings, an Obligor or any Subsidiary thereof.

“Laws” means, collectively, all international, foreign, federal, state, territorial and local statutes, treaties, rules, guidelines, 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, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of laws.

“L/C Commitment” means, with respect to any Letter of Credit Issuer at any time, (i) the amount set forth opposite such Letter of Credit Issuer’s name on Schedule 1.1 hereto under the caption “L/C Commitment” or (ii) such other amount agreed from time to time between such Letter of Credit Issuer and the Borrower.

“Lender” means (a) the Persons listed on Schedule 1.1, (b) any other Person that shall become a party hereto as a “lender” pursuant to Section 12.2 and (c) each Person that becomes a party hereto as a “lender” pursuant to the terms of Section 2.6, in each case other than a Person who ceases to hold any outstanding Loans, participations in Letters of Credit or Swingline Loans or any Commitment and shall include the Agent to the extent of any Agent Advance outstanding and the Swingline Lender to the extent of any Swingline Loan outstanding.

“Lender Default” means (a) the refusal (in writing) or failure of any Lender to make available its portion of any incurrence of Loans or participations in Letters of Credit or Swingline Loans, which refusal or failure is not cured within one Business Day after the date of such refusal or failure, (b) the failure of any Lender to pay over to the Agent, any Letter of Credit Issuer, the Swingline Lender or any other Lender any other amount required to be paid by it hereunder within one Business Day of the date when due, (c) a Lender has notified the Borrower or the Agent that it does not intend or expect to comply with any of its funding obligations or has made a public statement to that effect with respect to its funding obligations under this Agreement, (d) the failure by a Lender to confirm in a manner reasonably satisfactory to the Agent that it will comply with its obligations under this Agreement, (e) any Lender or a direct or indirect parent company of each Lender becoming subject to a Bail-In Action or (f) a Distressed Person has admitted in writing that it is insolvent or such Distressed Person becomes subject to a Lender-Related Distress Event.

“Lender-Related Distress Event” means, with respect to any Lender, that such Lender or any Person that directly or indirectly controls such Lender (each, a “Distressed Person”), as the case may be, is or becomes subject to a voluntary or involuntary case with respect to such Distressed Person under any debt relief law, or a custodian, conservator, receiver or similar official is appointed for such Distressed Person or any substantial part of such Distressed Person’s assets, or such Distressed Person or any person that directly or indirectly controls such Distressed Person is subject to a forced liquidation or winding up, or such Distressed Person makes a general assignment for the benefit of creditors or is otherwise adjudicated as, or determined by any governmental authority having regulatory authority over such Distressed Person or its assets to be, insolvent or bankrupt; provided that a Lender-Related Distress Event shall not be deemed to have occurred solely by virtue of the ownership or acquisition of any Stock in any Lender or any Person that directly or indirectly controls such Lender by a governmental authority or an instrumentality thereof; provided, further, that such ownership interest does not result in or provide such person with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such person (or such governmental authority or instrumentality) to reject, repudiate, disavow or disaffirm any contract or agreements made by such person or its parent entity.

“Letter of Credit” has the meaning specified in Section 2.3(a).

“Letter of Credit Fee” has the meaning specified in Section 3.6.

“Letter of Credit Issuer” means (a) Barclays, ~~JPMorgan~~ Goldman Sachs Bank USA, Bank of America, N.A., Morgan Stanley Senior Funding, Inc., The Bank of Nova Scotia, Houston Branch or any of their respective Subsidiaries or Affiliates and (b) any other Lender (or any of its Subsidiaries or Affiliates) that becomes an Letter of Credit Issuer in accordance with Section 2.3(h); in the case of each of clause (a) or (b) above, in its capacity as an issuer of Letters of Credit hereunder, or any successor issuer of Letters of Credit hereunder. In the event that there is more than one Letter of Credit Issuer at any time, references herein and in the other Loan Documents to the Letter of Credit Issuer shall be deemed to refer to the Letter of Credit Issuer in respect of the applicable Letter of Credit or to all Letter of Credit Issuers, as the context requires.

“Letter of Credit Subfacility” means ~~\$25,000,000~~ \$35,000,000.

“Lien” means: (a) any interest in property securing an obligation owed to, or a claim by, a Person other than the owner of the property, whether such interest is based on the common law, statute, or contract, and including a security interest, charge, claim, priority or lien arising from a mortgage, deed of trust, encumbrance, pledge, hypothecation, deemed trust, assignment, deposit arrangement, security agreement, conditional sale or trust receipt or the interest of a vendor or lessor under a capital lease, consignment or title retention agreement; and (b) to the extent not included under clause (a), any reservation, exception, encroachment, easement, servitude right-of-way, restriction, lease or other title exception or encumbrance affecting property (and for clarity, including exclusive licenses (but not non-exclusive licenses) granted in Intellectual Property).

“Loan Documents” means this Agreement, Amendment No. 1, Amendment No. 2, Amendment No. 3, Amendment No. 4, the Guarantee Agreement, the Security Documents, the Notes, the Engagement Letter, any Intercreditor Agreement and any other agreements, instruments, and documents heretofore, now or hereafter evidencing, securing or guaranteeing any of the Obligations or any of the Collateral, in each case to which one or more Obligors is a party.

“Loans” means, collectively, all loans and advances provided for in Article II, including any Revolving Loans, or Extended Revolving Loans, as applicable.

“Losses” has the meaning specified in Section 14.10.

“Management Investors” means the members of management, directors, officers and employees of Holdings (or any Parent Entity thereof), the Borrower or any of its Subsidiaries who are (directly or indirectly through one or more investment vehicles) investors in Holdings or any Parent Entity as of the Restatement Effective Date.

“Margin Stock” means “margin stock” as such term is defined in Regulation T, U or X of the Federal Reserve Board.

“Master Agreement” has the meaning specified in the definition of “Hedge Agreement.”

“Material Adverse Effect” means (a) a material adverse change in, or a material adverse effect upon, the operations, business or financial condition of ~~the Borrower~~ Holdings and its Restricted Subsidiaries, taken as a whole; (b) a material impairment of the ability of the Borrower and the other Obligors (taken as a whole) to perform their payment obligations under the Loan Documents; or (c) a material adverse effect upon the legality, validity, binding effect or enforceability against any Obligor of any Loan Document to which it is a party.

“Material Indebtedness” means Debt (other than the Obligations) of any one or more of ~~the Borrower~~ Holdings and the Restricted Subsidiaries in an aggregate principal amount exceeding ~~\$25,000,000~~ \$35,000,000. For purposes of determining Material Indebtedness, the “principal amount” of the obligations in respect of any Hedge Agreement at any time shall be the Swap Termination Value thereof.

“Maximum Credit” means, at any time, the lesser of (i) the Maximum Revolver Amount in effect at such time and (ii) the Borrowing Base at such time.

“Maximum Rate” has the meaning specified in Section 3.3.

“Maximum Revolver Amount” means, at any time, the aggregate Revolving Credit Commitments at such time, as the same may be increased from time to time in accordance with Section 2.6 or reduced from time to time in accordance with Section 4.4(b); provided that the Maximum Revolver Amount shall not at any time exceed the sum of (x) \$~~225,000,000~~350,000,000 and (y) the Incremental Amount. As of the Amendment No. 4 Effective Date, the Maximum Revolver Amount is \$~~225,000,000~~350,000,000. Anything contained herein to the contrary notwithstanding, upon termination of the Revolving Credit Commitments, the Maximum Revolver Amount shall automatically be reduced to zero.

“Moody’s” means Moody’s Investors Service, Inc., or any successor thereto.

“Mortgage” means, collectively, the deeds of trust, trust deeds, debentures, deeds of hypothec and mortgages creating and evidencing a Lien on a Mortgaged Property made by any Obligor in favor or for the benefit of the Collateral Agent on behalf of the Secured Parties in the form and substance reasonably acceptable to the Collateral Agent and the Borrower that are executed and delivered pursuant to Section 9.1(a)(ii) of the Original Credit Agreement (if applicable) and Section 8.22.

“Mortgaged Properties” has the meaning specified in paragraph (f) of the definition of “Collateral and Guarantee Requirement.”

“Multi-employer Plan” means a “multi-employer plan” as defined in Section 4001(a)(3) of ERISA which is or was at any time during the current year or the immediately preceding six (6) years contributed to by the Borrower Holdings, a Restricted Subsidiary or any ERISA Affiliate or with respect to which the Borrower Holdings, a Restricted Subsidiary or any ERISA Affiliate has any ongoing obligation with respect to withdrawal liability (within the meaning of Title IV of ERISA).

“Net Income” means, with respect to any Person, the net income (loss) attributable to such Person and its Restricted Subsidiaries, determined on a consolidated basis in accordance with GAAP and before any reduction in respect of Preferred Stock dividends.

“Net Orderly Liquidation Value” means, with respect to Equipment of any Person, the orderly liquidation value thereof as set forth in the most recently delivered Appraisal conducted pursuant to Section 8.4(b) or the definition of “Eligible Power Generation Equipment”, net of all costs of liquidation thereof.

“New Holdings” has the meaning specified in the definition of “Holdings.”

“No Interest Agreement” means an agreement substantially in the form of Exhibit I or such other form as is reasonably satisfactory to the Collateral Agent.

“Non-Consenting Lender” has the meaning specified in Section 12.1(b).

“Non-Extension Notice Date” has the meaning specified in Section 2.3(b).

“Note” means a promissory note of the Borrower payable to any Lender or its registered assigns, in substantially the form of Exhibit K hereto, evidencing the aggregate Debt of the Borrower to such Lender resulting from the Loans made by such Lender.

“Notice of Borrowing” has the meaning specified in Section 2.4(a).

“Notice of Continuation/Conversion” has the meaning specified in Section 3.2(b).

“Noticed Hedge” means Secured Hedge Obligations in respect of which the notice delivered to the Agent by the applicable Hedge Bank and the Borrower confirms that such Secured Hedge Agreement shall be deemed a “Noticed Hedge” hereunder for all purposes, including the application of Bank Product Reserves and Section 10.3, so long as the establishment of a Bank Product Reserve with respect to such Secured Hedge Obligation would not result in the Borrower exceeding the Maximum Credit; provided that such designation shall be made within ten (10) Business Days of (i) the Closing Date if such Secured Hedge Agreement is in place on the Closing Date or (ii) the date such Secured Hedge Agreement is entered into if such Secured Hedge Agreement is not in place on the Closing Date; provided, further, that, if the amount of Secured Hedge Obligations arising under such Secured Hedge Agreement is increased in accordance with the definition of “Secured Hedge Obligation,” then such Secured Hedge Obligations shall only constitute a Noticed Hedge to the extent that a Bank Product Reserve can be established with respect to such Secured Hedge Agreement without exceeding the then-current Availability.

“Obligations” means all present and future loans, advances, liabilities, obligations, covenants, duties, and debts owing by the Obligors or Restricted Subsidiaries, or any of them, to the Agent, any Letter of Credit Issuer, any Lender, any Secured Party and/or any Indemnified Person, arising under or pursuant to this Agreement, any of the other Loan Documents, Secured Cash Management Agreements and Secured Hedge Agreements, whether or not evidenced by any note, or other instrument or document, whether arising from an extension of credit, opening of a letter of credit, acceptance, loan, guaranty, indemnification or otherwise, whether direct or indirect, absolute or contingent, due or to become due, primary or secondary, as principal or guarantor, and including all principal, interest, charges, expenses, fees, attorneys’ fees, Attorney Costs, filing fees and any other sums chargeable to any of the Borrower or any other Obligor hereunder or under any of the other Loan Documents. “Obligations” include, without limitation, (a) all debts, liabilities, and obligations now or hereafter arising from or in connection with the Letters of Credit, (b) all Secured Hedge Obligations (other than with respect to any Obligor’s Hedge Obligations that constitute Excluded Swap Obligations) and Cash Management Obligations and (c) all interest, fees and other amounts that accrue or would accrue after commencement of any Insolvency Proceeding against any Obligor, whether or not allowed in such proceeding.

“Obligors” means, collectively, the Borrower, each Guarantor, and any other Person that now or hereafter is primarily or secondarily liable for any of the Obligations and/or grants the Collateral Agent a Lien in any Collateral as security for any of the Obligations. ~~For the avoidance of doubt, Holdings shall not be an Obligor.~~

“OFAC” has the meaning specified in Section 7.24(a).

“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 or articles of formation or organization and operating agreement; and (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

“Original Agreement Date” means March 22, 2017.

“Original Credit Agreement” has the meaning specified in the recitals to this Agreement.

“Original Currency” has the meaning specified in Section 14.19.

“Originating Lender” has the meaning specified in Section 12.2(e).

“Other Connection Taxes” means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

“Other Taxes” means all present or future stamp, court, documentary, intangible, recording, filing, or similar Taxes which arise from any payment made under any Loan Document or from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under or otherwise with respect to, this Agreement or any other Loan Documents, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 5.8(c)).

“Out-of-Formula Condition” has the meaning specified in Section 4.2.

“Parent Entity” means any Person that is a direct or indirect parent company (which may be organized as, among other things, a partnership) of Holdings and/or the Borrower, as applicable. For the avoidance of doubt, any Person that is formed to effect a public offering of common Stock that directly or indirectly owns a majority of the voting Stock of Holdings will be deemed a Parent Entity of Holdings.

“Participant” means any Person who shall have been granted the right by any Lender to participate in the financing provided by such Lender under this Agreement, and who shall have entered into a participation agreement in form and substance satisfactory to such Lender.

“Participant Register” has the meaning specified in Section 13.20(b).

“Payment” has the meaning specified in Section 13.20(a).

“Payment Notice” has the meaning specified in Section 13.20(b).

“Payment Recipient” has the meaning specified in Section 13.20(a).

“PBGC” means the Pension Benefit Guaranty Corporation, or any Governmental Authority succeeding to the functions thereof.

“Pension Plan” means a pension plan (as defined in Section 3(2) of ERISA) subject to Title IV of ERISA or Section 412 of the Code, other than a Multi-employer Plan, which ~~the Borrower~~ Holdings, a Restricted Subsidiary, or any ERISA Affiliate sponsors, maintains, or to which it makes, is making, or is obligated to make contributions, or has made contributions at any time during the immediately preceding five (5) plan years.

“Perfection Certificate” means the Perfection Certificate substantially in the form of Exhibit F.

“Periodic Term SOFR Determination Day” has the meaning assigned to such term in the definition of “Term SOFR”.

“Permitted Acquisition” means any acquisition, by merger, consolidation, amalgamation or otherwise, by ~~the Borrower~~Holdings or any of its Restricted Subsidiaries of assets (including any assets constituting a business unit, line of business or division) or Stock, so long as (a) such acquisition and all transactions related thereto shall be consummated in all material respects in accordance with all applicable Laws, (b) if such acquisition involves the acquisition of Stock of a Person that upon such acquisition would become a Subsidiary, such acquisition shall result in the issuer of such Stock becoming a Restricted Subsidiary (unless otherwise designated as an Unrestricted Subsidiary pursuant to Section 8.26) and, to the extent required by the Collateral and Guarantee Requirement, a Guarantor, (c) to the extent required by the Collateral and Guarantee Requirement, such acquisition shall result in the Collateral Agent, for the benefit of the Secured Parties, being granted a security interest in any Stock or any assets so acquired, (d) both immediately prior to and after giving effect to such acquisition, no Event of Default under any of Sections 10.1(a), (e), (f) or (g) shall have occurred and be continuing; and (e) immediately after giving effect to such acquisition, ~~the Borrower~~Holdings and its Restricted Subsidiaries shall be in compliance with Section 8.15.

“Permitted Acquisition Consideration” means, in connection with any Permitted Acquisition, the aggregate amount (as valued at the Fair Market Value of such Permitted Acquisition at the time such Permitted Acquisition is made) of, without duplication: (a) the purchase consideration for such Permitted Acquisition, whether payable at or prior to the consummation of such Permitted Acquisition or deferred for payment at any future time, whether or not any such future payment is subject to the occurrence of any contingency, and including any and all payments representing the purchase price and any assumptions of Debt and/or Guaranties, “earn-outs” and other agreements to make any payment the amount of which is, or the terms of payment of which are, in any respect subject to or contingent upon the revenues, income, cash flow or profits (or the like) of any Person or business and (b) the aggregate amount of Debt incurred in connection with such Permitted Acquisition; provided in each case, that any such future payment that is subject to a contingency shall be considered Permitted Acquisition Consideration only to the extent of the reserve, if any, required under GAAP (as determined at the time of the consummation of such Permitted Acquisition) to be established in respect thereof by Holdings, the Borrower or its Restricted Subsidiaries.

“Permitted Bond Hedge Transaction” means any call or capped call option (or substantively equivalent derivative transaction) on Holdings’ common stock purchased by Holdings in connection with the issuance of any Convertible Indebtedness; provided that the purchase price for such Permitted Bond Hedge Transaction, less the proceeds received by Holdings from the sale of any related Permitted Warrant Transaction, does not exceed the net proceeds received by Holdings from the sale of such Convertible Indebtedness issued in connection with the Permitted Bond Hedge Transaction.

“Permitted Debt” has the meaning specified in Section 8.12.

“Permitted Disposition” means:

(a) Dispositions, rentals or other disposals of Equipment and Inventory and other assets (including allowing any registrations or any applications for registration of any immaterial Intellectual Property to lapse or go abandoned in the ordinary course of business) in the ordinary course of business and sales of Equipment and Inventory to buyers in the ordinary course of business;

(b) Dispositions of obsolete, surplus, damaged or worn-out property or property that is no longer necessary, used or useful in the business of the ~~Borrower~~Holdings and its Restricted Subsidiaries;

(c) Dispositions of property to the extent that (i) such property is exchanged for credit against the purchase price of similar replacement property that is promptly purchased or (ii) the proceeds of such Disposition are promptly applied to the purchase price of such replacement property (which replacement property is actually promptly purchased);

- (d) the use, transfer or Disposition of cash and Cash Equivalents pursuant to any transaction not prohibited by the terms of the Loan Documents;
- (e) sales, discounting or forgiveness of Accounts in connection with the collection, settlement or compromise thereof;
- (f) any Disposition, license, sublicense, abandonment or lapse of Intellectual Property which does not materially interfere with the business of ~~the Borrower~~ Holdings or any of its Restricted Subsidiaries, taken as a whole;
- (g) Dispositions constituting Permitted Distributions, Permitted Investments (other than pursuant to clause (p) of the definition of “Permitted Investments”), transactions permitted by Section 8.9 or Permitted Liens;
- (h) any sale or issuance of Stock by a Restricted Subsidiary of ~~the Borrower to the Borrower~~ Holdings to Holdings or another Subsidiary of ~~the Borrower~~ Holdings;
- (i) Dispositions of property for aggregate consideration of less than \$1,000,000 with respect to any individual transaction; provided that the aggregate amount of such Dispositions excluded by this clause (i) shall not exceed \$5,000,000 during any Fiscal Year;
- (j) the leasing or subleasing of assets of ~~the Borrower~~ Holdings or any of its Restricted Subsidiaries not materially interfering with the business of ~~the Borrower~~ Holdings and its Restricted Subsidiaries, taken as a whole;
- (k) Dispositions pursuant to transactions permitted under Section 8.18;
- (l) Dispositions of non-core assets acquired in connection with Permitted Acquisitions or similar Investments that are not used in the business of ~~the Borrower~~ Holdings and its Restricted Subsidiaries;
- (m) leases, subleases, licenses or sublicenses, in each case in the ordinary course of business and which do not materially interfere with the business of ~~the Borrower~~ Holdings and its Restricted Subsidiaries, taken as a whole;
- (n) transfers of property subject to Casualty Events upon receipt of the net proceeds of such Casualty Event;
- (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;
- (p) the unwinding of any Hedge Agreement pursuant to its terms;
- (q) the Disposition of the Stock in, Debt of, or other securities issued by, an Unrestricted Subsidiary;

(r) Dispositions of property or assets to ~~the Borrower Holdings~~ or to a Restricted Subsidiary; provided that, if the transferor of such property is an Obligor (i) the transferee thereof must either be an Obligor or (ii) such transaction must constitute a Permitted Investment;

(s) the settlement, release or surrender of litigation claims in the ordinary course of business;

(t) Dispositions not otherwise permitted pursuant to this definition, if such Disposition shall be for Fair Market Value; provided that (i) with respect to any Disposition pursuant to this clause (t) for a purchase price in excess of \$5,000,000, ~~the Borrower Holdings~~ or a Restricted Subsidiary shall receive not less than 75% of such consideration in the form of cash or Cash Equivalents; provided, further, that, for purposes of determining what constitutes cash and Cash Equivalents under this clause (t), (A) any liabilities (as shown on Holdings', the Borrower's or such Restricted Subsidiary's most recent balance sheet provided hereunder or in the footnotes thereto) of ~~the Borrower Holdings~~ or such Restricted Subsidiary, 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 ~~the Borrower Holdings~~ and all of its Restricted Subsidiaries shall have been validly released by all applicable creditors in writing shall be deemed to be cash, (B) any securities received by ~~the Borrower Holdings~~ or such Restricted Subsidiary from such transferee that are converted by ~~the Borrower Holdings~~ or such Restricted Subsidiary into cash (to the extent of the cash received) within 180 days following the closing of the applicable Disposition shall be deemed to be cash and (C) any Designated Non-Cash Consideration received by ~~the Borrower Holdings~~ or such Restricted Subsidiary in respect of the applicable Disposition of property that is not Current Asset Collateral or Inventory having an aggregate Fair Market Value, taken together with all other Designated Non-Cash Consideration received pursuant to this clause (C) that is outstanding at the time such Designated Non-Cash Consideration is received, not in excess of the greater of (x) ~~\$15,000,000~~ 45,000,000 and (y) 3.0% of Consolidated Total Assets (measured as of the date such Disposition is made based upon the Section 6.2 Financials most recently delivered on or prior to such date) at the time of the receipt of such Designated Non-Cash Consideration, with the Fair Market Value of each item of Designated Non-Cash Consideration being measured at the time received and without giving effect to subsequent changes in value, shall be deemed to be cash, and (ii) the Borrower shall deliver an updated Borrowing Base Certificate if more than 5.0% of the assets included in the most recent calculation of the Borrowing Base are being disposed of pursuant to this clause (t); provided further that any such Distribution shall not cause the aggregate amount of all outstanding Loans to exceed the then-current Availability; ~~and~~

(u) Dispositions to any Restricted Subsidiary that is not an Obligor; provided that the aggregate amount of Dispositions pursuant to this clause (u) shall not exceed the greater of (x) ~~\$15,000,000~~ 45,000,000 and 3.0% of Consolidated Total Assets (measured as of the date such Disposition is made based upon the Section 6.2 Financials most recently delivered on or prior to such date); ~~and~~

(v) (i) the issuance or sale of any Convertible Indebtedness by Holdings, (ii) the sale of any Permitted Warrant Transaction by Holdings, (iii) the purchase of any Permitted Bond Hedge Transaction by Holdings, (iv) the performance by Holdings of its obligations under any Convertible Indebtedness, any Permitted Warrant Transaction or any Permitted Bond Hedge Transaction, in each case as permitted by this Agreement or (v) the early unwind, settlement, or termination of any Permitted Bond Hedge Transaction or any Permitted Warrant Transaction.

"Permitted Distributions" has the meaning specified in Section 8.10.

“Permitted Encumbrances” means, with respect to any Obligor, the Liens listed below:

(a) Liens for Taxes that (i) are not delinquent, or (ii) are being contested in good faith and by the appropriate proceedings and for which adequate reserves have been established in accordance with GAAP (or other applicable accounting principles);

(b) (i) Liens consisting of deposits or pledges (or letters of credit issued) made in the ordinary course of business in connection with, or to secure payment of, obligations under worker’s compensation, unemployment insurance, social security and other similar laws and (ii) Liens incurred or deposits made to secure the performance of bids, tenders, trade contracts, governmental contracts, leases or purchase, supply or other contracts or to secure indemnity, performance or other similar bonds for the performance of bids, tenders or contracts or to secure statutory or regulatory obligations (other than Liens arising under ERISA), surety, stay, customs and appeal bonds, performance bonds and other obligations of a like nature (including those to secure health, safety and environmental obligations) incurred in the ordinary course of business;

(c) Liens securing the claims or demands of materialmen, mechanics, carriers, warehousemen, landlords and other like Persons, provided that if any such Lien arises from the nonpayment of any such claims or demands when due, such claims or demands are being Properly Contested; and

(d) Liens arising from any judgment, decree or order of any court or other Governmental Authority or any attachments in connection with court proceedings; provided that the attachment or enforcement of such Liens do not constitute an Event of Default hereunder;

provided that the term “Permitted Encumbrances” shall not include any Lien securing Debt for Borrowed Money, except with respect to clause (d) above.

“Permitted Holders” means each of the Investors, the Management Investors and any group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act or any successor provision) of which any of the foregoing are members; provided, that, in the case of such group and without giving effect to the existence of such group or any other group, such Investors and Management Investors, collectively, have beneficial ownership, directly or indirectly of more than 50% of the total voting power of the Voting Stock of Holdings or any Parent Entity.

“Permitted Investments” means:

(a) Investments by ~~the Borrower~~ Holdings or any Restricted Subsidiary in assets constituting Cash Equivalents at the time such Investment was made;

(b) (i) Investments existing on the Restatement Effective Date and identified in Schedule 8.11 to this Agreement; and (ii) Investments consisting of any modification, replacement, renewal, reinvestment or extension of any Investment permitted by clause (b)(i) existing on the Restatement Effective Date; provided that the aggregate amount of the Investments permitted pursuant to this clause (b) is not increased from the aggregate amount of such Investments on the Restatement Effective Date except pursuant to the terms of such Investment as of the Restatement Effective Date or as otherwise permitted by Section 8.11;

(c) Investments by any Obligor in any other Obligor;

(d) Investments by any Restricted Subsidiary which is not an Obligor in Holdings, the Borrower or any other Restricted Subsidiary;

(e) Investments by any Obligor in any Restricted Subsidiary which is not an Obligor; provided that the aggregate amount of Investments made and then-outstanding pursuant to this clause (e), shall not exceed, at the time of the making of such Investment and after giving Pro Forma Effect thereto, the greater of (x) ~~\$15,000,000~~ \$45,000,000 and (y) 3.0% of Consolidated Total Assets as of the last day of the Test Period most recently ended on or prior to the date such Investments was made (measured as of the date such Investment was made based upon the Section 6.2 Financials most recently delivered on or prior to such date);

(f) Investments in the nature of pledges or deposits with respect to leases or utilities provided to third parties in the ordinary course of business;

(g) Deposit Accounts maintained in the ordinary course of business;

(h) Investments constituting Hedge Agreements entered into in the ordinary course of business and for non-speculative purposes;

(i) Investments (including debt obligations and Stock) received in connection with the bankruptcy or reorganization of Account Debtors, suppliers and customers or in settlement of delinquent obligations of, or other disputes with, Account Debtors, customers and suppliers arising in the ordinary course of business or upon the foreclosure with respect to any secured Investment or other transfer of title with respect to any secured Investment;

(j) loans or advances to officers, directors, partners, members and employees of Holdings (or any Parent Entity), the Borrower or its Restricted Subsidiaries (i) for reasonable and customary business-related travel, entertainment, relocation and analogous ordinary business purposes, (ii) in connection with such Person's purchase of Stock of Holdings (or any Parent Entity or the Borrower) (provided that the amount of such loans and advances shall be contributed to the Borrower in cash as common equity (or any other form of equity reasonably satisfactory to the Agent or used to satisfy Tax obligations relating to proceeds received by such Person in connection with the Transactions, which proceeds are used for the purchase of such Stock)), (iii) relating to indemnification of any officers, directors or employees in respect of liabilities relating to their serving in any such capacity, and any reimbursement of any such officer, director or employee of expenses relating to the claims giving rise to such indemnification and (iv) for purposes not described in the foregoing clauses (i), (ii) and (iii), in an aggregate principal amount at any one time outstanding not to exceed \$10,000,000;

(k) Permitted Acquisitions; provided that, unless the Specified Conditions are then met, the aggregate amount of Permitted Acquisition Consideration relating to all such Permitted Acquisitions made or provided and then-outstanding by the Borrower or any Guarantor to acquire any Restricted Subsidiary that does not become a Guarantor or merge, consolidate or amalgamate into the Borrower or a Guarantor or any assets that shall not, immediately after giving effect to such Permitted Acquisition, be owned by the Borrower or a Guarantor, shall not exceed, at the time of the making of such Investment and after giving Pro Forma Effect thereto, the greater of (x) ~~\$15,000,000~~ \$45,000,000 and (y) 3.0% of Consolidated Total Assets as of the last day of the Test Period most recently ended on or prior to the date such Investment was made (measured as of the date such Investment was made based upon the Section 6.2 Financials most recently delivered on or prior to such date);

(l) any Investment to the extent that the consideration therefor is Stock (other than Disqualified Stock) of Holdings (or any Parent Entity);

- (m) Guaranties of ~~the Borrower~~Holdings or any Restricted Subsidiary in respect of leases (other than Capital Leases) or of other obligations that do not constitute Debt, in each case entered into in the ordinary course of business;
- (n) Investments in the ordinary course of business consisting of endorsements for collection or deposit and customary trade arrangements with customers in the ordinary course of business;
- (o) 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 and other credits to suppliers in the ordinary course of business;
- (p) Investments consisting of Liens, Debt, fundamental changes, Dispositions (other than pursuant to clause (g) of the definition of “Permitted Dispositions”) and Distributions permitted under this Agreement; provided, however, that no Investments may be made solely pursuant to this clause (p);
- (q) Investments in cash, and in negotiable instruments deposited or to be deposited for collection in the ordinary course of business;
- (r) promissory notes and other non-cash consideration received in connection with Permitted Dispositions;
- (s) advances of payroll payments to employees, directors, consultants, independent contractors or other service providers or other advances of salaries or compensation to employees, directors, partners, members, consultants, independent contractors or other service providers, in each case in the ordinary course of business;
- (t) Investments made to acquire, purchase, repurchase or retire Stock of Holdings (or any Parent Entity thereof) or the Borrower owned by any employee stock ownership plan or similar plan of Holdings (or any Parent Entity thereof) the Borrower, or any Subsidiary;
- (u) contributions to a “rabbi” trust for the benefit of employees, directors, partners, members, consultants, independent contractors or other service providers or other grantor trust subject to claims of creditors in the case of a bankruptcy of the Borrower (or any Parent Entity thereof);
- (v) Investments held by any Person acquired by Holdings, the Borrower or a Restricted Subsidiary after the Restatement Effective Date or of any Person merged into ~~the Borrower~~Holdings or merged, amalgamated or consolidated with the Borrower or a Restricted Subsidiary in accordance with Section 8.9 after the Restatement Effective Date to the extent that such Investments were not made in contemplation of or in connection with such acquisition, merger, amalgamate or consolidation and were in existence on the date of such acquisition, amalgamation, merger or consolidation;
- (w) Restricted Subsidiaries of ~~the Borrower~~Holdings may be established or created if ~~the Borrower~~Holdings and such Restricted Subsidiary comply with the requirements of Section 8.22, if applicable; provided that in each case, to the extent such new Restricted Subsidiary is created solely for the purpose of consummating a transaction pursuant to an acquisition permitted by this Agreement, and such new Restricted Subsidiary at no time holds any assets or liabilities other than any merger consideration contributed to it contemporaneously with the closing of such transactions, such new Restricted Subsidiary shall not be required to take the actions set forth in Section 8.22 until the respective acquisition is consummated (at which time the surviving entity of the respective transaction shall be required to so comply in accordance with the provisions thereof);

(x) to the extent that they constitute Investments, purchases and acquisitions of inventory, supplies, materials or equipment or purchases, acquisitions, licenses or leases of other assets, Intellectual Property, or other rights, in each case in the ordinary course of business;

(y) ~~reserved~~ to the extent constituting an Investment, Permitted Bond Hedge Transactions and Permitted Warrant Transactions;

(z) intercompany Investments, reorganizations and related activities in connection with tax planning and reorganization activities so long as after giving effect to any such activities, the Collateral Agent's Liens, taken as a whole, would not be impaired;

(aa) asset purchases (including purchases of Inventory, supplies and materials), in each case in the ordinary course of business;

(bb) any Investment in a non-Obligor to the extent such Investment is substantially contemporaneously repaid in full with a dividend or other distribution in like kind as such Investment from such non-Obligor;

(cc) any Investments in an amount not to exceed the Available Equity Amount at such time;

(dd) any Investments (including Investments in minority investments, Investments in Unrestricted Subsidiaries and Investments in joint ventures or similar entities that do not constitute Restricted Subsidiaries); provided that the aggregate amount of such Investments made and then-outstanding pursuant to this clause (dd), measured at the time of the making of such Investment and after giving Pro Forma Effect thereto shall not exceed the greater of (x) ~~\$15,000,000~~ 75,000,000 and (y) ~~3.0~~ 5.0% of Consolidated Total Assets as of the last day of the Test Period most recently ended on or prior to the date such Investment was made (measured as of the date such Investment was made based upon the Section 6.2 Financials most recently delivered on or prior to such date);

(ee) the Pioneer Acquisition; and

(ff) any other Investments, so long as the Specified Conditions shall have been satisfied.

For purposes of determining compliance with this definition, in the event that any Investment meets the criteria of more than one of the types of Permitted Investments described in the above clauses, the Borrower, in its sole discretion, may classify and reclassify such Investment and only be required to include the amount and type of such Investment in one of such clauses.

For the avoidance of doubt, Holdings may repurchase, exchange or induce the conversion of Convertible Indebtedness by delivery of shares of Holdings' common stock and/or a different series of Convertible Indebtedness and/or by payment of cash; provided that, for the avoidance of doubt, Holdings may exercise or unwind or terminate early (whether in cash, shares or any combination thereof) the portion of the Permitted Bond Hedge Transactions and Permitted Warrant Transactions, if any, corresponding to such Convertible Indebtedness that is so repurchased, exchanged or converted.

“Permitted Liens” means, with respect to ~~the Borrower~~Holdings and its Restricted Subsidiaries, the Liens listed below:

(a) Liens for Taxes that (i) are not delinquent or the nonpayment of which in the aggregate would not reasonably be expected to have a Material Adverse Effect, or (ii) are being contested in good faith and by the appropriate proceedings and for which adequate reserves have been established in accordance with GAAP (or other applicable accounting principles);

(b) the Collateral Agent’s Liens;

(c) (i) Liens consisting of deposits or pledges (or letters of credit issued) made in the ordinary course of business in connection with, or to secure payment of, obligations under worker’s compensation, unemployment insurance, social security and other similar laws, (ii) Liens consisting of pledges and deposits in the ordinary course of business securing liability for reimbursement or indemnification obligations of (including obligations in respect of letters of credit or bank guarantees for the benefit of) insurance carriers providing property, casualty or liability insurance to ~~the Borrower~~Holdings or any Restricted Subsidiary, (iii) Liens incurred or deposits made to secure the performance of bids, tenders, trade contracts, governmental contracts, leases or purchase, supply or other contracts (other than for the repayment of Debt for Borrowed Money) or to secure indemnity, performance or other similar bonds for the performance of bids, tenders or contracts (other than for the repayment of Debt for Borrowed Money) or to secure statutory or regulatory obligations (other than Liens arising under ERISA), surety, stay, customs and appeal bonds, performance bonds and other obligations of a like nature (including those to secure health, safety and environmental obligations) incurred in the ordinary course of business;

(d) Liens securing the claims or demands of materialmen, mechanics, carriers, warehousemen, landlords and other like Persons, provided that if any such Lien arises from the nonpayment of any such claims or demands when due, such claims or demands would not reasonably be expected to have a Material Adverse Effect or are being Properly Contested;

(e) (x) Liens securing Capital Leases and purchase money Debt (in the case of this clause (x), other than Specified Capital Leases) to the extent such Capital Leases or purchase money Debt are permitted in Section 8.12; provided that (i) such Liens attach concurrently with or within two hundred and seventy (270) days after the acquisition, construction, repair, replacement, lease or improvement (as applicable) of the property subject to such Liens, (ii) such Liens do not at any time encumber any property other than the property financed by such Debt, replacements thereof and additions and accessions to such property (including, to the extent applicable, any rights against the seller pursuant to any purchase agreements, purchase orders, equipment supply agreements, or similar agreements or documents with respect to such property) and the proceeds (excluding any proceeds that constitute Accounts of an Obligor) and the products thereof, and customary security deposits, and (iii) with respect to Capital Leases, such Liens do not at any time extend to or cover any assets (except for additions and accessions to such assets, replacements and products thereof and customary security deposits) other than the assets subject to such Capital Leases; provided that individual financings of equipment provided by one creditor may be cross-collateralized to other financings of equipment provided by such creditor, and (y) Liens on assets of the Specified Capital Lease Subsidiary securing Specified Capital Leases permitted to be incurred pursuant to Section 8.12~~(f)~~; provided that (i) such Liens attach concurrently with or within two hundred and seventy (270) days after the acquisition, construction, repair, replacement, lease or improvement (as applicable) of the property subject to such Liens and (ii) such Liens do not at any time encumber any property other than (A) the property of the Specified Capital Lease Subsidiary financed by such Specified Capital Leases, replacements thereof and additions and accessions to such property (including, to the extent applicable, any rights against the seller pursuant to any purchase agreements, purchase orders, equipment supply agreements, or similar agreements or documents with respect to such property) and the proceeds (including, to the extent required to be collateral thereunder, proceeds that constitute Accounts of an Obligor) and the products thereof and customary security deposits, (B) to the extent that the Agent has received written notice from the Borrower identifying certain Specified Capital Lease Subject Accounts in such detail as shall be reasonably satisfactory to the Agent, those Specified Capital Lease Subject Accounts owing to the Specified Capital Lease Subsidiary (including, for the avoidance of doubt, amounts representing the identifiable cash proceeds of Specified Capital Lease Subject Accounts owing to the Specified Capital Lease Subsidiary) that are adequately described in such written notice, (C) any rights and interests of the Specified Capital Lease Subsidiary with respect to the underlying contractual arrangements giving rise to any Specified Capital Lease Subject Accounts owing to the Specified Capital Lease Subsidiary, and (D) cash deposits provided to the lessor(s) under any Specified Capital Lease and on deposit in the applicable lessor’s deposit account in an aggregate amount not to exceed \$50,000,000;

(f) (i) Liens constituting encumbrances in the nature of reservations, exceptions, encroachments, easements, zoning, rights of way, covenants running with the land, and other similar title ordinary course exceptions or encumbrances affecting any Real Estate; provided that they do not, in the aggregate, materially interfere with its use in the ordinary conduct of ~~the Borrower's~~Holdings and its Subsidiaries' business taken as a whole, (ii) mortgages, Liens, security interests, restrictions, encumbrances or any other matters of record that have been placed by any developer, landlord or other third party on Real Estate over which ~~the Borrower~~Holdings or any Restricted Subsidiary has easement rights (but does not own) or on any leased Real Estate and subordination or similar agreements relating thereto, and (iii) any condemnation or eminent domain proceedings affecting any Real Estate;

(g) Liens arising from any judgment, decree or order of any court or other Governmental Authority or any attachments in connection with court proceedings; provided that the attachment or enforcement of such Liens do not constitute an Event of Default hereunder;

(h) licenses, sublicenses, leases or subleases on the property covered thereby (including Intellectual Property) granted to other Persons and not materially interfering with the ordinary conduct of the business of ~~the Borrower~~Holdings and its Restricted Subsidiaries taken as a whole;

(i) any interest or title of a lessor, sublessor, licensee or licensor under any lease, sublease, sublicense or license agreement not prohibited by this Agreement;

(j) Liens (i) on inventory or goods and proceeds securing the obligations in respect of bankers' acceptances issued or created to facilitate the purchase, shipment or storage of such inventory or other goods of ~~the Borrower~~Holdings or any Restricted Subsidiary in the ordinary course of its business, (ii) that are contractual rights of set-off, (iii) relating to purchase orders and other agreements entered into with customers or suppliers of ~~the Borrower~~Holdings or any Restricted Subsidiary in the ordinary course of business, or (iv) in favor of customs and revenue authorities arising as a matter of law to secure the payment of customs duties in connection with the importation of goods in the ordinary course of business;

(k) Liens (i) of a collection bank (including those arising under Section 4-210 of the UCC) on the items in the course of collection, (ii) in favor of a banking or other financial institution arising as a matter of law encumbering deposits or other funds maintained with a financial institution (including the right of set-off) and which are within the general parameters customary in the banking industry and (iii) attaching to commodity trading accounts, or other commodity brokerage accounts incurred in the ordinary course of business;

- (l) 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 Permitted Investment;
- (m) Liens arising from precautionary UCC filings;
- (n) Liens on insurance proceeds or unearned premiums incurred in the ordinary course of business in connection with the financing of insurance premiums;
- (o) Liens identified on Schedule 8.16; provided that (i) such Lien does not extend to any other property or asset of ~~the Borrower~~ Holdings or any Restricted Subsidiary other than (A) after acquired property that is affixed or incorporated into the property covered by such Lien or financed by Permitted Debt and (B) the proceeds and products thereof and (ii) such Lien shall secure only those obligations that it secures on the Restatement Effective Date and any Refinancing Debt incurred to Refinance such Permitted Debt;
- (p) Liens securing Refinancing Debt to the extent such Liens are permitted in the definition of “Refinancing Debt”;
- (q) Liens existing on property at the time of its acquisition or existing on the property of any Person at the time such Person becomes a Restricted Subsidiary (other than by designation as a Restricted Subsidiary pursuant to Section 8.26), in each case after the Restatement Effective Date; provided that (i) such Lien was not created in contemplation of such acquisition or such Person becoming a Restricted Subsidiary, (ii) such Lien does not extend to or cover any other assets or property (other than the proceeds or products thereof and other than after-acquired property subjected to a Lien securing Debt and other obligations incurred prior to such time and which Debt and other obligations are permitted hereunder that require, pursuant to their terms at such time, a pledge of after-acquired property, it being understood that such requirement shall not be permitted to apply to any property to which such requirement would not have applied but for such acquisition) and (iii) the Debt is Permitted Debt and is not incurred in contemplation of such acquisition or in connection with such Person becoming a Restricted Subsidiary;
- (r) Liens securing Debt permitted under Section 8.12(q)(x);
- (s) Liens on property of a Subsidiary that is not an Obligor securing Debt of such Subsidiary that is not an Obligor pursuant to Section 8.12(p);
- (t) deposits in the ordinary course of business to secure liabilities to insurance carriers, lessors, utilities and other service providers or any seller of goods;
- (u) [reserved];
- (v) any encumbrance or restriction (including pursuant to put and call agreements or buy/sell arrangements) with respect to the Stock of any joint venture or similar arrangements pursuant to the joint venture or similar agreement with respect to such joint venture or similar arrangement;

(w) Liens (i) on cash advances in favor of the seller of any property to be acquired in a Permitted Investment to be applied against the purchase price for such Investment and (ii) consisting of an agreement to Dispose of any property in a Permitted Disposition, in each case, solely to the extent such Investment or Disposition, as the case may be, would have been permitted on the date of the creation of such Lien;

(x) Liens arising out of conditional sale, title retention, consignment or similar arrangements for sale of goods entered into by ~~the Borrower~~Holdings or any of its Restricted Subsidiaries in the ordinary course of business;

(y) Liens that are contractual rights of set-off (i) relating to the establishment of depository relations with banks or other financial institutions not given in connection with the incurrence of Debt, (ii) relating to pooled deposit or sweep accounts of ~~the Borrower~~Holdings or any Restricted Subsidiary to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of ~~the Borrower~~Holdings or its Restricted Subsidiaries or (iii) relating to purchase orders and other agreements entered into with customers of ~~the Borrower~~Holdings or any Restricted Subsidiary in the ordinary course of business;

(z) any zoning or similar law or right reserved to or vested in any Governmental Authority to control or regulate the use of any real property that does not materially interfere with the ordinary conduct of the business of ~~the Borrower~~Holdings or any Restricted Subsidiary;

(aa) Liens on specific items of inventory or other goods and the proceeds thereof securing such Person's obligations in respect of documentary letters of credit issued for the account of such Person to facilitate the purchase, shipment or storage of such inventory or goods;

(bb) ground leases in respect of real property on which facilities owned or leased by ~~the Borrower~~Holdings or any of its Subsidiaries are located;

(cc) Liens securing Debt or other obligations of ~~the Borrower~~Holdings or a Restricted Subsidiary in favor of the Borrower or any Guarantor and Liens securing Debt or other obligations of any Restricted Subsidiary that is not a Guarantor in favor of any Restricted Subsidiary that is not a Guarantor;

(dd) Liens on securities that are the subject of repurchase agreements constituting Cash Equivalents permitted as Permitted Investments;

(ee) Liens on Stock in joint ventures (other than Wholly Owned Restricted Subsidiaries); provided that any such Lien is in favor of a creditor or partner of such joint venture;

(ff) Liens on cash and Cash Equivalents used to satisfy or discharge Debt; provided such satisfaction or discharge is permitted hereunder;

(gg) Liens given to a public utility or any municipality or governmental or other public authority when required by such utility or other authority in connection with the ordinary conduct of the business of ~~the Borrower~~Holdings or any Restricted Subsidiary; provided that such Liens do not materially interfere with the ordinary conduct of the business of ~~the Borrower~~Holdings or any Restricted Subsidiary, taken as whole;

(hh) servicing agreements, development agreements, site plan agreements, subdivision agreements and other agreements with Governmental Authorities pertaining to the use or development of any of the real property of ~~the Borrower~~Holdings or any Restricted Subsidiary; provided same do not materially interfere with the ordinary conduct of the business of ~~the Borrower~~Holdings or any Restricted Subsidiary, taken as whole, including, without limitation, any obligations to deliver letters of credit and other security as required;

(ii) the right reserved to or vested in any Governmental Authority by any statutory provision or by the terms of any lease, license, franchise, grant or permit of ~~the Borrower~~ Holdings or any Restricted Subsidiary, to terminate any such lease, license, franchise, grant or permit, or to require annual or other payments as a condition to the continuance thereof;

(jj) Liens securing Hedge Agreements submitted for clearing in accordance with applicable Law;

(kk) Liens to secure transactions permitted by Section 8.18 so long as (i) such Lien attaches only to the assets sold in connection with such transaction and the proceeds thereof (but not any proceeds arising from the rental, leasing or subleasing of such assets by ~~Borrower~~ Holdings or its Subsidiaries), and (ii) such Lien only secures the Debt that was incurred to acquire the assets leased in connection therewith or any Refinancing Debt in respect thereof; and

(ll) other Liens; provided that at the time of the incurrence thereof and after giving Pro Forma Effect thereto and the use of proceeds thereof, the aggregate outstanding amount of Debt and other obligations secured by Liens incurred under this clause (ll) and then-outstanding shall not exceed the greater of (x) ~~\$30,000,000~~ \$2,500,000 and (y) 5.5% of Consolidated Total Assets (measured as of the date such Lien was incurred based upon the Section 6.2 Financials most recently delivered on or prior to such date); provided, further, that if such Liens are consensual and are on the Collateral (other than cash and Cash Equivalents), the holders of the Debt or other obligations secured thereby (or a representative or trustee on their behalf) shall have entered into the Intercreditor Agreement or another intercreditor agreement reasonably acceptable to the Borrower and the Collateral Agent providing that the Liens on the Current Asset Collateral securing such Debt or other obligations shall rank junior to the Liens on the assets of the Obligor in favor of the Secured Parties.

For purposes of determining compliance with this definition, in the event that any Lien meets the criteria of more than one of the types of Permitted Liens described in the above clauses, the Borrower, in its sole discretion, may classify and reclassify such Lien and only be required to include the amount and type of such Lien in one of such clauses.

“Permitted Warrant Transaction” means any call option, warrant or right to purchase (or substantively equivalent derivative transaction) on Holdings’ common stock (or other securities or property following a merger event or other change of the common stock of Holdings) and/or cash (in an amount determined by reference to the price of such common stock or such other securities) sold by Holdings substantially concurrently with any purchase by Holdings of a related Permitted Bond Hedge Transaction.

“Person” means any individual, sole proprietorship, partnership, limited liability company, unlimited liability company, joint venture, trust, unincorporated organization, association, corporation, Governmental Authority, or any other entity.

“Pioneer” means Pioneer Natural Resources USA, Inc., a Delaware corporation.

“Pioneer Acquisition” means the sale by Pioneer and Pioneer Natural Resources Pumping Services LLC of certain assets to the Borrower pursuant to that certain Purchase and Sale Agreement, dated as of November 12, 2018, by and among the Borrower, Pioneer and Pioneer Natural Resources Pumping Services LLC.

“Plan” means any employee benefit plan (as defined in Section 3(3) of ERISA) which ~~the Borrower~~Holdings or a Restricted Subsidiary, sponsors or maintains or to which ~~the Borrower~~Holdings or a Subsidiary of ~~the Borrower~~Holdings makes, is making, or is obligated to make contributions.

“Post-Transaction Period” means, with respect to any Specified Transaction, the period beginning on the date on which such Specified Transaction is consummated and ending on the last day of the twelfth month immediately following the date on which such Specified Transaction is consummated.

“Preferred Stock” means, as applied to the Stock of any Person, the Stock of any class or classes (however designated) that is preferred with respect to the payment of dividends, or as to the distribution of assets upon any voluntary or involuntary liquidation or dissolution of such Person, over shares of Stock of any other class of such Person.

“Previous Holdings” has the meaning specified in the definition of “Holdings.”

“Pro Forma Adjustment” means, for any Test Period that includes all or any part of a Fiscal Quarter included in any Post-Transaction Period, with respect to the Acquired EBITDA of the applicable Acquired Entity or Business or Converted Restricted Subsidiary or the Consolidated EBITDA of ~~the Borrower~~Holdings, (a) the pro forma increase or decrease (for the avoidance of doubt net of any such increase or decrease actually realized) in such Acquired EBITDA or such Consolidated EBITDA, as the case may be, projected by the Borrower in good faith as a result of (a) actions taken, actions with respect to which substantial steps have been taken or actions that are expected to be taken prior to or during such Post-Transaction Period, for the purposes of realizing reasonably identifiable cost savings, operating expense reductions or costs or other synergies or (b) any additional costs, expenses or charges, accruals or reserves incurred prior to or during such Post-Transaction Period with the combination of the operations of such Acquired Entity or Business or Converted Restricted Subsidiary with the operations of ~~the Borrower~~Holdings and its Restricted Subsidiaries or otherwise in connection with, as a result of or related to such Specified Transaction or Specified Restructuring; provided that (i) so long as such actions are taken or expected to be taken prior to or during such Post-Transaction Period or such costs are incurred prior to or during such Post-Transaction Period, as applicable, for purposes of projecting such pro forma increase or decrease to such Acquired EBITDA or such Consolidated EBITDA, as the case may be, it may be assumed that such cost savings, operating expense reductions or costs or other synergies will be realizable during the entirety of such Test Period, or such additional costs, as applicable, will be incurred during the entirety of such Test Period and (ii) such Pro Forma Adjustments, when aggregated with any addbacks made pursuant to clause (a)(10) of the definition of “Consolidated EBITDA,” shall not be in excess of ~~20~~25% of Consolidated EBITDA (provided, such cap will not apply to any amounts relating to amounts that would be permitted to be included in pro forma financial statements prepared in accordance with Regulation S-X under the Securities Act of 1933, as amended) (~~prior to~~after giving effect to any increase in Consolidated EBITDA pursuant to this clause (ii) or clause (a)(10) of the definition of “Consolidated EBITDA”) in any Test Period.

“Pro Forma Basis” and “Pro Forma Effect” mean, with respect to compliance with any test, financial ratio or covenant hereunder for an applicable period of measurement, for any Specified Transactions or Specified Restructurings that have been made during any applicable Test Period or, if applicable, subsequent to such Test Period and prior to or simultaneously with the events for which any such calculation is made, shall be calculated on a pro forma basis assuming that (A) to the extent applicable, the Pro Forma Adjustment shall have been made and (B) all Specified Transactions and the following transactions in connection therewith shall be deemed to have occurred as of the first day of the applicable period of measurement (as of the last date in the case of a balance sheet item) in such test or covenant: (a) income statement items (whether positive or negative) attributable to the property or Person subject to such Specified Transaction, (i) in the case of a Disposition of all or substantially all Stock in any Subsidiary of the Borrower Holdings or any division, product line, or facility used for operations of the Borrower Holdings or any of its Subsidiaries, shall be excluded, and (ii) in the case of a Permitted Acquisition or Investment described in the definition of “Specified Transaction,” shall be included, (b) Refinancing of Debt, and (c) any Debt incurred by the Borrower Holdings or any of its Restricted Subsidiaries in connection therewith and if such Debt has a floating or formula rate, shall have an implied rate of interest for the applicable period for purposes of this definition determined by utilizing the rate which is or would be in effect with respect to such Debt as at the relevant date of determination; provided that, without limiting the application of the Pro Forma Adjustment pursuant to (A) above, the foregoing pro forma adjustments may be applied to any such test, ratio or covenant solely to the extent that such adjustments are consistent with the definition of “Consolidated EBITDA” and give effect to events (including operating expense reductions) that are (as determined by the Borrower in good faith) (i) (x) directly attributable to such transaction, (y) expected to have a continuing impact on the Borrower Holdings and its Restricted Subsidiaries and (z) reasonably identifiable or (ii) otherwise consistent with the definition of “Pro Forma Adjustment”.

“Pro Rata Share” means, with respect to a Lender, a fraction (expressed as a percentage), the numerator of which is the aggregate amount of such Lender’s Revolving Credit Commitments and the denominator of which is the sum of the amounts of all of the Lenders’ Revolving Credit Commitments, or if no Revolving Credit Commitments are outstanding, a fraction (expressed as a percentage), (x) the numerator of which is the sum (without duplication) of the aggregate amount of the Revolving Loans owed to such Lender plus such Lender’s participation in the aggregate undrawn face amount of all outstanding Letters of Credit, plus such Lender’s participation in the aggregate amount of any Unpaid Drawings in respect of Letters of Credit and (y) the denominator of which is the sum (without duplication) of the aggregate amount of the Revolving Loans owed to the Lenders, plus the aggregate undrawn face amount of all outstanding Letters of Credit, plus the aggregate amount of any Unpaid Drawings in respect of Letters of Credit, in each case giving effect to a Lender’s participation in Swingline Loans and Agent Advances.

“Properly Contested” means, in the case of any Debt or other obligation of the Borrower Holdings or any Restricted Subsidiary that is not paid as and when due or payable by reason of such Person’s bona fide dispute concerning its liability to pay the same or concerning the amount thereof, (a) such Debt or other obligation is being properly contested in good faith by appropriate proceedings promptly instituted and diligently conducted; (b) such Person has established appropriate reserves for the contested Debt or other obligation in conformity with GAAP; and (c) will not result in any impairment of the enforceability, validity or priority of the Collateral Agent’s Liens.

“Proposed Change” has the meaning specified in Section 12.1(b).

“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.

“QFC” shall have the meaning assigned to such term in Section 14.22.

“Qualified Stock” means any Stock that is not Disqualified Stock.

“Real Estate” means all of each Obligor’s and each of its Restricted Subsidiaries’ now or hereafter owned or leased estates in real property, including, without limitation, all fees, leaseholds and future interests, together with all of each Obligor’s and each of its Restricted Subsidiaries’ now or hereafter owned or leased interests in the improvements thereon, the fixtures attached thereto and the easements appurtenant thereto.

“Reasonable Credit Judgment” means the Agent’s reasonable credit judgment (from the perspective of an asset-based lender) in establishing reserves, exercised in good faith in accordance with customary business practices for similar asset based lending facilities, (i) to reflect the impediments to the Collateral Agent’s ability to realize upon the Current Asset Collateral included in the Borrowing Base, (ii) to reflect claims and liabilities that will need to be satisfied in connection with the realization upon the Current Asset Collateral included in the Borrowing Base or (iii) to reflect criteria, events, conditions, contingencies or risks which adversely affect, or are reasonably likely to adversely affect, any component of the Borrowing Base, the Collateral or the validity or enforceability of this Agreement or the other Loan Documents or any material remedies of the Secured Parties hereunder or thereunder. Any Reserve established or modified by the Agent shall have a reasonable relationship to circumstances, conditions, events or contingencies which are the basis for such Reserve, as reasonably determined, without duplication, by the Agent in good faith; provided that circumstances, conditions, events or contingencies existing or arising prior to the Restatement Effective Date and, in each case, disclosed in writing in any Field Examination or Appraisal delivered to the Agent in connection herewith or otherwise known to the Agent prior to the Restatement Effective Date, shall not be the basis for any establishment of any Reserves after the Restatement Effective Date, unless such circumstances, conditions, events or contingencies shall have changed in a material respect since the Restatement Effective Date.

“Recipient” means (a) the Agent, (b) any Lender and (c) any other recipient of any payment made by or on behalf of the Obligors under this Agreement or any of the Loan Documents, as applicable.

“Refinance,” “Refinanced” and “Refinancing” each has the meaning specified in the definition of the term “Refinancing Debt.”

“Refinanced Debt” has the meaning specified in the definition of the term “Refinancing Debt.”

“Refinancing Debt” means with respect to any Debt (the “Refinanced Debt”), any Debt incurred in exchange for or as a replacement of (including by entering into alternative financing arrangements in respect of such exchange or replacement (in whole or in part), by adding or replacing lenders, creditors, agents, the Borrower and/or guarantors, or, after the original instrument giving rise to such Debt has been terminated, by entering into any credit agreement, loan agreement, note purchase agreement, indenture or other agreement), or the net proceeds of which are to be used for the purpose of modifying, extending, refinancing, renewing, replacing, redeeming, repurchasing, defeasing, amending, supplementing, restructuring, repaying or refunding (collectively to “Refinance” or a “Refinancing” or “Refinanced”), such Refinanced Debt (or previous refinancing thereof constituting Refinancing Debt); provided that (a) the principal amount (or accreted value, if applicable) of such Refinancing Debt does not exceed the principal amount (or accreted value, if applicable) of the Refinanced Debt except by an amount equal to unpaid accrued interest and premium (including applicable prepayment penalties) thereof plus fees and expenses reasonably incurred in connection therewith plus an amount equal to any existing commitment unutilized and letters of credit undrawn thereunder, (b) any Liens securing such Refinancing Debt shall have the same collateral priority as the Liens securing the Refinanced Debt, (c) no Obligor that was not previously liable for the repayment of such Refinanced Debt is or is required to become liable for the Refinancing Debt (except that any Obligor may be added as an additional direct or contingent obligor in respect of such Refinancing Debt), (d) such extension, refinancing, refunding, replacement or renewal does not result in the Refinancing Debt having a shorter Weighted Average Life to Maturity than the Refinanced Debt, and (e) if the Refinanced Debt was subordinated in right of payment to any of the Obligations, then the terms and conditions of the Refinancing Debt shall include subordination terms and conditions that are no less favorable to the Lenders in all material respects as those that were applicable to the Refinanced Debt.

“Register” has the meaning specified in Section 13.20(a).

“Release” means a release, spill, emission, leaking, pumping, injection, deposit, disposal, discharge, dispersal, leaching or migration of a Contaminant into or through the Environment or within, from or into any building, structure, facility or fixture.

“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 System or the Federal Reserve Bank of New York, or any successor thereto.

“Report” and “Reports” each has the meaning specified in Section 13.17(a).

“Reportable Event” means any of the events set forth in Section 4043(c) of ERISA or the regulations thereunder, other than any such event for which the 30-day notice requirement under ERISA has been waived in regulations issued by the PBGC.

“Required Lenders” means, at any time, Lenders having Commitments representing at least 50.1% of the aggregate Commitments at such time; provided, however, that if any Lender shall remain a Defaulting Lender, the term “Required Lenders” means Lenders having Commitments representing at least 50.1% of the aggregate Commitments at such time (excluding the Commitment of any such Lender that is a Defaulting Lender); provided further, however, that if the Commitments have been terminated, the term “Required Lenders” means Lenders holding Loans (including Swingline Loans) representing at least 50.1% of the aggregate principal amount of Loans (including Swingline Loans) outstanding at such time (excluding Loans of any such Lender that is a Defaulting Lender).

“Required Reimbursement Date” has the meaning specified in Section 2.3(e).

“Requirement of Law” means, as to any Person, any law (statutory or common), treaty, rule or regulation or determination of an arbitrator or of a Governmental Authority, in each case applicable to or binding upon the Person or any of its property or to which the Person or any of its property is subject.

“Reserves” means reserves that limit the availability of credit hereunder, consisting of reserves against Availability, Eligible Accounts and, Eligible Unbilled Accounts and Eligible Power Generation Equipment and any other reserves permitted under this Agreement, in each case, established by the Agent from time to time in the Agent’s Reasonable Credit Judgment in accordance with Section 2.5 of this Agreement.

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

“Responsible Officer” means the President, any Vice President, Chief Executive Officer, Chief Financial Officer, Secretary, Assistant Secretary, Treasurer, Assistant Treasurer, legal counsel, or any other executive or financial officer of Holdings, the Borrower or any Restricted Subsidiary, or any other officer having substantially the same authority and responsibility; or, with respect to compliance with financial covenants and the preparation of the Borrowing Base Certificate, the president, chief financial officer or the treasurer or assistant treasurer of the Borrower, or any other officer having substantially the same authority and responsibility.

“Restatement Agreement” has the meaning specified in the recitals to this Agreement.

“Restatement Effective Date” means April 13, 2022, the date on which the conditions to effectiveness set forth in the Restatement Agreement are satisfied.

“Restricted Subsidiary” means each Subsidiary of Holdings (including, for the avoidance of doubt, the Borrower) other than an Unrestricted Subsidiary.

“Restructuring Costs” means any non-recurring, unusual and other one-time costs (including but not limited to legal and consulting fees) incurred by Holdings or any of its Restricted Subsidiaries in connection with its business, operations and structure in respect of plant closures, facility shutdowns, plant “moth-balling” or consolidation of assets located at any leased or fee-owned facilities, relocation or elimination of facilities, offices or operations, information technology integration, headcount reductions, salary continuation, termination, relocation and training of employees, severance costs, retention payments, bonuses, benefits and payroll taxes and other costs incurred in connection with the foregoing.

“Revolving Credit Borrowing” means a Borrowing comprised of Revolving Loans.

“Revolving Credit Commitment” means, at any date for any Lender, the obligation of such Lender to make Revolving Loans and to purchase participations in Letters of Credit pursuant to the terms and conditions of this Agreement, which shall not exceed the aggregate principal amount set forth on Schedule 1.1 under the heading “Revolving Credit Commitment” or on the signature page of the Assignment and Acceptance, Incremental Agreement or Extension Agreement, as applicable, by which it became a Lender, as modified from time to time pursuant to the terms of this Agreement or to give effect to any applicable Assignment and Acceptance, Incremental Agreement or Extension Agreement; and “Revolving Credit Commitments” means the aggregate principal amount of the Revolving Credit Commitments of all Lenders, the maximum amount of which shall be the Maximum Revolver Amount.

“Revolving Credit Commitment Increase” has the meaning specified in Section 2.6(a).

“Revolving Credit Facility” has the meaning specified in the recitals to this Agreement.

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

“Revolving Loans” means the revolving loans made pursuant to Section 2.2, each Agent Advance and Swingline Loan.

“S&P” means Standard & Poor’s Ratings Service, a Standard & Poor’s Financial Services LLC business, or any successor thereto.

“Sanctioned Entity” means (a) a country or territory or a government of a country or territory, (b) an agency of the government of a country, (c) an organization directly or indirectly controlled by a country or its government or (d) a Person resident in or determined to be resident in a country, in each case, that is subject to a country sanctions program administered and enforced by OFAC.

“Sanctioned Person” means a person or entity named or a person or entity owned 50% or more by a person or entity on any of the lists of designated sanctioned persons maintained by OFAC or the United States Department of State, including the list of Specially Designated Nationals.

“SEC” means the Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions.

“Second Currency” has the meaning specified in Section 14.19.

“Section 6.2 Financials” means the Financial Statements delivered, or required to be delivered, pursuant to Section 6.2(a) or 6.2(b) (or, if prior to the date on which the first of such Financial Statements are required to have been delivered, the Financial Statements delivered pursuant to Section 6.2(a) or 6.2(b) of the Original Credit Agreement).

“Secured Cash Management Agreement” means any Cash Management Document that is entered into by and between ~~the Borrower~~Holdings or any Restricted Subsidiary and a Cash Management Bank and designated in writing by the Cash Management Bank and such Person to the Agent as a “Secured Cash Management Agreement.”

“Secured Hedge Agreement” means any Hedge Agreement permitted under Section 8.12 that is entered into by and between any Obligor or any Restricted Subsidiary and any Hedge Bank and designated in writing by the Hedge Bank and such Obligor to the Agent as a “Secured Hedge Agreement.” Such designation in writing by the Hedge Bank and the applicable Obligor (or any subsequent written notice by the Hedge Bank to the Agent) may further designate with the consent of the Borrower any Secured Hedge Agreement as being a “Noticed Hedge” as defined under this Agreement.

“Secured Hedge Obligations” means obligations under any Secured Hedge Agreement up to the maximum amount (in the case of any Hedge Bank other than Barclays and its Affiliates so long as Barclays is the Agent) reasonably specified by such Hedge Bank and any Obligor or any Restricted Subsidiary in writing to the Agent, which amount may be established or increased (by further written notice to the Agent from time to time) as long as Aggregate Revolver Outstandings would not exceed the Maximum Revolver Amount as a result of the establishment of a Bank Product Reserve for such amount.

“Secured Parties” means, collectively, the Agent, the Collateral Agent, the Lenders, each Letter of Credit Issuer, the Indemnified Persons, the Cash Management Banks and the Hedge Banks.

“Securities Accounts” means all “securities accounts” as such term is defined in the UCC.

“Securities Account Control Agreement” means an effective securities account control agreement with an Approved Securities Intermediary, in each case in the form set forth as an exhibit to the Security Agreement or otherwise in form and substance reasonably satisfactory to the Agent.

“Securities Act” means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

“Security Agreement” means the Amended and Restated Security Agreement, dated as of the ~~Original Agreement~~Amendment No. 4 Effective Date, among Holdings, the Borrower, each of the Guarantors from time to time party thereto, and the Collateral Agent, for the benefit of the Secured Parties.

“Security Documents” means the Security Agreement, any Mortgage and any other agreements, instruments, and documents heretofore, now or hereafter securing any of the Obligations.

“Senior Secured Net Leverage Ratio” means, as of any date of determination, the ratio of (a) Consolidated Total Net Debt that is secured by a Lien on any assets or property of Holdings, the Borrower or any Restricted Subsidiary as of the last day of the Test Period most recently ended on or prior to the date of determination to (b) Consolidated EBITDA of Holdings, the Borrower and its Restricted Subsidiaries for such Test Period.

“Settlement” and “Settlement Date” have the meanings specified in Section 13.14(a)(i).

“Significant Subsidiary” means, at any date of determination, (a) any Restricted Subsidiary whose total assets (when combined with the assets of such Restricted Subsidiary’s Subsidiaries after eliminating intercompany obligations) at the last day of the Test Period most recently ended on or prior to such date of determination were equal to or greater than 10% of the Consolidated Total Assets at such date, (b) any Restricted Subsidiary whose gross revenues (when combined with the gross revenues of such Restricted Subsidiary’s Subsidiaries after eliminating intercompany obligations) for such Test Period were equal to or greater than 10% of the consolidated gross revenues of ~~the Borrower~~ Holdings and the Restricted Subsidiaries for such Test Period, in each case determined in accordance with GAAP or (c) each other Restricted Subsidiary that, when such Restricted Subsidiary’s total assets or gross revenues (when combined with the total assets or gross revenues of such Restricted Subsidiary’s Subsidiaries after eliminating intercompany obligations) are aggregated with each other Restricted Subsidiary (when combined with the total assets or gross revenues of such Restricted Subsidiary’s Subsidiaries after eliminating intercompany obligations) that would constitute a “Significant Subsidiary” under clause (a) or (b) above.

“SOFR” means, with respect to any U.S. Government Securities Business Day, a rate per annum equal to the secured overnight financing rate for such U.S. Government Securities Business Day published by the SOFR Administrator on the SOFR Administrator’s Website on the immediately succeeding U.S. Government Securities Business Day.

~~“SOFR Adjustment” means 0.10% (10 basis points);~~

“SOFR Administrator” means the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

“SOFR Administrator’s Website” means the website of the Federal Reserve Bank of New York, currently at <http://www.newyorkfed.org>, or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time.

“SOFR Borrowing” means, as to any Borrowing, the SOFR Loans comprising such Borrowing.

“SOFR Loan” means a Loan that bears interest at a rate based on Daily Simple SOFR and Term SOFR, other than, in each case, pursuant to clause (c) of the definition of “Base Rate”.

“SOFR Rate Day” has the meaning assigned to such term in the definition of “Daily Simple SOFR”.

“Sold Entity or Business” has the meaning specified in the definition of the term “Consolidated EBITDA.”

“Solvent” or “Solvency” means, at the time of determination:

- (a) each of the Fair Value and the Present Fair Saleable Value of the assets of a Person and its Subsidiaries taken as a whole exceed their Stated Liabilities and Identified Contingent Liabilities; and
- (b) such Person and its Subsidiaries taken as whole do not have Unreasonably Small Capital; and
- (c) such Person and its Subsidiaries taken as whole can pay their Stated Liabilities and Identified Contingent Liabilities as they mature.

Defined terms used in the foregoing definition shall have the meanings set forth in the solvency certificate delivered on the Restatement Effective Date pursuant to Section 3(h) of the Restatement Agreement.

“Specified Capital Lease” means any Debt (a) of the Specified Capital Lease Subsidiary, (b) in the form of a Capital Lease or other financing facilities (which may include financings in the form of single or multiple draw term loan facilities), in each case, incurred to finance the acquisition, construction, repair, replacement, lease or improvement of any Equipment or any fixed or capital assets of the Specified Capital Lease Subsidiary, (c) for which the security interest granted to the lessor thereunder extends to, among other Liens permitted to be incurred pursuant to clause (e)(y) of the definition of “Permitted Liens,” (i) the Equipment or fixed or capital assets financed by such Capital Lease or other financing facility and (ii) to the extent that the Agent has received written notice from the Borrower identifying certain Accounts in such detail as shall be reasonably satisfactory to the Agent and to the extent required to be collateral thereunder, any Accounts of the Specified Capital Lease Subsidiary arising out of or otherwise related to the use of the Equipment or fixed or capital assets financed by such Capital Lease or other financing facility that are adequately described in such written notice (any such Accounts, but only to the extent required to be collateral under a Specified Capital Lease, “Specified Capital Lease Subject Accounts”), (d) for which the Specified Capital Lease Subject Accounts are subject to a No Interest Agreement and (e) for which the Borrower shall have delivered to the Agent an officer’s certificate certifying (i) that such Debt constitutes a Specified Capital Lease satisfying the requirements of this definition, including without limitation the execution of a No Interest Agreement with respect to any Specified Capital Lease Subject Accounts), (ii) that such Debt is permitted to be incurred pursuant to Section 8.12(r), (iii) that the Liens securing such Debt are permitted to be incurred pursuant to clause (e)(y) of the definition of “Permitted Liens”, (iv) that the Specified Capital Lease Subject Accounts are not included in the Borrowing Base and (v) as to such other matters as the Agent reasonably requests in connection with the implementation and maintenance of such Specified Capital Lease.

“Specified Capital Lease Subject Accounts” has the meaning specified in the definition of “Specified Capital Lease”.

“Specified Capital Lease Subsidiary” means ProPetro Energy Solutions, LLC.

“Specified Conditions” means, at any time of determination, that (a) no Specified Event of Default exists or would arise as a result of the making of the subject Specified Payment, (b) after giving Pro Forma Effect to such Specified Payment, the Fixed Charge Coverage Ratio as of the end of the most recently ended Test Period (regardless of whether a Covenant Trigger Period is then in effect) shall be greater than or equal to 1.0 to 1.0 calculated as if such Specified Payment (if applicable to such calculation) had been made as of the first day of such Test Period; provided, however, that the condition set forth in clause (b) shall not be applicable if Availability after giving Pro Forma Effect to such Specified Payment is as of the date of such Specified Transaction and during ~~30~~20 calendar days prior to such Specified Payment in excess of ~~the greater of (x) 20.0~~17.5% of the Maximum Credit ~~and (y) \$28,125,000~~, (c) Availability after giving Pro Forma Effect to such Specified Payment is as of the date of such Specified Transaction and during ~~30~~20 calendar days prior to such Specified Payment in excess of ~~the greater of (x) 15.0~~12.5% of the Maximum Credit ~~and (y) \$22,500,000~~ and (d) the Borrower shall have delivered a certificate of a Responsible Officer, to the Agent stating that the conditions contained in the foregoing clauses (a), (b) (if applicable) and (c) have been satisfied.

“Specified Event of Default” means the occurrence of and continuance of any Event of Default under (a) Section 10.1(b), to the extent related to the inaccuracy of any Borrowing Base Certificate delivered under this Agreement, (b) any of Sections 10.1(a), (e), (f) or (g), (c) Section 10.1(c)(ii), (d) Section 10.1(c)(iii) or (e) Section 10.1(c)(i) (as a result of a breach of Section 8.23 only).

“Specified Payment” means (a) any Permitted Acquisition, (b) Distributions made pursuant to Section 8.10(j)(1), (c) Investments made pursuant to clause (ff) of the definition of “Permitted Investments,” (d) sale and leaseback transactions consummated pursuant to Section 8.18 and (e) payments in respect of Junior Debt made pursuant to Section 8.13(vi).

“Specified Restructuring” means any restructuring or other strategic initiative (including cost saving initiative) of ~~the Borrower~~ Holdings or any of its Restricted Subsidiaries after the Restatement Effective Date and not in the ordinary course and described in reasonable detail in a certificate of a Responsible Officer delivered by the Borrower to the Agent.

“Specified Transaction” means, with respect to any period, any Investment, Disposition, incurrence of Debt, Refinancing of Debt, Distribution, Subsidiary designation, Revolving Credit Commitment Increase, creation of Extended Revolving Credit Commitments or other event that by the terms of the Loan Documents requires compliance on a “Pro Forma Basis” with a test or covenant hereunder or requires such test or covenant to be calculated on a “Pro Forma Basis” or after giving “Pro Forma Effect” thereto.

“Sponsor” means Energy Capital Partners, LLC and each of its Affiliates and any funds, partnerships or other investment vehicles managed or controlled by it or its Affiliates, but not including, however, any of their operating portfolio companies.

“Stated Termination Date” means, (a) with respect to the Revolving Credit Facility, ~~June 2, 2028 and the earlier of (i) May 4, 2031 and (ii) the date that is ninety one (91) days prior to the stated maturity date of any Debt for borrowed money of Holdings, the Borrower or any other Restricted Subsidiary with an aggregate outstanding principal amount in excess of \$150,000,000 that was incurred under Section 8.12(q) or Section 8.12(w) (but, for the avoidance of any doubt, excluding any Debt constituting Capital Leases, Specified Capital Leases or purchase money Debt); provided that the foregoing clause (a)(i) shall not apply if the Agent has implemented a Reserve in an amount equal to the aggregate outstanding principal amount of such Debt that is in excess of \$150,000,000 and Availability on a pro forma basis after giving effect to such Reserve is at least \$100,000,000 from the date that is ninety-one (91) days prior to the stated maturity date of such Debt until the stated maturity of such Debt (it being understood that if Availability is less than \$100,000,000 at any time during such period, the Stated Termination Date shall be the first date that Availability is less than \$100,000,000 during such period) and (b) with respect to any Extended Revolving Credit Facility, the maturity date set forth in the Extension Agreement related thereto.~~

“Stock” means all shares, options, warrants, general or limited partnership interests, membership interests or other equivalents (regardless of how designated) of or in a corporation, partnership, limited liability company, unlimited liability company or equivalent entity whether voting or nonvoting, including common stock, preferred stock or any other “equity security” (as such term is defined in Rule 3a11-1 of the General Rules and Regulations promulgated by the SEC under the Exchange Act); provided that (a) any instrument evidencing Debt convertible or exchangeable into Stock (including, for the avoidance of doubt, any Convertible Indebtedness), whether or not such debt securities include any right of participation with Stock, shall not be deemed to be Stock unless and until such instrument is so converted or exchanged and (b) “Stock” shall not include any Permitted Bond Hedge Transaction or Permitted Warrant Transaction until any Stock has been issued pursuant to the terms thereof.

“Subordinated Debt” means any Debt subordinated in right of payment to, or required under the Loan Documents to be subordinated in right of payment to, any Debt under the Loan Documents, except any Debt that is subject to Lien subordination but not payment subordination.

“Subordinated Intercompany Note” means the Intercompany Subordinated Note, dated as of the Original Agreement Date, by and among Holdings, the Borrower and each Restricted Subsidiary of the Borrower from time to time party thereto.

“Subsidiary” of a Person means any corporation, association, partnership, limited liability company, unlimited liability company, joint venture or other business entity of which more than fifty percent (50%) of the voting stock or other Stock (in the case of Persons other than corporations), is owned or controlled directly or indirectly by the Person, or one or more of the Subsidiaries of the Person, or a combination thereof. Unless the context otherwise clearly requires, references herein to a “Subsidiary” refer to a Subsidiary of ~~the Borrower~~ Holdings.

“Successor Borrower” has the meaning specified in Section 8.9(a).

“Successor Holdings” has the meaning specified in Section 8.278.9(bg).

“Supermajority Lenders” means, at any time, Lenders having Commitments representing at least 66⅔% of the aggregate Commitments at such time; provided, however, that if any Lender shall remain a Defaulting Lender, the term “Supermajority Lenders” means Lenders having Commitments representing at least 66⅔% of the aggregate Commitments at such time (excluding the Commitment of any such Lender that is a Defaulting Lender); provided further, however, that if the Commitments have been terminated, the term “Supermajority Lenders” means Lenders holding Loans (including Swingline Loans) representing at least 66⅔% of the aggregate principal amount of Loans (including Swingline Loans) outstanding at such time (excluding Loans of any such Lender that is a Defaulting Lender).

“Supporting Letter of Credit” has the meaning specified in Section 2.3(g).

“Swap Termination Value” means, in respect of any one or more Hedge Agreements, after taking into account the effect of any legally enforceable netting agreement relating to such Hedge Agreements, (a) for any date on or after the date such Hedge Agreements have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark to market value(s) for such Hedge Agreements, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Hedge Agreements (which may include a Lender or any Affiliate of a Lender).

“Swingline Commitment” means the Commitment of the Swingline Lender to make loans pursuant to Section 2.4(f).

“Swingline Lender” means Barclays or any successor financial institution agreed to by the Agent, in its capacity as provider of Swingline Loans.

“Swingline Loan” and “Swingline Loans” have the meanings specified in Section 2.4(f).

“Swingline Sublimit” has the meaning specified in Section 2.4(f).

“Tax Group” has the meaning specified in Section 8.10(g)(i).

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

“Term SOFR” means,

(a) for any calculation with respect to a SOFR Loan, the Term SOFR Reference Rate for a tenor comparable to the applicable Interest Period on the day (such day, the “Periodic Term SOFR Determination Day”) that is two (2) U.S. Government Securities Business Days prior to the first day of such Interest Period, as such rate is published by the Term SOFR Administrator, ~~plus the Applicable SOFR Adjustment~~; provided, however, that if as of 5:00 p.m. (New York City time) on any Periodic Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Periodic Term SOFR Determination Day, and

(b) for any calculation with respect to an Base Rate Loan on any day, the Term SOFR Reference Rate for a tenor of one month on the day (such day, the “Base Rate Term SOFR Determination Day”) that is two (2) U.S. Government Securities Business Days prior to such day, as such rate is published by the Term SOFR Administrator, ~~plus the Applicable SOFR Adjustment~~; provided, however, that if as of 5:00 p.m. (New York City time) on any Base Rate Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Base Rate Term SOFR Determination Day;

provided, further, that if Term SOFR determined as provided above (including pursuant to the proviso under clause (a) or clause (b) above) shall ever be less than 0.00%, then Term SOFR shall be deemed to be 0.00%.

“Term SOFR Administrator” means the CME Group Benchmark Administration Limited (CBA) (or a successor administrator of the Term SOFR Reference Rate selected by the Agent in its reasonable discretion).

“Term SOFR Interest Payment Date” means, with respect to a Term SOFR Loan, the last day of the Interest Period applicable to the Borrowing of which such Loan is a part and, in the case of a Term SOFR Borrowing with an Interest Period of more than three months’ duration, each day prior to the last day of such Interest Period that occurs at intervals of three months’ duration after the first day of such Interest Period.

“Term SOFR Loan” means a Loan that bears interest at a rate based on Term SOFR.

“Term SOFR Reference Rate” means the rate per annum determined by the Agent as the forward-looking term rate based on SOFR.

“Termination Date” means the earliest to occur of (a) the Stated Termination Date, (b) the date the Commitments are terminated either by the Borrower pursuant to Section 4.4 or by the Required Lenders pursuant to Section 10.2, and (c) the date this Agreement is otherwise terminated for any reason whatsoever pursuant to the terms of this Agreement.

“Test Period” means, at any date of determination, the most recently completed four consecutive fiscal quarters of ~~the Borrower~~ Holdings ending on or prior to such date for which financial statements have been (or were required to have been) delivered pursuant to Section 6.2(a) or 6.2(b) (or, if prior to the date on which the first of such Financial Statements are required to have been delivered, the Financial Statements delivered pursuant to Section 6.2(a) or 6.2(b) of the Original Credit Agreement).

“Titled Goods” means vehicles and similar items that are (a) subject to certificate-of-title statutes or regulations under which a security interest in such items are perfected by an indication on the certificates of title of such items (in lieu of filing of financing statements under the UCC) or (b) evidenced by certificates of ownership or other registration certificates issued or required to be issued under the laws of any jurisdiction.

“Total Net Leverage Ratio” means, as of any date of determination, the ratio of (a) Consolidated Total Net Debt as of the last day of the Test Period most recently ended on or prior to the date of determination to (b) Consolidated EBITDA of Holdings, the Borrower and its Restricted Subsidiaries for such Test Period.

“Transactions” means, collectively, (a) the entering into of the Restatement Agreement and the other applicable Loan Documents on the Restatement Effective Date and (b) the payment of fees and expenses in connection therewith.

“Type” means any type of a Loan determined with respect to the interest option applicable thereto, which shall be a Term SOFR Loan or a Base Rate Loan.

“U.S. Government Securities Business Day” means any day except for (i) a Saturday, (ii) a Sunday or (iii) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

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

“U.S. Tax Compliance Certificate” has the meaning specified in Section 5.1(d)(ii)(C).

“UCC” means the Uniform Commercial Code, as in effect from time to time, of the State of New York or of any other state the laws of which are required as a result thereof to be applied in connection with the issue of perfection of security interests.

“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.

“Unadjusted Benchmark Replacement” means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

“Unfinanced Capital Expenditures” means, with respect to any Person and for any period, Capital Expenditures made by such Person during such period that are not Financed Capital Expenditures.

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

“Unpaid Drawings” has the meaning specified in Section 2.3(e).

“Unrestricted Subsidiary” means (i) each Subsidiary of ~~the Borrower~~Holdings listed on Schedule 1.4, (ii) any Subsidiary of ~~the Borrower~~Holdings designated by the Board of Directors of ~~the Borrower~~Holdings as an Unrestricted Subsidiary pursuant to Section 8.26 subsequent to the Restatement Effective Date and (iii) any Subsidiary of an Unrestricted Subsidiary.

“Unused Letter of Credit Subfacility” means an amount equal to the Letter of Credit Subfacility minus the sum of (a) the aggregate undrawn amount of all outstanding Letters of Credit plus, without duplication, (b) the aggregate Unpaid Drawings obligations with respect to a Letters of Credit.

“Unused Line Fee” has the meaning specified in Section 3.5.

“USA PATRIOT Act” means The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Title III of Pub. L. No. 107-56 (signed into law October 26, 2001)), as amended or modified from time to time.

“Voting Stock” means, with respect to any Person, shares of such Person’s Stock having the right to vote for the election of members of the Board of Directors of such Person under ordinary circumstances.

“Weighted Average Life to Maturity” means, when applied to any Debt at any date, the number of years obtained by dividing: (i) the sum of the products obtained by multiplying (a) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect thereof, by (b) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment by (ii) the then-outstanding principal amount of such Debt.

“Wholly Owned” means, with respect to a Subsidiary of a Person, a Subsidiary of such Person all of the outstanding Stock of which (other than (x) director’s qualifying shares and (y) shares issued to foreign nationals to the extent required by applicable Law) are owned by such Person and/or by one or more wholly owned Subsidiaries of such Person.

“Withholding Agent” means any Obligor, any Agent and, in the case of U.S. federal withholding tax, any other applicable withholding agent.

“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.

1.2 Accounting Terms.

(a) 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 in a manner consistent with that used in preparing the Historical Financial Statements, except as otherwise specifically prescribed herein; provided, however, that if the Borrower notifies the Agent that the Borrower requests an amendment to any provision hereof to eliminate the effect of any change occurring after the Restatement Effective Date in GAAP or in the application thereof on the operation of such provision (or if the Agent notifies the Borrower that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith.

(b) Notwithstanding anything to the contrary herein, for purposes of determining compliance with any test or covenant contained in this Agreement with respect to any period during which any Specified Transaction or Specified Restructuring occurs, the Fixed Charge Coverage Ratio, the Total Net Leverage Ratio and the Senior Secured Net Leverage Ratio shall be calculated with respect to such period and such Specified Transaction or Specified Restructuring on a Pro Forma Basis.

(c) Where reference is made to “Holdings, the Borrower and its Restricted Subsidiaries, on a consolidated basis” or similar language, such consolidation shall not include any Subsidiaries of ~~the Borrower~~ Holdings other than Restricted Subsidiaries.

(d) Notwithstanding any other provision contained herein, (i) all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made, without giving effect to any election under the Financial Accounting Standards Board’s Accounting Standards Codification No. 825—Financial Instruments, or any successor thereto (including pursuant to the Accounting Standards Codification), to value any Debt of Holdings, the Borrower or any Subsidiary at “fair value” as defined therein and (ii) all leases and obligations under any leases of any Person that are or would be characterized as operating leases and/or operating lease obligations in accordance with GAAP as of December 31, 2016 (whether or not such operating leases and/or operating lease obligations were in effect on such date) shall continue to be accounted for as operating leases and/or operating lease obligations (and not as Capital Leases and/or Capital Lease Obligations) for purposes of this Agreement regardless of any change in GAAP following the date that would otherwise require such obligations to be recharacterized as Capital Leases and/or Capital Lease Obligations.

(e) For the avoidance of doubt, notwithstanding any classification under GAAP of any Person or business in respect of which a definitive agreement for the Disposition thereof has been entered into as discontinued operations, the Net Income of such Person or business shall not be excluded from the calculation of Net Income until such Disposition shall have been consummated.

1.3 Interpretive Provisions.

(a) The meanings of defined terms are equally applicable to the singular and plural forms of the defined terms.

(b) The words “hereof,” “herein,” “hereunder” and similar words refer to this Agreement as a whole and not to any particular provision of this Agreement; and Subsection, Section, Schedule and Exhibit references are to this Agreement unless otherwise specified.

(c) The term “documents” includes any and all instruments, documents, agreements, certificates, indentures, notices and other writings, however evidenced.

(i) The term “including” is not limiting and means “including without limitation.”

(ii) 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.”

(iii) The word “or” is not exclusive.

(iv) Any reference to any Person shall be constructed to include such Person’s successors or assigns (subject to any restrictions on assignment set forth herein) and, in the case of any Governmental Authority, any other Governmental Authority that shall have succeeded to any or all of the functions thereof.

(v) Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms.

(vi) The word “will” shall be construed to have the same meaning as the word “shall.”

(vii) 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.

(d) Unless otherwise expressly provided herein, (a) references to Organization Documents, Charter Documents, agreements (including the Loan Documents) and other contractual obligations shall be deemed to include all subsequent amendments, restatements, amendment and restatements, extensions, supplements and other modifications thereto, but only to the extent that such amendments, restatements, amendment and restatements, extensions, supplements and other modifications are permitted by this Agreement; and (b) references to any applicable Law shall include all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting such applicable Law.

(e) The captions and headings of this Agreement and other Loan Documents are for convenience of reference only and shall not affect the interpretation of this Agreement.

(f) This Agreement and other Loan Documents may use several different limitations, tests or measurements to regulate the same or similar matters. All such limitations, tests and measurements are cumulative and shall each be performed in accordance with their terms.

1.4 Classification of Loans and Borrowings. For purposes of this Agreement, Loans may be classified and referred to by Class (e.g., a “Revolving Loan”) or by Type (e.g., a “Term SOFR Loan”) or by Class and Type (e.g., a “Revolving Term SOFR Loan”). Borrowings also may be classified and referred to by Class (e.g., a “Revolving Borrowing”) or by Type (e.g., a “Term SOFR Borrowing”) or by Class and Type (e.g., a “Revolving Term SOFR Borrowing”).

1.5 [Reserved].

1.6 Rounding. Any financial ratios required to be maintained or complied with by the Borrower pursuant to this Agreement (or required to be satisfied in order for a specific action to be permitted under this Agreement) shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

1.7 Times of Day. Unless otherwise specified, all references herein to times of day shall be references to New York City (daylight or standard, as applicable).

1.8 Timing of Payment or Performance. When the payment of any obligation or the performance of any covenant, duty or obligation is stated to be due or performance required on a day which is not a Business Day, the date of such payment (other than as described in the definition of “Interest Period”) or performance shall extend to the immediately succeeding Business Day.

1.9 Currency Equivalents Generally.

(a) For purposes of any determination under any provision of this Agreement requiring the use of a current exchange rate, all amounts incurred or proposed to be incurred in currencies other than Dollars shall be translated into Dollars at currency exchange rates then in effect on the date of such determination; provided, however, that (x) for purposes of determining compliance with respect to the amount of any Debt, Investment, Disposition, Distribution or payment of Junior Debt 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 exchange occurring after the time such Debt or Investment is incurred or Disposition, Distribution of payment of Junior Debt is made, (y) for purposes of determining compliance with any Dollar-denominated restriction on the incurrence of Debt, if such Debt is incurred to Refinance other Debt denominated in a foreign currency, and such Refinancing would cause the applicable Dollar-denominated restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such Refinancing, such Dollar-denominated restriction shall be deemed not to have been exceeded so long as the principal amount of such Refinanced Debt does not exceed the principal amount of such Debt being Refinanced, except by an amount equal to the accrued interest and premium thereon plus other amounts paid and fees and expenses incurred in connection with such Refinancing plus an amount equal to any existing commitment unutilized and letters of credit undrawn thereunder and (z) for the avoidance of doubt, the foregoing provisions of this Section 1.9 shall otherwise apply to such Sections, including with respect to determining whether any Debt or Investment may be incurred or Disposition, Distribution or payment of Junior Debt may be made at any time under such Sections. For purposes of the Financial Covenant, amounts in currencies other than Dollars shall be translated into Dollars at the applicable exchange rates used in preparing the most recently delivered Section 6.2 Financials.

(b) Each provision of this Agreement shall be subject to such reasonable changes of construction as the Agent may from time to time specify with the Borrower’s consent (such consent not to be unreasonably withheld) to appropriately reflect a change in currency of any country and any relevant market conventions or practices relating to such change in currency.

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

1.11 Rates. The Agent does not warrant or accept responsibility for, and shall not have any liability with respect to (a) the continuation of, administration of, submission of, calculation of or any other matter related to Base Rate, Term SOFR, Daily Simple SOFR, or any component definition thereof or rates referred to in the definitions thereof, or any alternative, successor or replacement rate thereto (including any Benchmark Replacement), including whether the composition or characteristics of any such alternative, successor or replacement rate (including any Benchmark Replacement) will be similar to, or produce the same value or economic equivalence of, or have the same volume or liquidity as, Base Rate, Term SOFR, Daily Simple SOFR or any other Benchmark prior to its discontinuance or unavailability, or (b) the effect, implementation or composition of any Conforming Changes. The Agent and its affiliates or other related entities may engage in transactions that affect the calculation of Base Rate, Term SOFR, Daily Simple SOFR, any alternative, successor or replacement rate (including any Benchmark Replacement) or any relevant adjustments thereto, in each case, in a manner adverse to the Borrower. The Agent may select information sources or services in its reasonable discretion to ascertain Base Rate, Term SOFR, Daily Simple SOFR or any other Benchmark, in each case pursuant to the terms of this Agreement, and shall have no liability to the Borrower, any Lender or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service.

ARTICLE II

LOANS AND LETTERS OF CREDIT

2.1 Credit Facilities. Subject to all of the terms and conditions of this Agreement, (i) the Lenders agree to make Revolving Loans to the Borrower at any time and from time to time on or after the Restatement Effective Date and prior to the Termination Date, in an aggregate principal amount outstanding not in excess of the Maximum Revolver Amount, (ii) the Swingline Lender agrees to extend credit to the Borrower, at any time and from time to time prior to the Termination Date, in the form of Swingline Loans, in an aggregate principal amount at any time outstanding not in excess of the Swingline Sublimit, and (iii) the Letter of Credit Issuers agree to issue Letters of Credit on behalf of the Borrower, in an aggregate face amount at any time outstanding not in excess of the Letter of Credit Subfacility. The proceeds of the Revolving Loans and the Swingline Loans are to be used solely to finance ongoing working capital needs and for other general corporate purposes (including Permitted Acquisitions and other Permitted Investments, Permitted Distributions and the repayment or prepayment of Debt, in each case to the extent not prohibited pursuant to the terms hereof) of the Borrower and its Restricted Subsidiaries. Each Loan made pursuant to this Agreement shall be made in Dollars.

2.2 Revolving Loans. Subject to all of the terms and conditions of this Agreement, each Lender severally, but not jointly or jointly and severally, agrees, upon the Borrower's request from time to time on any Business Day during the period from the Restatement Effective Date to the Termination Date, to make Revolving Loans in Dollars to the Borrower in amounts not to exceed such Lender's Pro Rata Share of then-current Availability. The Lenders, however, in their unanimous discretion, may elect to make Revolving Loans or issue or arrange to have issued Letters of Credit in excess of the Borrowing Base on one or more occasions, but if they do so, neither the Agent nor the Lenders shall be deemed thereby to have changed the limits of the Borrowing Base or to be obligated to exceed such limits on any other occasion. If any such Borrowing would exceed Availability, the Lenders may refuse to make or may otherwise restrict the making of Revolving Loans as the Lenders determine until such excess has been eliminated, subject to the Agent's authority, in its sole discretion, to make Agent Advances pursuant to the terms of Section 2.4(g).

2.3 Letters of Credit.

(a) Agreement to Issue. Subject to all of the terms and conditions of this Agreement, the Letter of Credit Issuers agree to issue for the account of the Borrower or any Restricted Subsidiary of the Borrower one or more standby letters of credit denominated in Dollars (each, a “Letter of Credit” and, collectively, the “Letters of Credit”) and to amend, renew or extend Letters of Credit previously issued by such Letter of Credit Issuer (unless otherwise provided below); provided that the Borrower shall be the applicant, and be jointly and severally liable, with respect to any Letter of Credit issued for the account of a Restricted Subsidiary.

(b) Amounts; Outside Expiration Date. The Letter of Credit Issuers shall not have any obligation to issue any Letter of Credit at any time if (i) the maximum aggregate amount of the requested Letter of Credit for the term of such Letter of Credit (including any increases in amount referenced therein) is greater than the Unused Letter of Credit Subfacility at such time; (ii) the maximum undrawn amount of the requested Letter of Credit would exceed the then-current Availability; or (iii) such Letter of Credit has an expiration date later than 12 months after the date of issuance (subject to customary evergreen or automatic renewal provisions reasonably acceptable to such Letter of Credit Issuer, which may provide for renewal for additional period of up to 12 months); provided that in no event shall any Letter of Credit have an expiration date later than the date that is five (5) Business Days prior to the Stated Termination Date or such later date to the extent such Letter of Credit has been cash collateralized in an amount to be agreed with the applicable Letter of Credit Issuer or backstopped with another letter of credit for such period after the Termination Date in a manner mutually and reasonably agreed between the applicable Letter of Credit Issuer and the Borrower. Notwithstanding the foregoing, no Letter of Credit Issuer shall be required to issue any Letter of Credit if the aggregate maximum amount of all Letters of Credit issued by such Letter of Credit Issuer would exceed its L/C Commitment. With respect to any Letter of Credit which contains any “evergreen” or automatic renewal or extension provision, if such Letter of Credit permits the applicable Letter of Credit Issuer to prevent any extension by giving notice to the beneficiary thereof no later than a date (the “Non-Extension Notice Date”), once any such Letter of Credit has been issued, the Lenders shall be deemed to have authorized such Letter of Credit Issuer to permit extensions of such Letter of Credit to an expiry date not later than the date that is five (5) Business Days prior to the Stated Termination Date, unless the Agent shall have received written notice from the Required Lenders declining to consent to any such extension at least thirty (30) days prior to the Non-Extension Notice Date; provided that no Lender may decline to consent to any such extension if all of the requirements of this Section 2.3 are met and no Default or Event of Default has occurred and is continuing.

(c) Other Conditions. In addition to the conditions precedent contained in Article IX, the obligation of the Letter of Credit Issuers to issue any applicable Letter of Credit is subject to the following conditions precedent having been satisfied:

(i) the Borrower shall have delivered to the applicable Letter of Credit Issuer, at least three (3) Business Days (or such shorter period as the applicable Letter of Credit Issuer may agree) in advance of the proposed date of issuance of any Letter of Credit, an application in form and substance reasonably satisfactory to such Letter of Credit Issuer for the issuance of the Letter of Credit and such other documents as may be reasonably required pursuant to the terms thereof, and the form of the proposed Letter of Credit shall be reasonably satisfactory to the applicable Letter of Credit Issuer; ~~and~~

(ii) as of the date of issuance, no order, judgment or decree of any court, arbitrator or Governmental Authority shall purport by its terms to enjoin or restrain the applicable Letter of Credit Issuer from issuing letters of credit of the type and in the amount of the proposed Letter of Credit, or request that such Letter of Credit Issuer refrain from issuing the proposed Letter of Credit, and no Law applicable to the applicable Letter of Credit Issuer and no request or directive (whether or not having the force of Law) from any Governmental Authority with jurisdiction over such Letter of Credit Issuer shall prohibit, or request that the proposed Letter of Credit Issuer refrain from, the issuance of letters of credit generally or the issuance of such Letters of Credit, or any such order, judgment or decree, or Law shall impose upon such Letter of Credit Issuer with respect to such Letter of Credit any restriction, reserve or capital or liquidity requirement (for which such Letter of Credit Issuer is not otherwise compensated hereunder) not in effect on the Amendment No. 4 Effective Date, or shall impose upon such Letter of Credit Issuer any unreimbursed loss, cost or expense that was not applicable on the Amendment No. 4 Effective Date and that such Letter of Credit Issuer in good faith deems material to it; and

(iii) as of the date of issuance, the issuance of such Letter of Credit would not violate any policy or policies of such Letter of Credit Issuer applicable to letters of credit generally.

(d) Issuance of Letters of Credit.

(i) Request for Issuance. The Borrower shall deliver an application signed by a Responsible Officer of the Borrower in form and substance reasonably satisfactory to the Letter of Credit Issuer to the Agent and the applicable Letter of Credit Issuer of a requested Letter of Credit at least three (3) Business Days (or such shorter period as the applicable Letter of Credit Issuer may agree) prior to the proposed issuance date. Such application shall specify the original face amount of the Letter of Credit requested, the Business Day of issuance of such requested Letter of Credit, whether such Letter of Credit may be drawn in a single or in partial draws, the Business Day on which the requested Letter of Credit is to expire, the purpose for which such Letter of Credit is to be issued, and the beneficiary of the requested Letter of Credit. The Borrower shall attach to such application the proposed draw conditions to be included in the form of the Letter of Credit.

(ii) Responsibilities of the Agent: Issuance. As of the Business Day immediately preceding the requested issuance date of each Letter of Credit, the Agent shall determine the amount of the Unused Letter of Credit Subfacility and the then-current Availability as of such date. If (A) the aggregate amount of the requested Letter of Credit for the term of such Letter of Credit (including any increases in amount referenced therein) is less than the Unused Letter of Credit Subfacility and (B) the amount of such requested Letter of Credit would not exceed the then-current Availability, the Agent shall inform the applicable Letter of Credit Issuer that it may issue the requested Letter of Credit on the requested issuance date so long as the other conditions to such issuance set forth in this Agreement are met.

(iii) No Extensions or Amendment. Except in the case of Letters of Credit subject to evergreen or automatic renewal provisions, no Letter of Credit Issuer shall be required to extend, renew or amend any Letter of Credit issued pursuant hereto unless the requirements of this Section 2.3 are met as though a new Letter of Credit were being requested and issued.

(e) Payments Pursuant to Letters of Credit. The Borrower hereby agrees to reimburse the applicable Letter of Credit Issuer in Dollars with respect to any drawing or disbursement by such Letter of Credit Issuer under any Letter of Credit, by making payment, whether with its own funds, with the proceeds of Revolving Loans or any other source, to the Agent for the account of the applicable Letter of Credit Issuer in immediately available funds, (with respect to each such amount so paid under a Letter of Credit until reimbursed, an “Unpaid Drawing”) (i) within one Business Day of the date of such drawing or disbursement if the applicable Letter of Credit Issuer provides notice to the Borrower of such drawing or disbursement prior to 11:00 a.m. (New York City time) on such prior Business Day after the date of such drawing or disbursement or (ii) if such notice is received after such time, on the next Business Day following the date of receipt of such notice (such required date for reimbursement under clause (i) or (ii), as applicable (the “Required Reimbursement Date”)), with interest on the amount so paid or disbursed by such applicable Letter of Credit Issuer, from and including the date of such drawing or disbursement to but excluding the Required Reimbursement Date, at the per annum rate for each day equal to the applicable rate described in Section 3.1(a)(i); provided that, notwithstanding anything contained in this Agreement to the contrary, with respect to any Letter of Credit, unless the Borrower shall have notified the Agent and the applicable Letter of Credit Issuer prior to 11:00 a.m. (New York City time) on the Required Reimbursement Date that the Borrower intends to reimburse such Letter of Credit Issuer for the amount of such drawing or disbursement with funds other than the proceeds of Revolving Loans, each drawing under any Letter of Credit shall constitute a request by the Borrower to the Agent for a Borrowing of a Base Rate Loan in the amount of such drawing and, to the extent such Base Rate Loan is made, the Borrower’s obligation to make such payment shall be discharged and replaced by the resulting Base Rate Loan.

(f) Indemnification; Exoneration; Power of Attorney.

(i) Indemnification. In addition to amounts payable as elsewhere provided in this Section 2.3, the Borrower agrees to protect, indemnify, pay and save the applicable Letter of Credit Issuer harmless from and against any and all claims, demands, liabilities, damages, losses, costs, charges and reasonable and documented or invoiced out-of-pocket expenses (including reasonable Attorney Costs) which such Letter of Credit Issuer may incur or be subject to as a consequence, direct or indirect, of the issuance of any Letter of Credit, except that the foregoing indemnity shall not apply to such Letter of Credit Issuer to the extent of acts or omissions arises out of gross negligence, bad faith or willful misconduct of such Letter of Credit Issuer (as determined by a court of competent jurisdiction in a final and non-appealable decision). The Borrower's obligations under this Section shall survive payment of all other Obligations and termination of this Agreement.

(ii) Assumption of Risk by the Borrower. As among the Borrower, the Revolving Credit Lenders, the applicable Letter of Credit Issuer and the Agent, the Borrower assumes all risks of the acts and omissions of, or misuse of any of the Letters of Credit by, the respective beneficiaries of such Letters of Credit. In furtherance and not in limitation of the foregoing, the Lenders, the applicable Letter of Credit Issuer and the Agent shall not be responsible for (except in the case of any such Person (but not with respect to any other Person), to the extent arising out of the gross negligence, bad faith or willful misconduct of such Person (as determined by a court of competent jurisdiction in a final and non-appealable decision) in connection with any of the following): (A) the form, validity, sufficiency, accuracy, genuineness or legal effect of any document submitted by any Person in connection with the application for and issuance of and presentation of drafts with respect to any of the Letters of Credit, even if it should prove to be in any or all respects invalid, insufficient, inaccurate, fraudulent or forged; (B) the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign any 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; (C) the failure of the beneficiary of any Letter of Credit to comply duly with conditions set forth in any separate agreement with the Borrower that are required in order to draw upon such Letter of Credit; (D) errors, omissions, interruptions, or delays in transmission or delivery of any messages, by mail, cable, telegraph, telex or otherwise, whether or not they be in cipher; (E) errors in interpretation of technical terms; (F) any loss or delay in the transmission or otherwise of any document required in order to make a drawing under any Letter of Credit or of the proceeds thereof; (G) the misapplication by the beneficiary of any Letter of Credit of the proceeds of any drawing under such Letter of Credit; (H) any consequences arising from causes beyond the control of the Revolving Credit Lenders, the applicable Letter of Credit Issuer or the Agent, including any act or omission, whether rightful or wrongful, of any present or future de jure or de facto Governmental Authority; or (I) the applicable Letter of Credit Issuer's honor of a draw for which the draw or any certificate fails to comply in any material respect with the terms of the Letter of Credit; provided that this assumption is not intended to, and shall not, preclude the Borrower's pursuing such rights and remedies as it may have against the beneficiary or transferee at Law or under any other agreement. None of the foregoing shall affect, impair or prevent the vesting of any rights or powers of the Agent or any Revolving Credit Lender under this Section 2.3(f).

(iii) Exoneration. Without limiting the foregoing, no action or omission whatsoever by the Agent, a Letter of Credit Issuer or any Revolving Credit Lender shall result in any liability of the Agent, such Letter of Credit Issuer or any Revolving Credit Lender to the Borrower (except as provided in the immediately succeeding clause (iv)), or relieve the Borrower of any of its obligations hereunder to any such Person.

(iv) Rights Against Letter of Credit Issuer. Nothing contained in this Agreement is intended to limit the Borrower's rights or claims, if any, under Law or otherwise, against any Letter of Credit Issuer which arise as a result of the letter of credit application and related documents executed by such Letter of Credit Issuer or which arise as a result of such Letter of Credit Issuer's willful misconduct, gross negligence or bad faith (as determined by a court of competent jurisdiction in a final and non-appealable decision).

(v) Account Party. The Borrower hereby authorizes and directs any Letter of Credit Issuer to name the Borrower as the "Account Party" in the Letters of Credit and to deliver to the Agent all instruments, documents and other writings and property received by the applicable Letter of Credit Issuer pursuant to the Letters of Credit, and to accept and rely upon the Agent's instructions and agreements with respect to all matters arising in connection with the Letters of Credit or the applications therefor.

(g) Supporting Letter of Credit. If, notwithstanding the provisions of Section 2.3(h) and Section 11.1, any Letter of Credit is outstanding upon the termination of this Agreement, then upon such termination the Borrower shall (i) deposit with the Agent, for the ratable benefit of the Agent, the applicable Letter of Credit Issuer and the Revolving Credit Lenders, with respect to each Letter of Credit then outstanding, a standby letter of credit (a "Supporting Letter of Credit") in form and substance reasonably satisfactory to the Agent, issued by an issuer reasonably satisfactory to the Agent, in an amount equal to 103% (or such lesser amount as the Agent and such Letter of Credit Issuer shall agree but not less than 100%) of the sum of the greatest amount for which such Letter of Credit may be drawn plus any fees and expenses then due and owing with such Letter of Credit, under which Supporting Letter of Credit the Agent is entitled to draw amounts necessary to reimburse the Agent, such Letter of Credit Issuer and the Revolving Credit Lenders for payments to be made by the Agent, such Letter of Credit Issuer and such Revolving Credit Lenders under such Letter of Credit and any fees and expenses then due and owing or to become due and owing with such Letter of Credit, or (ii) cash collateralize each Letter of Credit then outstanding, in an amount equal to 103% (or such lesser amount as the Agent and such Letter of Credit Issuer shall agree) of the sum of the greatest amount for which such Letter of Credit may be drawn plus any fees and expenses then due and owing with such Letter of Credit, in a manner reasonably satisfactory to the Agent. Such Supporting Letter of Credit or cash collateral shall be held by the Agent, for the ratable benefit of the Agent, the applicable Letter of Credit Issuer and the Revolving Credit Lenders, as security for, and to provide for the payment of, the aggregate undrawn amount of such Letters of Credit remaining outstanding.

(h) Addition of a Letter of Credit Issuer. A Lender (or any of its Subsidiaries or affiliates) may become an additional Letter of Credit Issuer hereunder pursuant to a written agreement among the Borrower, the Agent and such Lender. The Agent shall notify the Revolving Credit Lenders of any such additional Letter of Credit Issuer.

2.4 Loan Administration.

(a) Procedure for Borrowing.

(i) Each Borrowing by the Borrower shall be made upon the Borrower's written notice delivered to the Agent in the form of a notice of borrowing substantially in the form of Exhibit B ("Notice of Borrowing"), which must be received by the Agent prior to (w) 12:00 noon (New York City time) three (3) Business Days prior to the requested Funding Date, in the case of Term SOFR Loans, (x) 1:00 p.m. (New York City time) one (1) Business Day prior to the requested Funding Date, in the case of Base Rate Loans on any Funding Date, (y) 11:00 a.m. (New York City time) five (5) Business Days prior to the requested Funding Date, in the case of Daily Simple SOFR Loans and (z) 10:00 a.m. (New York City time) on the Funding Date, in the case of Swingline Loans, specifying:

(A) whether such Borrowing is to be a Term SOFR Borrowing or a Base Rate Borrowing (and if not specified, it shall be deemed a request for a Base Rate Borrowing);

(B) the amount of the Borrowing, which must equal or exceed \$1,000,000 (and increments of \$1,000,000 in excess of such amount);

(C) the requested Funding Date, which must be a Business Day; and

(D) in the case of a request for Term SOFR Loans, the duration of the initial Interest Period to be applicable thereto (and if not specified, it shall be deemed a request for an Interest Period of one month).

(ii) At the election of the Agent or the Required Lenders, the Borrower shall have no right to request a Term SOFR Loan while an Event of Default has occurred and is continuing.

(b) Reliance upon Authority. On or prior to the Closing Date, the Borrower shall deliver to the Agent a notice setting forth the account of the Borrower (such account, together with any replacement account, the "Designated Account") to which the Agent is authorized to transfer the proceeds of the Loans requested hereunder unless otherwise directed in writing by the Borrower. The Borrower may designate a replacement account from time to time by written notice to the Agent. The Agent is entitled to rely conclusively on any Person's request for Revolving Loans on behalf of the Borrower, so long as the proceeds thereof are to be transferred to the Designated Account or to another account designated by the Borrower in writing. The Agent has no duty to verify the identity of any individual representing himself or herself as a person authorized by the Borrower to make such requests on its behalf.

(c) No Liability. The Agent shall not incur any liability to the Borrower as a result of acting upon any notice referred to in Section 2.4(a) or (b), which the Agent believes in good faith to have been given by an officer or other person duly authorized by the Borrower to request Loans on its behalf. The crediting of Loans to the Designated Account conclusively establishes the obligation of the Borrower to repay such Loans as provided herein.

(d) Borrower's Election. Promptly after receipt of a Notice of Borrowing for a Revolving Base Rate Loan, the Borrower shall elect to have the terms of Section 2.4(e) or the terms of Section 2.4(f) apply to such requested Borrowing. If the condition in Section 2.4(f)(i)(C) is not satisfied, the terms of Section 2.4(e) shall apply to the requested Borrowing.

(e) Making of Revolving Loans. If the Borrower elects to have the terms of this Section 2.4(e) apply to a requested Revolving Credit Borrowing of a Base Rate Loan or if the Agent receives a Notice of Borrowing for a Term SOFR Loan, then, promptly after receipt of the Notice of Borrowing with respect to such Revolving Base Rate Loan or Revolving Term SOFR Loan, the Agent shall notify the Revolving Credit Lenders by telecopy, telephone or e-mail of the requested Borrowing. Each Revolving Credit Lender shall transfer its Pro Rata Share of the requested Borrowing to the Agent in immediately available funds, to the account from time to time designated by the Agent, not later than 12:00 noon (New York City time) on the applicable Funding Date. After the Agent's receipt of all such amounts from the Lenders, the Agent shall make the aggregate of such amounts available to the Borrower on the applicable Funding Date by transferring same day funds to the account(s) designated by the Borrower; provided, however, that the amount of Revolving Loans so made on any date shall not exceed the then-current Availability on such date.

(f) Making of Swingline Loans.

(i) If the Borrower elects to have the terms of this Section 2.4(f) apply to a requested Revolving Credit Borrowing of a Base Rate Loan, the Swingline Lender shall make a Revolving Loan in the amount of that Borrowing available to the Borrower on the applicable Funding Date by transferring same day funds to the Designated Account or such other account(s) as may be designated by the Borrower in writing. Each Revolving Loan made solely by the Swingline Lender pursuant to this Section 2.4(f) is herein referred to as a “Swingline Loan,” and such Revolving Loans are collectively referred to as the “Swingline Loans.” Each Swingline Loan shall be subject to all the terms and conditions applicable to other Revolving Loans except that all payments thereon (including interest) shall be payable to the Swingline Lender solely for its own account. The Agent shall not request the Swingline Lender to make any Swingline Loan if (A) the Agent has received written notice from any Lender that one or more of the applicable conditions precedent set forth in Article IX will not be satisfied on the requested Funding Date for the applicable Borrowing, (B) the requested Borrowing would exceed then-current Availability on that Funding Date (as reasonably determined by the Agent), or (C) such Swingline Loan would cause the aggregate outstanding principal balance of all Swingline Loans to exceed ~~\$15,000,000~~ \$5,000,000 (the “Swingline Sublimit”).

(ii) The Swingline Loans shall be secured by the Collateral Agent’s Liens in and to the Collateral and shall constitute Base Rate Loans and Obligations hereunder.

(g) Agent Advances.

(i) Subject to the limitations set forth below, the Agent is authorized by the Borrower and the Revolving Credit Lenders, from time to time in the Agent’s sole discretion, upon notice to the Revolving Credit Lenders, (A) after the occurrence of a Default or an Event of Default, or (B) at any time that any of the other conditions precedent set forth in Article IX have not been satisfied, to make Base Rate Loans to the Borrower on behalf of the Lenders in an aggregate principal amount outstanding at any time not to exceed 10% of the Borrowing Base (provided that the making of any such Loan does not cause the Aggregate Revolver Outstandings to exceed the Maximum Revolver Amount) which the Agent, in its good faith judgment, deems necessary or desirable (1) to preserve or protect the Collateral, or any portion thereof, (2) to enhance the likelihood of, or maximize the amount of, repayment of the Loans and other Obligations (including through Base Rate Loans for the purpose of enabling the Borrower and its Subsidiaries to meet their payroll and associated Tax obligations), and/or (3) to pay any other amount chargeable to the Borrower pursuant to the terms of this Agreement, including costs, fees and expenses as described in Section 14.7 (any of such advances are herein referred to as “Agent Advances”); provided, that the Required Lenders may at any time revoke the Agent’s authorization to make Agent Advances. Any such revocation must be in writing and shall become effective prospectively upon the Agent’s receipt thereof.

(ii) The Agent Advances shall be secured by the Collateral Agent’s Liens in and to the Collateral and shall constitute Base Rate Loans and Obligations hereunder.

(h) Notice Irrevocable. Any Notice of Borrowing made pursuant to Section 2.4(a), shall be irrevocable. The Borrower shall be bound to borrow the funds requested therein in accordance therewith.

2.5 Reserves. The Agent may establish Reserves or change (including by decreasing the amount of) any of the Reserves, in the exercise of its Reasonable Credit Judgment; provided that such Reserves shall not be established or changed except upon not less than five (5) Business Days' written notice to the Borrower (unless an Event of Default exists and is continuing in which event such notice (which, in such event, may be oral) may be given at any time prior to the establishment or change and shall not be subject to the five (5) Business Day notice requirement); provided, further, that no such prior notice shall be required for any changes to any Reserves resulting solely by virtue of mathematical calculations of the amount of the Reserves in accordance with the methodology of calculation previously utilized; provided, further, that, the Borrower may not obtain any new Loans hereunder during the period after receipt of such notice and prior to the expiration of such five (5) Business Day notice period to the extent such new Loans would cause the aggregate amount of all outstanding Loans to exceed the then-current Availability after giving effect to such proposed Reserve. The Agent will be available during such period to discuss any such proposed Reserve or change with the Borrower and without limiting the right of the Agent to establish or change such Reserves in the Agent's Reasonable Credit Judgment, the Borrower may take such action as may be required so that the event, condition or matter that is the basis for such Reserve no longer exists, in a manner and to the extent reasonably satisfactory to the Agent. The amount of any Reserve established by the Agent pursuant to the first sentence of this Section 2.5 shall have a reasonable relationship as determined by the Agent in its Reasonable Credit Judgment to the event, condition or other matter that is the basis for the Reserve. In the event that the Agent has determined to establish or change a Reserve pursuant to the first sentence of this Section 2.5 and the Reserve amount to be so established or as modified is inconsistent with the Reserve amount determined by the Agent, then the greater Reserve amount so determined shall apply. Notwithstanding anything herein to the contrary, a Reserve shall not be established to the extent that such Reserve would be duplicative of any specific item excluded as ineligible in the definition of "Eligible Account" ~~or~~, "Eligible Unbilled Account" or "Eligible Power Generation Equipment", or of any then-existing Reserve. The establishment of any Reserve with respect to any obligation, charge, liability, debt or otherwise shall in no event grant any rights or be deemed to have granted any rights in such reserved amount to the holder of such obligation, charge, liability or debt or any other Person (except as explicitly set forth hereunder), but shall solely be viewed as amounts reserved to protect the interests of the Secured Parties hereunder and under the other Loan Documents.

2.6 Incremental Credit Extension.

(a) The Borrower may at any time or from time to time after the Restatement Effective Date, by written notice delivered to the Agent, request one or more increases in the amount under any Class of Revolving Credit Commitments (each such increase, a "Revolving Credit Commitment Increase").

(b) Each Revolving Credit Commitment Increase shall be in an aggregate principal amount that is not less than \$5,000,000 (provided that such amount may be less than \$5,000,000 if such amount represents all remaining availability under the limit set forth below) (and in minimum increments of \$5,000,000 in excess thereof), and the aggregate amount of Revolving Credit Commitment Increases (after giving Pro Forma Effect thereto and the use of the proceeds thereof) incurred pursuant to this Section 2.6(b) ~~plus the aggregate principal amount of Revolving Credit Commitments hereunder~~ after the Amendment No. 4 Effective Date shall not exceed ~~\$325,000,000~~ the Incremental Amount.

(c) (i) The Revolving Credit Commitment Increases shall be treated the same as the Revolving Credit Commitments (except that the maturity date thereof shall be no earlier than the initial Stated Termination Date for the Revolving Credit Facility) and shall be considered to be part of the Revolving Credit Commitments (it being understood that, if required to consummate a Revolving Credit Commitment Increase, the interest rate margins, rate floors and undrawn commitment fees on the Revolving Credit Commitments may be increased and additional upfront or similar fees may be payable to the lenders providing the Revolving Credit Commitment Increase without any requirement to pay such fees to any then-existing Lenders).

(ii) The Revolving Credit Commitment Increases may be in the form of a separate “first-in, last-out” or “last-out” tranche (the “FILO Tranche”) with interest rate margins, rate floors, upfront fees, funding discounts, advance rates, premiums, unused fees and original issue discounts to be agreed between the Borrower and the applicable Lenders providing such Revolving Credit Commitment Increases, and with other terms reasonably satisfactory to the Agent (it being understood to the extent that any financial maintenance covenant is added for the benefit of any FILO Tranche, no consent shall be required from the Agent or any Lender to the extent that such financial maintenance covenant is also added for the benefit of the Revolving Credit Facility) and to be agreed upon (which, for the avoidance of doubt, shall not require any adjustment to the Applicable Margin of other Loans pursuant to clause (i), above) among the Borrower and the Lenders providing the FILO Tranche so long as (1) any loans and related obligations in respect of the FILO Tranche shall not be guaranteed by any Person other than the Guarantors and shall rank equal (or, at the option of the Borrower, junior) in right of priority to the Collateral Agent’s Liens; (2) as between (x) the Revolving Credit Facility (other than the FILO Tranche) and (y) the FILO Tranche, all proceeds from the liquidation or other realization of the Collateral shall be applied, first to obligations owing under, or with respect to, the Revolving Credit Facility (other than the FILO Tranche) and second to the FILO Tranche; (3) no Borrower may prepay Loans under the FILO Tranche or terminate or reduce the commitments in respect thereof at any time that other Revolving Loans (including Swingline Loans) and/or Unpaid Drawings (unless cash collateralized or otherwise provided for in a manner reasonably satisfactory to the Agent) are outstanding; (4) the Required Lenders (calculated as including the FILO Tranche) shall, subject to the terms of the Intercreditor Agreement, control exercise of remedies in respect of the Collateral; and (5) no changes affecting the priority status of the Revolving Credit Facility (other than the FILO Tranche) vis-à-vis the FILO Tranche may be made without the consent of each of the Lenders under the Revolving Credit Facility (other than the FILO Tranche).

(d) Each notice from the Borrower pursuant to this Section 2.6 shall be given in writing and shall set forth the requested amount and proposed terms of the relevant Revolving Credit Commitment Increase. Revolving Credit Commitment Increases may be provided subject to the prior written consent of the Borrower, by any existing Lender (it being understood that no existing Lender will have an obligation to make a portion of any Revolving Credit Commitment Increase) or by any other bank, financial institution, other institutional lender or other investor (any such other bank, financial institution or other investor being called an “Additional Lender”); provided that (i) each existing Lender shall be offered the opportunity to participate in the relevant Revolving Credit Commitment Increase (other than in the case of a FILO Tranche) on a pro rata basis based on such Lender’s Revolving Credit Commitment prior to such Revolving Credit Commitment Increase and (ii) the Agent, the Swingline Lender and each Letter of Credit Issuer shall have consented (in each case, not to be unreasonably withheld or delayed) to such Lender’s or Additional Lender’s providing such Revolving Credit Commitment Increase if such consent would be required under Section 12.2 for an assignment of Loans and/or Commitments to such Lender or Additional Lender.

(e) Commitments in respect of a Revolving Credit Commitment Increase, including under a FILO Tranche, shall become Commitments under this Agreement pursuant to an amendment (an “Incremental Agreement”) to this Agreement and, as appropriate, the other Loan Documents, executed by the Borrower, each Lender agreeing to provide such Commitment, if any, each Additional Lender, if any, and the Agent. The Incremental Agreement may, subject to Section 2.6(c), without the consent of any other Lenders, effect such amendments to this Agreement and the other Loan Documents as may be necessary or advisable in the reasonable opinion of the Borrower and the Agent to effect the provisions of this Section 2.6. The effectiveness of any Incremental Agreement shall be subject to the satisfaction on the date thereof (each, an “Incremental Facility Closing Date”) and the occurrence of any extension of credit thereunder shall be subject to the satisfaction of the conditions set forth in Section 9.3(a) (provided that, in connection with a Permitted Acquisition or other similar Investment permitted hereunder, compliance with clause (ii) thereof shall instead be limited to compliance with no Event of Default under Section 10.1(a), (c), (e), (f) and (g) having occurred and being in continuance), and such other conditions as the parties thereto shall agree. The Borrower will use the proceeds of the loans under any Revolving Credit Commitment Increase for any purpose not prohibited by this Agreement.

(f) (i) Except as set forth under clause (d) above, the Borrower shall not be obligated to offer any existing Lender the opportunity to provide any Revolving Credit Commitment Increase.

(ii) Upon each increase in the Revolving Credit Commitments pursuant to this Section 2.6, other than in connection with a FILO Tranche, each Revolving Credit Lender immediately prior to such increase will automatically and without further act be deemed to have assigned to each Lender providing a portion of the Revolving Credit Commitment Increase (each, an “Incremental Revolving Credit Commitment Increase Lender”) in respect of such increase, and each such Incremental Revolving Credit Commitment Increase Lender will automatically and without further act be deemed to have assumed, a portion of such Lender’s participations hereunder in outstanding Letters of Credit and Swingline Loans such that, after giving effect to each such deemed assignment and assumption of participations, the percentage of the aggregate outstanding (A) participations hereunder in Letters of Credit and (B) participations hereunder in Swingline Loans held by each Revolving Credit Lender (including each such Incremental Revolving Credit Commitment Increase Lender) will equal the percentage of the aggregate Revolving Credit Commitments represented by such Lender’s Revolving Credit Commitment. If, on the date of such increase, there are any Revolving Loans outstanding, such Revolving Loans shall on or prior to the effectiveness of such Revolving Credit Commitment Increase be prepaid from the proceeds of additional Revolving Loans made hereunder (reflecting such increase in Revolving Credit Commitments), which prepayment shall be accompanied by accrued interest on the Revolving Loans being prepaid and any costs incurred by any Lender in accordance with Section 5.4. The Agent and the Lenders hereby agree that the minimum borrowing, pro rata borrowing and pro rata payment requirements contained elsewhere in this Agreement shall not apply to the transactions effected pursuant to the immediately preceding sentence or pursuant to a FILO Tranche.

(g) This Section 2.6 shall supersede any provisions in Section 2.4(e) or 12.1 to the contrary. For the avoidance of doubt, any provisions of this Section 2.6 may be amended with the consent of the Required Lenders; provided no such amendment shall require any Lender to provide any Revolving Credit Commitment Increase without such Lender’s consent.

2.7 Extensions of Revolving Loans and Revolving Credit Commitments.

(a) The Borrower may at any time and from time to time request that all or a portion of the Revolving Credit Commitments of any Class and/or the Extended Revolving Credit Commitments of any Class (and, in each case, including any previously extended Revolving Credit Commitments), existing at the time of such request (each, an “Existing Revolving Credit Commitment”) and any related revolving credit loans under any such facility, “Existing Revolving Loans”; each Existing Revolving Credit Commitment and related Existing Revolving Loans together being referred to as an “Existing Revolving Credit Class”) be converted or exchanged to extend the termination date thereof and the scheduled maturity date(s) of any payment of principal with respect to all or a portion of any principal amount of Existing Revolving Loans related to such Existing Revolving Credit Commitments (any such Existing Revolving Credit Commitments which have been so extended, “Extended Revolving Credit Commitments” and any related revolving credit loans, “Extended Revolving Loans”) and to provide for other terms consistent with this Section 2.7. Prior to entering into any Extension Agreement with respect to any Extended Revolving Credit Commitments, the Borrower shall provide written notice to the Agent (who shall provide a copy of such notice to each of the Lenders of the applicable Class of Existing Revolving Credit Commitments, with such request offered equally to all Lenders of such Class) (an “Extension Request”) setting forth the proposed terms of the Extended Revolving Credit Commitments to be established thereunder, which terms shall be similar to those applicable to the Existing Revolving Credit Commitments from which they are to be extended (the “Specified Existing Revolving Credit Commitment Class”) except that (w) all or any of the final maturity dates of such Extended Revolving Credit Commitments may be delayed to later dates than the final maturity dates of the Existing Revolving Credit Commitments of the Specified Existing Revolving Credit Commitment Class, (x)(A) the interest rates, interest margins, rate floors, upfront fees, funding discounts, original issue discounts and prepayment premiums with respect to the Extended Revolving Credit Commitments may be different than those for the Existing Revolving Credit Commitments of the Specified Existing Revolving Credit Commitment Class and/or (B) additional fees and/or premiums may be payable to the Lenders providing such Extended Revolving Credit Commitments in addition to or in lieu of any of the items contemplated by the preceding clause (A) and (y)(1) the undrawn revolving credit commitment fee rates with respect to the Extended Revolving Credit Commitments may be different than those for the Specified Existing Revolving Credit Commitment Class and (2) the Extension Agreement may provide for other covenants and terms that apply to any period after the Termination Date; provided that notwithstanding anything to the contrary in this Section 2.7, or otherwise, (I) the borrowing and repayment (other than in connection with a permanent repayment and termination of commitments) of the Extended Revolving Loans under any Extended Revolving Credit Commitments shall be made on a pro rata basis with any borrowings and repayments of the Existing Revolving Loans of the Specified Existing Revolving Credit Commitment Class (the mechanics for which may be implemented through the applicable Extension Agreement and may include technical changes related to the borrowing and repayment procedures of the Specified Existing Revolving Credit Commitment Class), (II) assignments and participations of Extended Revolving Credit Commitments and Extended Revolving Loans shall be governed by the assignment and participation provisions set forth in Section 12.2 and (III) subject to the applicable limitations set forth in Section 4.4(a) and (b), permanent repayments of Extended Revolving Loans (and corresponding permanent reduction in the related Extended Revolving Credit Commitments) shall be permitted as may be agreed between the Borrower and the Lenders thereof. No Lender shall have any obligation to agree to have any of its Loans or Revolving Credit Commitments of any Existing Revolving Credit Class converted or exchanged into Extended Revolving Loans or Extended Revolving Credit Commitments pursuant to any Extension Request. Any Extended Revolving Credit Commitments of any Extension Series shall constitute a separate Class of revolving credit commitments from Existing Revolving Credit Commitments of the Specified Existing Revolving Credit Commitment Class and from any other Existing Revolving Credit Commitments (together with any other Extended Revolving Credit Commitments so established on such date).

(b) The Borrower shall provide the applicable Extension Request to the Agent at least ten (10) Business Days (or such shorter period as the Agent may determine in its sole discretion) prior to the date on which Lenders under the Existing Revolving Credit Class are requested to respond, and shall agree to such procedures, if any, as may be established by, or acceptable to, the Agent, in each case acting reasonably, to accomplish the purpose of this Section 2.7. Any Lender (an “Extending Lender”) wishing to have all or a portion of its Revolving Credit Commitments (or any earlier Extended Revolving Credit Commitments) of an Existing Revolving Credit Class subject to such Extension Request converted or exchanged into Extended Revolving Credit Commitments shall notify the Agent (an “Extension Election”) on or prior to the date specified in such Extension Request of the amount of its Revolving Credit Commitments (and/or any earlier-extended Extended Revolving Credit Commitments) which it has elected to convert or exchange into Extended Revolving Credit Commitments (subject to any minimum denomination requirements imposed by the Agent). In the event that the aggregate amount of Revolving Credit Commitments (and any earlier-extended Extended Revolving Credit Commitments) subject to Extension Elections exceeds the amount of Extended Revolving Credit Commitments requested pursuant to the Extension Request, Revolving Credit Commitments, or earlier-extended Extended Revolving Credit Commitments, as applicable, subject to Extension Elections shall be converted to or exchanged to Extended Revolving Credit Commitments on a pro rata basis (subject to such rounding requirements as may be established by the Agent) based on the amount of Revolving Credit Commitments and earlier-extended Extended Revolving Credit Commitments included in each such Extension Election or as may be otherwise agreed to in the applicable Extension Agreement. Notwithstanding the conversion of any Existing Revolving Credit Commitment into an Extended Revolving Credit Commitment, unless expressly agreed by the holders of each affected Existing Revolving Credit Commitment of the Specified Existing Revolving Credit Commitment Class, such Extended Revolving Credit Commitment shall not be treated more favorably than all Existing Revolving Credit Commitments of the Specified Existing Revolving Credit Commitment Class for purposes of the obligations of a Revolving Credit Lender in respect of Swingline Loans under Section 2.4 and Letters of Credit under Section 2.3, except that the applicable Extension Agreement may provide that the maturity date for the Swingline Loans and/or the last day for issuing Letters of Credit may be extended and the related obligations to make Swingline Loans and issue Letters of Credit may be continued (pursuant to mechanics to be specified in the applicable Extension Agreement) so long as the applicable Swingline Lender and/or the applicable Letter of Credit Issuer have consented to such extensions (it being understood that no consent of any other Lender shall be required in connection with any such extension).

(c) Extended Revolving Credit Commitments shall be established pursuant to an amendment (an “Extension Agreement”) to this Agreement (which, except to the extent expressly contemplated by the second sentence of this Section 2.7(c) and notwithstanding anything to the contrary set forth in Section 12.1, shall not require the consent of any Lender other than the Extending Lenders with respect to the Extended Revolving Credit Commitments established thereby) executed by Holdings, the Obligors, the Agent and the Extending Lenders. In connection with any Extension Agreement, the Borrower shall deliver an opinion of counsel reasonably acceptable to the Agent (i) as to the enforceability of such Extension Agreement, this Agreement as amended thereby, and such of the other Loan Documents (if any) as may be amended thereby (in the case of such other Loan Documents as contemplated by the immediately preceding sentence) and covering customary matters and (ii) to the effect that such Extension Agreement, including the Extended Revolving Credit Commitments provided for therein, does not breach or result in a default under the provisions of Section 12.1 of this Agreement.

(d) Notwithstanding anything to the contrary contained in this Agreement, on any date on which any Class of Existing Revolving Credit Commitments is converted or exchanged to extend the related scheduled maturity date(s) in accordance with Section 2.7(a) above (an “Extension Date”), in the case of the Existing Revolving Credit Commitments of each Extending Lender under any Specified Existing Revolving Credit Commitment Class, the aggregate principal amount of such Existing Revolving Credit Commitments shall be deemed reduced by an amount equal to the aggregate principal amount of Extended Revolving Credit Commitments so converted or exchanged by such Lender on such date, and such Extended Revolving Credit Commitments shall be established as a separate Class of revolving credit commitments from the Specified Existing Revolving Credit Commitment Class and from any other Existing Revolving Credit Commitments (together with any other Extended Revolving Credit Commitments so established on such date) and if, on any Extension Date, any Existing Revolving Loans of any Extending Lender are outstanding under the Specified Existing Revolving Credit Commitment Class, such Existing Revolving Loans (and any related participations) shall be deemed to be converted or exchanged to Extended Revolving Loans (and related participations) of the applicable Class in the same proportion as such Extending Lender’s Specified Existing Revolving Credit Commitments Class to Extended Revolving Credit Commitments of such Class.

(e) In the event that the Agent determines in its sole discretion that the allocation of the Extended Revolving Credit Commitments of a given Extension Series, in each case to a given Lender was incorrectly determined as a result of manifest administrative error in the receipt and processing of an Extension Election timely submitted by such Lender in accordance with the procedures set forth in the applicable Extension Agreement, then the Agent, the Borrower and such affected Lender may (and hereby are authorized to), in their sole discretion and without the consent of any other Lender, enter into an amendment to this Agreement and the other Loan Documents (each, a “Corrective Extension Agreement”) within 30 days following the effective date of such Extension Agreement, as the case may be, which Corrective Extension Agreement shall (i) provide for the conversion or exchange and extension of Existing Revolving Credit Commitments (and related exposure) in such amount as is required to cause such Lender to hold Extended Revolving Credit Commitments (and related exposure) of the applicable Extension Series into which such other Loans or commitments were initially converted or exchanged, as the case may be, in the amount such Lender would have held had such administrative error not occurred and had such Lender received the minimum allocation of the applicable Loans or Commitments to which it was entitled under the terms of such Extension Agreement, in the absence of such error, (ii) be subject to the satisfaction of such conditions as the Agent, the Borrower and such Lender may agree (including conditions of the type required to be satisfied for the effectiveness of an Extension Agreement described in Section 2.7(c)), and (iii) effect such other amendments of the type (with appropriate reference and nomenclature changes) described in the second sentence of Section 2.7(c).

(f) No conversion or exchange of Loans or Commitments pursuant to any Extension Agreement in accordance with this Section 2.7 shall constitute a voluntary or mandatory payment or prepayment for purposes of this Agreement.

(g) This Section 2.7 shall supersede any provisions in Section 2.4(e) or Section 12.1 to the contrary. For the avoidance of doubt, any of the provisions of this Section 2.7 may be amended with the consent of the Required Lenders; provided that no such amendment shall require any Lender to provide any Extended Revolving Credit Commitments without such Lender's consent.

2.8 Defaulting Lenders. Notwithstanding any provision of this Agreement to the contrary, if any Lender becomes a Defaulting Lender, then for so long as such Lender is a Defaulting Lender:

(a) the Unused Line Fee shall cease to accrue on any of the Revolving Credit Commitments of such Defaulting Lender pursuant to Section 3.5;

(b) the Commitments and Loans of such Defaulting Lender shall not be included in determining whether all Lenders or the Required Lenders have taken or may take any action hereunder (including any consent to any amendment, waiver or other modification pursuant to Section 12.1); provided that any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender which affects such Defaulting Lender disproportionately when compared to the other affected Lenders, or increases or extends the Commitment of such Defaulting Lender, shall require the consent of such Defaulting Lender;

(c) any payment of principal, interest, fees or other amounts received by the Agent for the account of that Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Section 10.2 or Section 10.3 or otherwise), shall be applied at such time or times as may be determined by the Agent as follows: first, to the payment of any amounts owing by that Defaulting Lender to the Agent hereunder; second, as the Borrower may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which that Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Agent; third, to the payment of any amounts owing to the Lenders as a result of any judgment of a court of competent jurisdiction obtained by any Lender against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; fourth, so long as no Default or Event of Default exists, to the payment of any amounts owing to any Obligor as a result of any judgment of a court of competent jurisdiction obtained by any Obligor against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; and fifth, to that Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that, if such payment is a payment of the principal amount of any Loans, such payment shall be applied solely to pay the relevant Loans of the relevant non-Defaulting Lenders on a pro rata basis prior to being applied in the manner set forth in this clause (c);

(d) if any Swingline Loans are outstanding or Letters of Credit issued at the time such Lender becomes a Defaulting Lender then:

(i) all or any part of such Defaulting Lender's participations in such Swingline Loans and/or Letters of Credit shall be reallocated among the non-Defaulting Lenders in accordance with their respective Pro Rata Shares but only to the extent (x) the sum of all non-Defaulting Lenders' Aggregate Revolver Outstandings does not exceed the lesser of the total of all non-Defaulting Lenders' Revolving Credit Commitments and the Borrowing Base as of such date and (y) no such non-Defaulting Lender's Aggregate Revolver Outstandings shall exceed such Lender's Revolving Credit Commitment at such time;

(ii) if the reallocation described in clause (i) above cannot, or can only partially, be effected, the Borrower shall within three (3) Business Days following notice by the Agent (x) first, prepay such Swingline Loans and (y) second, cash collateralize for the benefit of the Letter of Credit Issuer only the Borrower's obligations corresponding to such Defaulting Lender's participations in Letters of Credit (after giving effect to any partial reallocation pursuant to clause (i) above) for so long as such participations in Letters of Credit are outstanding;

(iii) if the Borrower cash collateralizes any portion of such Defaulting Lender's Obligations pursuant to clause (ii) above, the Borrower shall not be required to pay any fees to such Defaulting Lender pursuant to Section 3.6 with respect to such Defaulting Lender's participations in Letters of Credit during the period such participations in Letters of Credit are cash collateralized;

(iv) if the participations in Letters of Credit of the non-Defaulting Lenders are reallocated pursuant to clause (i) above, then the fees payable to the Lenders pursuant to Sections 3.5 and 3.6 shall be adjusted in accordance with such non-Defaulting Lenders' Pro Rata Shares; and

(v) if all or any portion of such Defaulting Lender's participations in Letters of Credit is neither reallocated nor cash collateralized pursuant to clause (i) or (ii) above, then, without prejudice to any rights or remedies of the Letter of Credit Issuers or any other Lender hereunder, all letter of credit fees payable under Section 3.6 with respect to such Defaulting Lender's participations in Letters of Credit shall be payable to the applicable Letter of Credit Issuer until and to the extent that such participations in Letters of Credit are reallocated and/or cash collateralized;

(e) so long as (i) such Lender is a Defaulting Lender and (ii) a reallocation pursuant to clauses (d)(i) or (d)(ii) above cannot be effectuated, the Swingline Lender shall not be required to fund any Swingline Loan and the Letter of Credit Issuers shall not be required to issue, amend or increase any Letter of Credit, unless it has received assurances reasonably satisfactory to it that non-Defaulting Lenders will cover the related exposure and/or cash collateral will be provided by the Borrower in accordance with this Section 2.8, and participating interests in any newly made Swingline Loan or any newly issued or increased Letter of Credit shall be allocated among non-Defaulting Lenders in a manner consistent with this Section 2.8 (and such Defaulting Lender shall not participate therein); and

(f) in the event that the Agent, the Borrower, the Swingline Lender and the Letter of Credit Issuers each agrees that a Defaulting Lender has adequately remedied all matters that caused such Lender to be a Defaulting Lender, then the obligations and participations of the Revolving Credit Lenders shall be readjusted to reflect the inclusion of such Lender's Revolving Credit Commitment and on such date such Lender shall purchase at par such of the Loans of the other Revolving Credit Lenders (other than Swingline Loans) as the Agent shall determine may be necessary in order for such Lender to hold such Loans in accordance with its Pro Rata Share; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while that Lender was a Defaulting Lender; provided, further, that, except to the extent otherwise expressly agreed by the affected parties and subject to Section 14.21, no change hereunder from Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from such Lender's having been a Defaulting Lender.

ARTICLE III

INTEREST AND FEES

3.1 Interest.

(a) Interest Rates. All outstanding Loans to the Borrower shall bear interest on the unpaid principal amount thereof (including, to the extent permitted by law, on interest thereon not paid when due) from the date made until paid in full in cash at a rate determined by reference to the (x) Base Rate, (y) prior to the occurrence of a Benchmark Replacement Date, Term SOFR or (z) if a Benchmark Transition Event has occurred with respect to Term SOFR or the then-current Benchmark, the applicable Benchmark Replacement, in each case, plus the Applicable Margin, but not to exceed the Maximum Rate. If at any time Loans are outstanding with respect to which the Borrower has not delivered to the Agent a notice specifying the basis for determining the interest rate applicable thereto in accordance herewith, those Loans shall be treated as Base Rate Loans until notice to the contrary has been given to the Agent in accordance with this Agreement and such notice has become effective. Except as otherwise provided herein, the Loans shall bear interest as follows:

- (i) For all Base Rate Loans, at a fluctuating per annum rate equal to the Base Rate plus the Applicable Margin; and
- (ii) For all Term SOFR Loans, at a fluctuating per annum rate equal to Term SOFR plus the Applicable Margin.

Each change in the Base Rate (or any component thereof) shall be reflected in the interest rate applicable to Base Rate Loans as of the effective date of such change. All computations of interest for Base Rate Loans when the Base Rate is determined by the "prime rate" shall be made on the basis of a year of 365 or 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 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 365-day year). On the last Business Day of each calendar quarter hereafter and on the Termination Date, the Borrower shall pay to the Agent, for the ratable benefit of the Lenders (provided that all interest on applicable Swingline Loans shall be for the benefit of the Swingline Lender and all interest on Agent Advances shall be for the benefit of the Agent), interest accrued to the first day of such calendar quarter (or accrued to the Termination Date in the case of a payment on the Termination Date) on all Base Rate Loans in arrears. The Borrower shall pay to the Agent, for the ratable benefit of the Lenders, interest on all (x) Term SOFR Loans in arrears on each Term SOFR Interest Payment Date and (y) Daily Simple SOFR Loans in arrears on each Daily Simple SOFR Interest Payment Date.

(b) Default Rate. During the continuance of any Specified Event of Default, if the Borrower shall default in the payment of the principal of or interest on any Loan or any other amount becoming due hereunder, by acceleration or otherwise, or under any other Loan Document, the Borrower shall on demand from time to time pay interest, to the extent permitted by Law, on such defaulted amount to but excluding the date of actual payment (after as well as before judgment) (A) in the case of overdue principal, at the Default Rate, and (B) in all other cases, at a rate per annum equal to the rate that would be applicable to a Base Rate Loan plus 2.00%.

3.2 Continuation and Conversion Elections.

(a) The Borrower may (provided that the Borrowing of Term SOFR Loans is then permitted under Section 2.4(a)(ii)):

- (i) elect, as of any Business Day, to convert any Base Rate Loans other than Agent Advances and Swingline Loans (or any part thereof in an amount not less than \$1,000,000 or an integral multiple of \$1,000,000 in excess thereof) into Term SOFR Loans; and
- (ii) elect, as of the last day of the applicable Interest Period, to continue any Term SOFR Loans having Interest Periods expiring on such day (or any part thereof in an amount not less than \$1,000,000, or that is in an integral multiple of \$1,000,000 in excess thereof);

provided, that if at any time the aggregate amount of Term SOFR Loans in respect of any Borrowing is reduced, by payment, prepayment, or conversion of part thereof to be less than \$1,000,000, such Term SOFR Loans shall automatically convert into Base Rate Loans; provided further that if the Notice of Continuation/Conversion shall fail to specify the duration of the Interest Period, such Interest Period shall be one month.

(b) The Borrower shall deliver a notice of continuation/conversion substantially in the form of Exhibit C (a "Notice of Continuation/Conversion") to the Agent not later than, (x) 1:00 p.m. (New York City time) at least three (3) Business Days in advance of the Continuation/Conversion Date if the Loans are to be converted into or continued as Term SOFR Loans and specifying:

- (i) the proposed Continuation/Conversion Date;
- (ii) the aggregate principal amount of Loans to be converted or continued;
- (iii) the Type of Loans resulting from the proposed conversion or continuation; and
- (iv) the duration of the requested Interest Period, provided, however, the Borrower may not select an Interest Period that ends after the Stated Termination Date.

(c) If, upon the expiration of any Interest Period applicable to any Term SOFR Loans, the Borrower fails to select timely a new Interest Period to be applicable to such Term SOFR Loans, the Borrower shall be deemed to have elected to convert such Term SOFR Loans into Base Rate Loans effective as of the expiration date of such Interest Period. If any Event of Default exists, at the election of the Agent or the Required Lenders, all Term SOFR Loans shall be converted into Base Rate Loans as of the expiration date of each applicable Interest Period.

(d) The Agent will promptly notify each Lender of its receipt of a Notice of Continuation/Conversion. All conversions and continuations shall be made ratably according to the respective outstanding principal amounts of the Loans with respect to which the notice was given held by each Lender.

(e) There may not be more than 15 (fifteen) different Term SOFR Loans in effect hereunder at any time (which number may be increased or adjusted by agreement between the Borrower and the Agent in connection with any Revolving Credit Commitment Increase or the creation of any Extended Revolving Credit Facility).

3.3 Maximum Interest Rate. In no event shall any interest rate provided for hereunder exceed the maximum rate legally chargeable under applicable law with respect to loans of the Type provided for hereunder (the "Maximum Rate"). If, in any month, any interest rate, absent such limitation, would have exceeded the Maximum Rate, then the interest rate for that month shall be the Maximum Rate, and, if in future months, that interest rate would otherwise be less than the Maximum Rate, then that interest rate shall remain at the Maximum Rate until such time as the amount of interest paid hereunder equals the amount of interest which would have been paid if the same had not been limited by the Maximum Rate. In the event that, upon payment in full of the Obligations, the total amount of interest paid or accrued under the terms of this Agreement is less than the total amount of interest which would, but for this Section 3.3, have been paid or accrued if the interest rate otherwise set forth in this Agreement had at all times been in effect, then the Borrower shall, to the extent permitted by applicable law, pay the Agent, for the account of the applicable Lenders, an amount equal to the excess of (a) the lesser of (i) the amount of interest which would have been charged if the Maximum Rate had, at all times, been in effect or (ii) the amount of interest which would have accrued had the interest rate otherwise set forth in this Agreement, at all times, been in effect over (b) the amount of interest actually paid or accrued under this Agreement. If a court of competent jurisdiction determines that the Agent and/or any Lender has received interest and other charges hereunder in excess of the Maximum Rate, such excess shall be deemed received on account of, and shall automatically be applied to reduce, the Obligations other than interest, and if there are no Obligations outstanding, the Agent and/or such Lender shall refund to the Borrower such excess.

3.4 Closing Fees and Other Fees. The Borrower agrees to pay the Agent, the Collateral Agent and each of the Arrangers, as applicable, all fees due and payable on any date required for payment of a fee.

3.5 Unused Line Fee. On the first Business Day of each calendar quarter (commencing with the first business day of the calendar quarter beginning July 1, 2022), and on the Termination Date, the Borrower agrees to pay to the Agent, for the account of the Revolving Credit Lenders, an unused line fee (the "Unused Line Fee") equal to the Applicable Unused Line Fee Margin per annum times the amount by which the average daily Maximum Revolver Amount exceeded the sum of the average daily outstanding amount of Revolving Loans (other than Swingline Loans) and the average daily undrawn face amount of outstanding Letters of Credit, during the immediately preceding calendar quarter (or shorter period if calculated for the first such payment after the Restatement Effective Date or if calculated on the Termination Date). All principal payments received by the Agent shall be deemed to be credited immediately upon receipt for purposes of calculating the Unused Line Fee pursuant to this Section 3.5. Upon receipt thereof, the Agent shall distribute the Unused Line Fee to the Revolving Credit Lenders ratably based on their Pro Rata Shares of the Revolving Credit Commitments.

3.6 Letter of Credit Fees. The Borrower agrees to pay (i) to the Agent, for the account of the Revolving Credit Lenders, in accordance with their respective Pro Rata Shares, for each Letter of Credit, a fee (the “Letter of Credit Fee”) equal to, on a per annum basis, the Applicable Margin for Term SOFR Loans, (ii) to each Letter of Credit Issuer, for its own account, a fronting fee of one-eighth of one percent (0.125%) per annum of the undrawn face amount of each Letter of Credit issued by such Letter of Credit Issuer, and (iii) to each Letter of Credit Issuer, any out-of-pocket costs, fees and expenses incurred by such Letter of Credit Issuer in connection with the application for, processing of, issuance of, or amendment to any Letter of Credit. The Letter of Credit Fee and fronting fee shall be payable quarterly in arrears on the last Business Day of each calendar quarter in which a Letter of Credit is outstanding and on the Termination Date; *provided* that the first such payment after the Restatement Effective Date shall be paid on June 30, 2022.

ARTICLE IV

PAYMENTS AND PREPAYMENTS

4.1 Payments and Prepayments.

(a) The Borrower shall repay the outstanding principal balance of the Revolving Loans, plus all accrued but unpaid interest thereon, on the Termination Date.

(b) The Borrower may, upon notice to the Agent, at any time or from time to time voluntarily prepay the Loans in whole or in part without premium or penalty (but subject to Section 5.4); provided that (i) such notice must be received by the Agent not later than 1:00 p.m. (New York City time) (A) three (3) Business Days prior to any date of prepayment of Term SOFR Loans and (B) one (1) Business Day prior to any date of prepayment of Base Rate Loans; provided, further, that, in respect of Swingline Loans, the Borrower may deliver such notice to the Agent not later than 1:00 p.m. (New York City time) on the date of prepayment of such Swingline Loans and (ii) each prepayment shall be in a principal amount of \$1,000,000 or a whole multiple of \$1,000,000 in excess thereof or, 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 Term SOFR Loans are to be prepaid, the Interest Period(s) of such Loans. The 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 Pro Rata Share).

4.2 Out-of-Formula Condition. The Borrower shall immediately pay to the Agent, for the account of the Lenders and/or to cash collateralize Letters of Credit pursuant to Section 2.3(g), upon demand, the amount, if any, by which the amount of the Aggregate Revolver Outstandings exceeds at any time the lesser of (i) the Maximum Revolver Amount and (ii) the then-current Borrowing Base (any such condition being an “Out-of-Formula Condition”), except that no such payment shall be required if the Out-of-Formula Condition is created solely as a result of an Agent Advance.

4.3 Mandatory Prepayments.

(a) (i) At all times after the occurrence and during the continuance of a Cash Dominion Period and notification thereof by the Agent to the Borrower, on each Business Day, the Agent shall apply all same day funds (other than Excluded Funds) credited to the Concentration Account and all amounts received pursuant to this Section 4.3(a) to one or more accounts maintained by the Agent or such other account as directed by the Agent and subject to the terms of any Intercreditor Agreement then in effect, all amounts received in such account shall be applied by Agent in accordance with Section 4.3(a)(ii) below.

(ii) Except as otherwise provided in Section 10.3, all amounts required to be paid pursuant to Section 4.3(a)(i) shall be applied by the Agent as follows: (A) first, to the prepayment in full of Agent Advances, (B) second, to the prepayment in full of the Swingline Loans, (C) third, to cash collateralize Letters of Credit, (D) fourth, to the prepayment in full of the Revolving Base Rate Loans and (E) fifth, to the prepayment in full of the Revolving Term SOFR Loans.

(b) No payment or prepayment made pursuant to this Section 4.3 shall, or shall be deemed to, effect or reduce any Commitment of any Lender or the aggregate Commitments of the Lenders.

4.4 Termination or Reductions of Facilities.

(a) The Borrower may terminate this Agreement, upon at least three (3) Business Days' notice to the Agent (who will distribute such notice to the Lenders), upon Full Payment of the Obligations and payment of amounts (if any) due under Section 5.4. Such notice may provide that such termination is contingent upon consummation of a contemplated refinancing or another transaction.

(b) The Borrower may from time to time permanently reduce the Revolving Credit Commitments (and the Maximum Revolver Amount), as the case may be, on a pro rata basis based on the applicable Lenders' respective Pro Rata Shares, upon at least three (3) Business Days' prior written notice to the Agent, which notice shall specify the amount of the reduction. Each reduction shall be in a minimum amount of \$5,000,000 or an increment of \$1,000,000 in excess thereof. If after giving effect to any reduction of the Revolving Credit Commitments, the Letter of Credit Subfacility or the Swingline Sublimit shall exceed the Revolving Credit Commitments at such time, each such subfacility or sublimit, as the case may be, shall be automatically reduced by the amount of such excess and such reduction shall be accompanied by such payment (if any) as may be required to be made such that after giving effect to such payment the relevant aggregate Letters of Credit or Swingline Loans do not exceed the applicable subfacility or sublimit as so reduced. Each reduction in the Revolving Credit Commitments shall be accompanied by such payment (if any) as may be required to avoid an Out-of-Formula Condition. It being understood and agreed that the Borrower may allocate any termination or reduction of Commitments among Classes of Commitments at its direction. Notwithstanding the foregoing, the Borrower may rescind or postpone any notice of termination of the Revolving Credit Commitments if such termination would have resulted from a refinancing of all of the applicable Commitments, which refinancing shall not be consummated or otherwise shall be delayed.

4.5 Term SOFR Loan Prepayments. In connection with any prepayment, if any Term SOFR Loans are prepaid prior to the expiration date of the Interest Period applicable thereto, the Borrower shall comply with Section 5.4.

4.6 Payments by the Borrower.

(a) All payments to be made by the Borrower under this Agreement or the other Loan Documents shall be made without set-off, recoupment or counterclaim. Except as otherwise expressly provided herein, all payments by the Borrower shall be made to the Agent for the account of the Lenders entitled thereto, at the account designated by the Agent and shall be made in Dollars and in immediately available funds, no later than 2:00 p.m. (New York City time) on the date specified herein. Any payment received by the Agent after such time shall be deemed (for purposes of calculating interest only) to have been received on the following Business Day and any applicable interest shall continue to accrue.

(b) Subject to the provisions set forth in the definition of "Interest Period," whenever any payment is due on a day other than a Business Day, such payment shall be due on the following Business Day, and such extension of time shall in such case be included in the computation of interest or fees, as the case may be.

4.7 Apportionment, Application and Reversal of Payments. Except as otherwise expressly provided herein, principal and interest payments shall be apportioned ratably among the Lenders to which such payment is owed (according to the unpaid principal balance of the Loans to which such payments owed are held by each such Lender) and payments of the fees shall, as applicable, be apportioned ratably (or other applicable share as provided herein) among the Lenders to which such payment is owed, except for fees payable solely to the Agent, any Arranger or the applicable Letter of Credit Issuer. Whenever any payment received by the Agent under this Agreement or any of the other Loan Documents is insufficient to pay in full all amounts due and payable to the Agent and the Lenders under or in respect of this Agreement and the other Loan Documents on any date, such payment shall be distributed by the Agent and applied by the Agent and the Lenders in the order of priority set forth in Section 10.3. If the Agent receives funds for application to the Obligations of the Obligors under or in respect of the Loan Documents under circumstances for which the Loan Documents do not specify the manner in which such funds are to be applied, the Agent may, but shall not be obligated to, elect to distribute such funds to each of the Lenders in accordance with such Lender's Pro Rata Share of the Aggregate Revolver Outstandings at such time, in repayment or prepayment of such of the outstanding Loans or other Obligations then owing to such Lender. Notwithstanding anything to the contrary contained in this Agreement, unless so directed by the Borrower, or unless an Event of Default has occurred and is continuing, neither the Agent nor any Lender shall apply any payments which it receives to any Term SOFR Loan, except (a) on the expiration date of the Interest Period applicable to any such Term SOFR Loan or (b) in the event, and only to the extent, that there are no outstanding Base Rate Loans and, in such event, the Borrower shall pay Term SOFR breakage losses in accordance with Section 5.4.

4.8 Indemnity for Returned Payments. If after receipt of any payment which is applied to the payment of all or any part of the Obligations under this Agreement or the other Loan Documents, the Agent, any Lender, or any other Secured Party is for any reason compelled to surrender such payment or proceeds to any Person because such payment or application of proceeds is invalidated, declared fraudulent, set aside, determined to be void or voidable as a preference, impermissible setoff, or a diversion of trust funds, or for any other reason, then such Obligations or part thereof intended to be satisfied shall be revived and continued and this Agreement shall continue in full force as if such payment or proceeds had not been received by the Agent, such Lender, or such other Secured Party, and the Borrower shall be liable to pay to the Agent, the Lenders, or such other Secured Party and hereby do indemnify the Agent, the Lenders, or such other Secured Party and hold the Agent, the Lenders, or such other Secured Party harmless for the amount of such payment or proceeds surrendered. The provisions of this Section 4.8 shall be and remain effective notwithstanding any release of Collateral or guarantors, cancellation or return of Loan Documents, or other contrary action which may have been taken by the Agent, any Lender, or such other Secured Party in reliance upon such payment or application of proceeds, and any such contrary action so taken shall be without prejudice to the Agent's, the Lenders', or such other Secured Party's rights under this Agreement and the other Loan Documents and shall be deemed to have been conditioned upon such payment or application of proceeds having become final and irrevocable. The provisions of this Section 4.8 shall survive the repayment of the Obligations and termination of this Agreement.

4.9 Agent's and Lenders' Books and Records. The Agent shall record the principal amount of the Loans owing to each Lender, the undrawn face amount of all applicable outstanding Letters of Credit and the aggregate amount of Unpaid Drawings obligations outstanding with respect to the Letters of Credit from time to time on its books. In addition, each Lender may note the date and amount of each payment or prepayment of principal of such Lender's Loans in its books and records. Failure by the Agent or any Lender to make such notation shall not affect the obligations of the Borrower with respect to the Loans or the Letters of Credit. The Borrower agrees that the Agent's and each Lender's books and records showing the Obligations and the transactions pursuant to this Agreement and the other Loan Documents shall be admissible in any action or proceeding arising therefrom, and shall constitute rebuttably presumptive proof thereof (absent manifest error), irrespective of whether any Obligation is also evidenced by a promissory note or other instrument. Such statement shall be deemed correct, accurate, and binding on the Borrower and an account stated (absent manifest error and except for reversals and reapplications of payments made as provided in Section 4.7 and corrections of errors discovered by the Agent), unless the Borrower notifies the Agent in writing to the contrary within 30 days after such statement is rendered. In the event a timely written notice of objections is given by the Borrower, only the items to which exception is expressly made will be considered to be disputed by the Borrower.

ARTICLE V

TAXES, YIELD PROTECTION AND ILLEGALITY

5.1 Taxes.

(a) Payments Free of Taxes. Unless otherwise required by applicable Law, all payments by or on behalf of an Obligor to a Lender or the Agent under this Agreement or any other Loan Document shall be made free and clear of, and without deduction or withholding for, any Taxes. If any applicable Withholding Agent shall be required by any applicable Law (as determined in the good faith discretion of such Withholding Agent) to deduct or withhold any Tax from any payment to a Recipient under this Agreement or any Loan Document, then (i) such Withholding Agent shall make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable Law and (ii) if such Tax is an Indemnified Tax, then the sum payable by the applicable Obligor shall be increased as necessary so that after all such required deductions and withholdings are made (including deductions and withholdings applicable to additional sums payable under this Section 5.1) the applicable Lender (or, in the case of a payment made to the Agent for its own account, the Agent) receives an amount equal to the sum it would have received had no such deductions or withholdings been made. In addition, the Borrower shall pay all Other Taxes when due.

(b) Indemnification by Obligors. The Obligors agree jointly and severally to indemnify and hold harmless each Lender and the Agent for the full amount of Indemnified Taxes (including any Indemnified Taxes imposed by any jurisdiction on amounts payable under this Section 5.1) paid or payable by any Lender or the Agent and any reasonable and documented or invoiced out-of-pocket expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally asserted. Payment under this indemnification shall be made within 30 days after the date such Lender or the Agent makes written demand therefor in accordance with Section 5.6.

(c) Evidence of Payments. As soon as practicable after the date of any payment by an Obligor of Taxes to a Governmental Authority pursuant to this Section 5.1, the relevant Obligor shall furnish the Agent the original or a certified copy of a receipt evidencing payment thereof, or other evidence of payment reasonably satisfactory to the Agent.

(d) Status of Lenders. Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to any payments made under any Loan Document shall deliver to the Borrower and Agent, at the time or times reasonably requested by the Borrower or Agent, such properly completed and executed documentation reasonably requested by the Borrower or Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Agent, shall deliver such other documentation prescribed by applicable Law or reasonably requested by the Borrower or the Agent as will enable the Borrower or the Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Each Lender agrees that if any documentation it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such documentation or promptly notify the Borrower and the Agent in writing of its legal ineligibility to do so. Without limiting the generality of the foregoing,

(i) any Lender that is a U.S. Person shall deliver to the Borrower and the Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Agent), two duly executed originals of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding Tax;

(ii) any Lender that is not a U.S. Person shall, to the extent it is legally eligible to do so, deliver to the Borrower and the Agent on or prior to the date on which such non-U.S. Person becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Agent), whichever of the following is applicable:

(A) two duly executed originals of IRS Form W-8BEN or W-8BEN-E claiming the benefits of an income Tax treaty to which the United States is a party;

(B) two duly executed originals of IRS Form W-8ECI;

(C) in the case of a Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) two duly executed copies of a certificate substantially in the form of Exhibit J-1 to the effect that (A) such foreign Lender is not a “bank” within the meaning of Section 881(c)(3)(A) of the Code, a “10-percent shareholder” of the Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Code and (B) the interest payments in question are not effectively connected with a U.S. trade or business conducted by such Lender (a “U.S. Tax Compliance Certificate”) and (y) two duly executed originals of IRS Form W-8BEN or W-8BEN-E; or

(D) to the extent a Lender is not the beneficial owner (for example, where the Lender is a partnership for U.S. federal income tax purposes or a participating Lender), two duly executed originals of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN or W-8BEN-E, a U.S. Tax Compliance Certificate substantially in the form of Exhibit J-2 or Exhibit J-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided, that if the Lender is a partnership and not a participating Lender and one or more direct or indirect partners of such Lender are claiming the portfolio interest exemption, such Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit J-4 on behalf of such direct and indirect partner(s);

(iii) any Lender that is not a U.S. Person shall deliver to the Borrower and the Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Agent), executed originals of any other form prescribed by applicable Law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable Law to permit the applicable Withholding Agent to determine the withholding or deduction required to be made; and

(iv) if any payment made to a Lender under any Loan Document would be subject to Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Agent at the time or times prescribed by Law and at such time or times reasonably requested by the Borrower or the Agent such documentation prescribed by applicable Law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Agent as may be necessary for the Borrower and the Agent to comply with their obligations under FATCA, to determine whether such Lender has complied with such Lender’s obligations under FATCA and to determine the amount, if any, to deduct and withhold from such payment. Solely for purposes of this clause (iv), “FATCA” shall include any amendments made to FATCA after the date of this Agreement.

Notwithstanding anything to the contrary in this Section 5.1(d), a Lender shall not be required to deliver any documentation pursuant to this Section 5.1(d) that it is not legally eligible to deliver. Each Lender hereby authorizes the Agent to deliver to the Obligors and to any successor Agent any documentation provided by such Lender to the Agent pursuant to this Section 5.1(d).

(e) Treatment of Certain Refunds. If any party determines, in its reasonable discretion, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 5.1 (including by the payment of additional amounts pursuant to this Section 5.1), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section 5.1 with respect to the Taxes giving rise to such refund), net of all reasonable and documented or invoiced out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this Section 5.1(e) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this Section 5.1(e), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this Section 5.1(e) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts giving rise to such refund had never been paid. This Section 5.1(e) shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(f) The Agent shall provide the Borrower with two duly completed original copies of, if it is a U.S. Person, IRS Form W-9 certifying that it is exempt from U.S. federal backup withholding Tax, and, if it is not a U.S. Person, (1) IRS Form W-8ECI with respect to payments to be received by it as a beneficial owner and (2) IRS Form W-8IMY (together with required accompanying documentation) with respect to payments to be received by it on behalf of the Lenders, certifying that, for such purpose, it is a U.S. branch that has agreed to be treated as a U.S. person for U.S. federal tax purposes. Notwithstanding any other provision of this clause (f), the Agent shall not be required to deliver any documentation that such Agent is not legally eligible to deliver as a result of a Change in Law after the Restatement Effective Date.

(g) Definitions. For purposes of this Section 5.1, the term “Lender” includes any Letter of Credit Issuer and the Swingline Lender.

5.2 Inability to Determine Rates; Illegality

(a) Subject to Section 5.5, if the Agent determines (which determination shall be conclusive and binding absent manifest error) that Term SOFR cannot be determined in accordance with the terms of this Agreement on or prior to the first day of any Interest Period, the Agent will promptly so notify the Borrower and each Lender. Upon notice thereof by the Agent to the Borrower, any obligation of the Lenders to make or continue Term SOFR Loans or to convert Base Rate Loans to Term SOFR Loans shall be suspended (to the extent of the affected Term SOFR Loans or, in the case of a Term SOFR Borrowing, the affected Interest Periods) until the Agent revokes such notice. Upon receipt of such notice, (i) the Borrower may revoke any pending request for a borrowing of, conversion to or continuation of Term SOFR Loans (to the extent of the affected Term SOFR Loans or, in the case of a Term SOFR Borrowing, the affected Interest Periods) or, failing that, in the case of any request for an affected Term SOFR Borrowing, then such request shall be ineffective and (ii) any outstanding affected Term SOFR Loans will be deemed to have been converted into Base Rate Loans. Upon any such conversion, the Borrower shall also pay any additional amounts required pursuant to Section 5.4. If the Agent determines that Term SOFR cannot be determined in accordance with the terms of this Agreement, in each case on any given day, the interest rate on Base Rate Loans shall be determined by the Agent without reference to clause (c) of the definition of “Base Rate” until the Agent revokes such determination.

(b) If as a result of any Change in Law occurring after the later of the Restatement Effective Date or the date that a Lender became a party to this Agreement, has made it unlawful, or any central bank or other Governmental Authority has asserted after such date that it is unlawful, for such Lender or its applicable lending office to make Term SOFR Loans, then, on notice thereof by that Lender to the Borrower through the Agent, any obligation of that Lender to make Term SOFR Loans shall be suspended until that Lender notifies the Agent and the Borrower that the circumstances giving rise to such determination no longer exist.

(c) If a Lender determines that, as a result of a Change in Law occurring after the later of the Restatement Effective Date and the date such Lender became a party hereto, it is unlawful to maintain any Term SOFR Loan, the Borrower shall, upon its receipt of notice of such fact and demand from such Lender (with a copy to the Agent), prepay in full such Term SOFR Loans of that Lender then outstanding, together with interest accrued thereon and amounts required under Section 5.4, either on the last day of the Interest Period, if that Lender may lawfully continue to maintain such Term SOFR Loans to such day, or immediately, if that Lender may not lawfully continue to maintain such Term SOFR Loans. If the Borrower is required to so prepay any Term SOFR Loans, then concurrently with such prepayment, the Borrower shall borrow from the affected Lender, in the amount of such repayment, a Base Rate Loan.

5.3 Increased Costs and Reduction of Return.

(a) If any Lender determines that due to any Change in Law occurring after the later of the Restatement Effective Date or the date such Lender became a party to this Agreement, there shall be any increase in the cost to such Lender of agreeing to make or making, funding, continuing, converting to or maintaining any Term SOFR Loans (other than any increase in cost resulting from (i) Indemnified Taxes, (ii) Taxes described in clauses (b) through (d) of the definition of “Excluded Taxes”, or (iii) Connection Income Taxes), then, subject to clause (c) of this Section 5.3, the Borrower shall be liable for, and shall from time to time, upon demand (with a copy of such demand to be sent to the Agent), pay to the Agent for the account of such Lender, additional amounts as are sufficient to compensate such Lender for such increased costs.

(b) If any Lender shall have determined that due to any Change in Law in respect of any Capital Adequacy Regulation occurring after the later of the Restatement Effective Date or the date such Lender became a party to this Agreement that affects or would affect the amount of capital or liquidity required or expected to be maintained by such Lender or any corporation or other entity controlling such Lender and such Lender (taking into consideration such Lender’s or such corporation’s or other entity’s policies with respect to capital adequacy and such Lender’s desired return on capital) determines that the amount of such capital or liquidity is required to be increased as a consequence of its Commitments, loans, credits or obligations under this Agreement, then, upon demand of such Lender to the Borrower through the Agent, subject to clause (c) of this Section 5.3, the Borrower shall pay to such Lender, from time to time as specified by such Lender, additional amounts sufficient to compensate such Lender for such increase.

(c) Failure or delay on the part of any Lender to demand compensation pursuant to the foregoing provisions of this Section 5.3 shall not constitute a waiver of such Lender's right to demand such compensation, provided that the Borrower shall not be required to compensate a Lender pursuant to the foregoing provisions of this Section 5.3 for any increased costs incurred or reductions suffered more than six months prior to the date that such Lender notifies the Borrower of the event giving rise to such increased costs or reductions and of such Lender's intention to claim compensation therefor (except that, if the event giving rise to such increased costs or reductions is retroactive, then the six-month period referred to above shall be extended to include the period of retroactive effect thereof). Notwithstanding any other provision herein, no Lender shall demand compensation pursuant to this Section 5.3 unless it certifies that it is the general policy or practice of such Lender to demand such compensation in similar circumstances for similarly situated borrowers under comparable provisions of other credit agreements, if any.

5.4 Funding Losses. The Borrower shall reimburse each Lender and hold each Lender harmless from any loss or expense which such Lender may sustain or incur as a consequence of:

- (a) the failure of the Borrower to borrow a Term SOFR Loan after the Borrower has given (or is deemed to have given) a Notice of Borrowing;
- (b) the failure of the Borrower to continue a Term SOFR Loan or convert a Loan into a Term SOFR Loan after the Borrower has given (or is deemed to have given) a Notice of Continuation/Conversion; or
- (c) the prepayment or other payment (including after acceleration thereof) of any Term SOFR Loans on a day that is not the last day of the relevant Interest Period (including, without limitation, any payment in respect thereof pursuant to Section 2.6(f)(ii) or 5.8),

including any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain its Term SOFR Loans (but not in respect of lost profits) or from fees payable to terminate the deposits from which such funds were obtained.

5.5 Benchmark Replacement Setting.

(a) Benchmark Replacement.

(i) Notwithstanding anything to the contrary herein or in any other Loan Document, upon the occurrence of a Benchmark Transition Event, then (A) if a Benchmark Replacement is determined in accordance with clause (a) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of such Benchmark setting and subsequent Benchmark settings without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document and (B) if a Benchmark Replacement is determined in accordance with clause (b) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of any Benchmark setting at or after 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the Agent has posted such proposed amendment to all affected Lenders and the Borrower so long as the Agent has not received, by such time, written notice of objection to such amendment from Lenders comprising the Required Lenders.

(ii) No Hedge Agreement shall be deemed not to be a “Loan Document” for purposes of this Section 5.5).

(b) Benchmark Replacement Conforming Changes. In connection with the use, administration, adoption or implementation of a Benchmark Replacement, the 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 or any other Loan Document.

(c) Notices; Standards for Decisions and Determinations. The Agent will promptly notify the Borrower and the Lenders of (i) the implementation of any Benchmark Replacement and (ii) the effectiveness of any Conforming Changes in connection with the use, administration, adoption or implementation of a Benchmark Replacement. The Agent will promptly notify the Borrower of the removal or reinstatement of any tenor of a Benchmark pursuant to Section 5.5(d). Any determination, decision or election that may be made by the Agent or, if applicable, any Lender (or group of Lenders) pursuant to this Section 5.5, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any other Loan Document, except, in each case, as expressly required pursuant to this Section 5.5.

(d) Unavailability of Tenor of Benchmark. Notwithstanding anything to the contrary herein or in any other Loan Document, at any time (including in connection with the implementation of a Benchmark Replacement), (i) if the then-current Benchmark is a term rate (including Term SOFR) and either (A) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Agent in its reasonable discretion or (B) the administrator of such Benchmark or the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is not or will not be representative or in compliance with or aligned with the International Organization of Securities Commissions (IOSCO) Principles for Financial Benchmarks, then the Agent may modify the definition of “Interest Period” (or any similar or analogous definition) for any Benchmark settings at or after such time to remove such unavailable, non-representative, non-compliant or non-aligned tenor and (ii) if a tenor that was removed pursuant to clause (i) above either (A) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (B) is not, or is no longer, subject to an announcement that it is not or will not be representative or in compliance with or aligned with the International Organization of Securities Commissions (IOSCO) Principles for Financial Benchmarks for a Benchmark (including a Benchmark Replacement), then the Agent may modify the definition of “Interest Period” (or any similar or analogous definition) for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(e) Benchmark Unavailability Period. Upon the Borrower’s receipt of notice of the commencement of a Benchmark Unavailability Period, the Borrower may revoke any pending request for a Term SOFR Borrowing of, conversion to or continuation of Term SOFR Loans to be made, converted or continued during any Benchmark Unavailability Period and, failing that, the Borrower will be deemed to have converted any such request into a request for a Borrowing of or conversion to Base Rate Loans. During any Benchmark Unavailability Period or at any time that any tenor for the then-current Benchmark is not an Available Tenor, the component of Base Rate based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of Base Rate.

5.6 Certificates of Agent. If the Agent or any Lender claims reimbursement or compensation under this Article V, the Agent or the affected Lender shall determine the amount thereof and shall deliver to the Borrower (with a copy to the Agent) a certificate setting forth in reasonable detail the amount payable to the Agent or the affected Lender, and such certificate shall be conclusive and binding on the Borrower in the absence of manifest error; provided that, except for compensation under Section 5.1, the Borrower shall not be obligated to pay the Agent or such Lender any compensation attributable to any period prior to the date that is ninety (90) days prior to the date on which the Agent or such Lender first gave notice to the Borrower of the circumstances entitling such Lender to compensation. The Borrower shall pay the Agent or such Lender the amount shown as due on any such certificate within 10 Business Days after receipt thereof.

5.7 Survival. The agreements and obligations of the Borrower and each Recipient in this Article V shall survive the payment of all other Obligations and termination of this Agreement.

5.8 Assignment of Commitments Under Certain Circumstances. In the event (a) any Lender requests compensation pursuant to Section 5.3, (b) any Lender delivers a notice described in Section 5.2, (c) Holdings or any Obligor is required to pay additional amounts to any Lender or any Governmental Authority on account of any Lender pursuant to Section 5.1, (d) any Lender is, or becomes an Affiliate of a Person that is, engaged in the business in which the Borrower is engaged or (e) any Lender is a Defaulting Lender, the Borrower may, at its sole expense and effort (including with respect to the processing fee referred to in Section 12.2(a)), upon notice to such Lender and the Agent, require such Lender to transfer and assign, without recourse (in accordance with and subject to the restrictions contained in Section 12.2), all of its interests, rights and obligations under the Loan Documents to an Eligible Assignee that shall assume such assigned obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that (i) such assignment shall not conflict with any Law or order of any court or other Governmental Authority having jurisdiction, (ii) except in the case of clause (d) or (e) above, no Event of Default shall have occurred and be continuing, (iii) the Borrower or such assignee shall have paid to such Lender in immediately available funds an amount equal to the sum of 100% of the principal of and interest accrued to the date of such payment on the outstanding Loans of such Lender, plus all fees and other amounts accrued for the account of such Lender hereunder (including any amounts under Sections 5.1, 5.2, 5.3 and 5.4), (iv) such assignment is consummated within 180 days after the date on which the Borrower's right under this Section 5.8 arises, and (v) if the consent of the Agent, any Letter of Credit Issuer or the Swingline Lender is required pursuant to Section 12.2, such consents are obtained; provided, further, that if prior to any such assignment the circumstances or event that resulted in such Lender's request or notice under Section 5.2 or 5.3 or demand for additional amounts under Section 5.1, as the case may be, shall cease to exist or become inapplicable for any reason, or if such Lender shall waive its rights in respect of such circumstances or event under Section 5.1, 5.2 or 5.3, as the case may be, then such Lender shall not thereafter be required to make such assignment hereunder. In the event that a replaced Lender does not execute an Assignment and Acceptance pursuant to Section 12.2 within two Business Days after receipt by such replaced Lender of notice of replacement pursuant to this Section 5.8 and presentation to such replaced Lender of an Assignment and Acceptance evidencing an assignment pursuant to this Section 5.8, the Borrower shall be entitled (but not obligated), upon receipt by the replaced Lender of all amounts required to be paid under this Section 5.8, to execute such an Assignment and Acceptance on behalf of such replaced Lender, and any such Assignment and Acceptance so executed by the Borrower, the replacement Lender and, to the extent required pursuant to Section 12.2, the Agent, shall be effective for purposes of this Section 5.8 and Section 12.2.

ARTICLE VI

BOOKS AND RECORDS; FINANCIAL INFORMATION; NOTICES

6.1 Books and Records. Holdings shall maintain, and shall cause the Borrower and each of its Restricted Subsidiaries to maintain, at all times, proper books and records and accounts prepared in conformity with GAAP consistently applied in respect of all material financial transactions and matters involving all material assets, business and activities of Holdings, the Borrower and its Restricted Subsidiaries, taken as a whole. ~~The Borrower~~ Holdings shall maintain, and shall cause each of its Restricted Subsidiaries to maintain, at all times books and records pertaining to the Collateral in such detail, form and scope as is consistent in all material respects with good business practice or consistent with past practice.

6.2 Financial Information. The Borrower shall promptly furnish to the Agent (for further distribution to each Lender):

(a) As soon as available, but in any event not later than ninety (90) days after the close of each Fiscal Year (commencing with the Fiscal Year ending December 31, 2022), consolidated audited balance sheets, income statements and cash flow statements of the Consolidated Parties and, if different, Holdings, the Borrower and its Restricted Subsidiaries, for such Fiscal Year, and the accompanying notes thereto, setting forth in each case in comparative form figures for and as of the end of the previous Fiscal Year (or, in lieu of such audited financial statements of Holdings, the Borrower and its Restricted Subsidiaries, a detailed reconciliation, reflecting such financial information for Holdings, the Borrower and its Restricted Subsidiaries, on the one hand, and the Consolidated Parties, on the other hand), all in reasonable detail, fairly presenting in all material respects the financial position and the results of operations of the Consolidated Parties (and, if applicable, Holdings, the Borrower and its Restricted Subsidiaries) as at the date thereof and for the Fiscal Year then ended, and prepared in accordance with GAAP in all material respects. Such consolidated statements shall be certified, reported on without a “going concern” or like qualification (other than (x) with respect to, or resulting from, the upcoming maturity of the Loans hereunder or (y) a prospective default under the Financial Covenant), or qualification arising out of the scope of the audit, by a firm of independent registered public accountants of recognized national standing selected by the Borrower. During a Covenant Trigger Period, such certified statements shall be delivered together with a certificate of such accounting firm stating that in the course of its regular audit of the business of the Consolidated Parties, which audit was conducted in accordance with generally accepted auditing standards, such accounting firm has obtained no knowledge of any Event of Default under Section 10.1 (solely arising from a breach of the Financial Covenant) that has occurred and is continuing or, if in the opinion of such accounting firm such an Event of Default has occurred and is continuing, a statement as to the nature thereof (which certificate may be limited to the extent required by accounting rules or guidelines or customary internal policy of such accounting firm). Notwithstanding the foregoing, the obligations in this Section 6.2(a) may be satisfied with respect to financial information of the Consolidated Parties by furnishing (A) the applicable financial statements of Holdings (or any Parent Entity of Holdings) or (B) the Borrower’s or Holdings’ (or any Parent Entity thereof), as applicable, Form 10-K filed with the SEC; provided that, with respect to each of clauses (A) and (B) above, (i) to the extent such information relates to Holdings (or such Parent Entity), such information is accompanied by consolidating information that explains in reasonable detail the differences between the information relating to Holdings (or such Parent Entity), on the one hand, and the information relating to the Consolidated Parties on a standalone basis, on the other hand and (ii) to the extent such information is in lieu of information required to be provided under the first sentence of this Section 6.2(a), such statements shall be certified, reported on without a “going concern” or like qualification (other than (x) with respect to, or resulting from, the upcoming maturity of the Loans hereunder or (y) a prospective default under the Financial Covenant), or qualification arising out of the scope of the audit, by a firm of independent registered public accountants of recognized national standing selected by Holdings (or such Parent Entity). In addition, together with the Financial Statements required to be delivered pursuant to this Section 6.2(a) but only to the extent required under SEC rules, the Borrower shall deliver a customary “management’s discussion and analysis of financial condition and results of operations” with respect to the periods covered by such Financial Statements in substantially the form filed with the SEC.

(b) As soon as available, but in any event not later than forty-five (45) days after the end of each of the first three Fiscal Quarters of each Fiscal Year, consolidated unaudited balance sheets of the Consolidated Parties and, if different, Holdings, the Borrower and its Restricted Subsidiaries, as at the end of such Fiscal Quarter, and consolidated unaudited income statements and cash flow statements for the Consolidated Parties, and, if different from Holdings, the Borrower and its Restricted Subsidiaries for such Fiscal Quarter and for the period from the beginning of the Fiscal Year to the end of such Fiscal Quarter, setting forth, in each case, in reasonable detail, in comparative form, the figures for and as of the corresponding period in the prior Fiscal Year (or, in lieu of such Financial Statements of Holdings, the Borrower and its Restricted Subsidiaries, a detailed reconciliation, reflecting such financial information for Holdings, the Borrower and its Restricted Subsidiaries, on the one hand, and the Consolidated Parties on the other hand), and prepared in all material respects in conformity with GAAP consistently applied, subject to changes resulting from normal year-end audit adjustments and to the absence of footnotes and certified by a Responsible Officer of the Borrower as being complete and correct in all material respects in conformity with GAAP, prepared in reasonable detail in accordance with GAAP in all material respects consistently applied and fairly presenting in all material respects the Consolidated Parties' (and, if applicable, Holdings, the Borrower and its Restricted Subsidiaries') financial position as at the dates thereof and their results of operations for the periods then ended, subject to changes resulting from normal year-end audit adjustments and to the absence of footnotes. Notwithstanding the foregoing, the obligations in this Section 6.2(b) may be satisfied with respect to financial information of the Consolidated Parties by furnishing (A) the applicable Financial Statements of Holdings (or any Parent Entity thereof) or (B) the Borrower's or Holdings' (or any Parent Entity thereof), as applicable, Form 10-Q filed with the SEC; provided that, with respect to each of clauses (A) and (B), to the extent such information relates to Holdings (or any such Parent Entity), such information is accompanied by consolidating information that explains in reasonable detail the differences between the information relating to Holdings (or such Parent Entity), on the one hand, and the information relating to the Consolidated Parties on a standalone basis, on the other hand. In addition, together with the Financial Statements required to be delivered pursuant to this Section 6.2(b) but only to the extent required under SEC rules, the Borrower shall deliver a customary "management's discussion and analysis of financial condition and results of operations" with respect to the periods covered by such Financial Statements in substantially the form filed with the SEC.

(c) Concurrently with the delivery of the annual audited Financial Statements pursuant to Section 6.2(a) (commencing with the Fiscal Year ending December 31, 2022) and the quarterly Financial Statements pursuant to Section 6.2(b) (commencing with the Fiscal Quarter ending March 31, 2022), a duly completed Compliance Certificate signed by a Responsible Officer of the Borrower and, if a Covenant Trigger Period is then in effect, demonstrate compliance with Section 8.20.

(d) As soon as available, but in any event not later than the date of delivery of the annual audited Financial Statements pursuant to Section 6.2(a) (commencing with the date of delivery of such Financial Statements for the Fiscal Year ending December 31, 2022), annual forecasts (to include forecasted consolidated balance sheets, income statements and cash flow statements, Borrowing Base and Availability) for Holdings, the Borrower and its Restricted Subsidiaries as at the end of and for each Fiscal Quarter of such Fiscal Year.

(e) Subject to applicable Laws and confidentiality restrictions, promptly upon the filing thereof, copies of all reports, if any, to or other documents filed by ~~the Borrower~~Holdings or any of its Restricted Subsidiaries with the SEC under the Exchange Act or any other similar regulatory or Governmental Authority of any jurisdiction, and all material reports, notices, or statements sent or received by ~~the Borrower~~Holdings or any of its Restricted Subsidiaries to or from the holders of any Debt of ~~the Borrower~~Holdings or any of its Restricted Subsidiaries registered under the Securities Act of 1933 or any other similar Laws in any jurisdiction (other than, in each such case, amendments to any registration statement (to the extent such registration statement, in the form it becomes effective, is delivered to the Agent for further delivery to the Lenders), exhibits to any registration statement and, if applicable, any registration statements on Form S-8 and other than any filing filed confidentially with the SEC or any analogous Governmental Authority in any relevant jurisdiction).

(f) Subject to applicable Laws and confidentiality restrictions set forth in this Agreement, (x) such additional information as the Agent may from time to time reasonably request regarding the financial condition of ~~the Borrower~~Holdings and its Restricted Subsidiaries taken as a whole and (y) such information and documentation reasonably requested by any Lender for purposes of compliance with applicable “know your customer” and anti-money laundering rules and regulations, including, without limitation, the Act and the Beneficial Ownership Regulation.

In addition, the Borrower shall, annually, at a time mutually agreed with the Agent that is promptly after the delivery of the information required to be delivered pursuant to Section 6.2(a), participate in a conference call with Lenders to discuss the financial condition and results of operations of the Borrower and its Restricted Subsidiaries for the most recently-ended Fiscal Year.

Documents required to be delivered pursuant to Section 6.2(a), (b) and (c) (to the extent any such documents are included in materials otherwise filed with the SEC or any similar regulator or Governmental Authority of any jurisdiction) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date on which such documents are posted on the Borrower’s behalf on an Internet or intranet website, if any, to which each Lender and the Agent have access (whether a commercial, third-party website or whether sponsored by the Agent); provided that the Borrower shall notify the Agent (by facsimile or electronic mail) of the posting of any such documents and shall deliver paper copies of such documents to the Agent or any Lender that requests such paper copies.

6.3 Notices to the Agent. The Borrower shall notify the Agent (for further distribution to the Lenders) in writing of the following matters at the following times:

(a) Promptly, and in any event within five (5) Business Days, after a Responsible Officer becoming aware of any Default or Event of Default.

(b) Promptly, and in any event within five (5) Business Days, after a Responsible Officer becoming aware of any action, suit, or proceeding, by any Person, or any investigation by a Governmental Authority, in each case affecting ~~the Borrower~~Holdings or any of its Restricted Subsidiaries and which would reasonably be expected to have a Material Adverse Effect.

(c) Promptly, and in any event within five (5) Business Days, after a Responsible Officer becoming aware of any violation of any Law (including any Environmental Law), statute, regulation, or ordinance of a Governmental Authority affecting ~~the Borrower~~Holdings or any of its Restricted Subsidiaries, which, in any case, would reasonably be expected to have a Material Adverse Effect.

(d) Any change in Holdings' or any Obligor's state of incorporation or organization, name as it appears in the state of its incorporation or other organization, type of entity, organizational identification number, or form of organization, each as applicable, in each case at least no later than ten (10) Business Days (or such longer period to which the Agent may agree in its discretion) after the occurrence of any such change.

(e) Promptly, and in any event within fifteen (15) Business Days, after a Responsible Officer of the Borrower or any ERISA Affiliate knows that an ERISA Event has occurred or is reasonably expected to occur, that, alone or with another ERISA Event that has occurred or is reasonably expected to occur, could reasonably be expected to have a Material Adverse Effect, and any action taken (or threatened in writing) by the IRS, the DOL, the PBGC or the Multiemployer Plan sponsor with respect thereto.

(f) Upon reasonable request, with respect to any Multi-employer Plan, (A) any documents described in Section 101(k) of ERISA that ~~the Borrower Holdings, a Restricted Subsidiary~~ or any ERISA Affiliate may request and (B) any notices described in Section 101(l) of ERISA that ~~the Borrower Holdings, a Restricted Subsidiary~~ or any ERISA Affiliate may request; provided that if ~~the Borrower Holdings, a Restricted Subsidiary~~ or ERISA Affiliate has not requested such documents or notices from the administrator or sponsor of the applicable Multi-employer Plan, ~~the Borrower Holdings, such Restricted Subsidiary~~ or ERISA Affiliate shall promptly make a request for such documents or notices from such administrator or sponsor and shall provide copies of such documents and notices promptly after receipt thereof.

(g) Within fifteen (15) Business Days after the occurrence of the assumption or establishment of any new Pension Plan or Multi-employer Plan, or the commencement of contributions to any Pension Plan or Multi-employer Plan, to which ~~the Borrower Holdings, a Restricted Subsidiary~~ or any ERISA Affiliate was not previously contributing, which in any event could reasonably be expected to have a Material Adverse Effect.

(h) Promptly, and in any event within five (5) Business Days, after a Responsible Officer becoming aware of any event or circumstance which would reasonably be expected to have a Material Adverse Effect.

(i) Unless otherwise publicly disclosed in an annual or quarterly report filed by the Borrower or any Parent Entity with the SEC under the Exchange Act, promptly after any material change in accounting policies or financial reporting practices (including as a result of a change in GAAP or the application thereof) by ~~the Borrower Holdings~~ or any Restricted Subsidiary thereof.

(j) Promptly, and in any event within five (5) Business Days, after a Responsible Officer becoming aware of any action, suit or proceeding pursuant to which a holder of any Lien on any Accounts of an Obligor makes a claim for conversion with respect to any such Accounts but only if the Accounts that are the subject of such claim have a Fair Market Value in excess of \$2,500,000.

(k) If the Borrower has previously provided a Beneficial Ownership Certification to any Lender in connection with this Agreement, any change in the information provided in such Beneficial Ownership Certification that would result in a change to the list of beneficial owners identified in such certification.

Each notice given under this Section 6.3 shall be accompanied by a statement of a Responsible Officer describing the subject matter thereof in reasonable detail and setting forth the action that the Borrower, applicable Subsidiary, or ERISA Affiliate has taken or proposes to take with respect thereto.

6.4 Collateral Reporting.

(a) The Borrower will furnish to the Agent (for further distribution to each Lender) a Borrowing Base Certificate prepared as of the last Business Day of each calendar month (commencing with the calendar month ending March 31, 2022) and delivered to the Agent (for further distribution to the Lenders) by the close of business on the 20th calendar day of the following calendar month. The Borrower acknowledges and agrees that while a Cash Dominion Period is in effect, the Borrower will furnish to the Agent (for further distribution to each Lender) Borrowing Base Certificates prepared as of the last Business Day of each calendar week during such Cash Dominion Period and delivered to the Agent (for further distribution to the Lenders) by the close of business on the Wednesday of the following week (with any such weekly Borrowing Base Certificate to be computed according to a method reasonably specified by the Agent after consultation with the Borrower).

(b) The Borrower will furnish to the Agent (and the Agent shall further distribute to each Lender that has made a request for such information through the Agent), in such detail as the Agent shall reasonably request, as soon as reasonably practical following the Agent's request from time to time, such reports as to the Accounts of the Obligors as the Agent shall reasonably request from time to time.

(c) If any of the Borrower's or Guarantor's records or reports of the Accounts are prepared by an accounting service or other agent, such Obligor hereby authorizes such service or agent to deliver such records, reports, and related documents to the Agent.

(d) The Borrower will furnish to the Agent (and the Agent shall further distribute to each Lender that has made a request for such information through the Agent) each of the reports set forth on Schedule 6.4 at the times specified therein.

ARTICLE VII

GENERAL WARRANTIES AND REPRESENTATIONS

Holdings and the Borrower each warrants and represents to the Agent and the Lenders on the Restatement Effective Date and on the date of each Borrowing that:

7.1 Authorization, Validity, and Enforceability of this Agreement and the Loan Documents. Holdings and each Obligor party to this Agreement and the other Loan Documents has the power and authority to execute, deliver and perform this Agreement and the other Loan Documents to which it is a party, to incur the Obligations, and to grant the Collateral Agent's Liens. Holdings and each Obligor party to this Agreement and the other Loan Documents has taken all necessary corporate, limited liability company or partnership, as applicable, action (including obtaining approval of its shareholders, if necessary) to authorize its execution, delivery and performance of this Agreement and the other Loan Documents to which it is a party. This Agreement and the other Loan Documents to which it is a party have been duly executed and delivered by Holdings and each Obligor party thereto, and constitute the legal, valid and binding obligations of Holdings and each such Obligor, enforceable against it in accordance with their respective terms, subject to the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization, winding up, moratorium and other similar Laws relating to or affecting creditors' rights generally and general equitable principles (whether considered in a proceeding in equity or at Law) and an implied covenant of good faith and fair dealing. Holdings' and each Obligor's execution, delivery and performance of this Agreement and the other Loan Documents to which it is a party, do not (x) conflict with, or constitute a violation or breach of, the terms of (a) any contract, mortgage, lease, agreement, indenture, or instrument to which Holdings, such Obligor or any of its Restricted Subsidiaries is a party or which is binding upon it, (b) any Requirement of Law applicable to Holdings, such Obligor or any of its Restricted Subsidiaries, or (c) any Charter Documents of Holdings, such Obligor or any of its Restricted Subsidiaries, in each case, in any respect that would reasonably be expected to have a Material Adverse Effect or (y) result in the imposition of any Lien (other than the Liens created by the Security Documents) upon the property of Holdings, such Obligor or any of its Restricted Subsidiaries by reason of any of the foregoing.

7.2 Validity and Priority of Security Interest. Upon execution and delivery thereof by the parties thereto, the applicable Security Documents will be effective to create legal and valid Liens on all the applicable Collateral in favor of the Collateral Agent for the benefit of the Secured Parties, subject to the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization, winding up, moratorium and other similar Laws relating to or affecting creditors' rights generally, general equitable principles (whether considered in a proceeding in equity or at Law) and an implied covenant of good faith and fair dealing and, upon the taking of such actions set forth in the Security Documents, but subject to any exceptions to the taking of any actions as set forth therein or in the definition of "Collateral and Guarantee Requirement", such Liens (a) constitute perfected Liens on all of the applicable Collateral, (b) have priority over all other Liens on the Collateral, subject to Permitted Liens and the provisions of any Intercreditor Agreement then in existence, and (c) are enforceable against each Obligor or Holdings, as applicable, granting such Liens.

7.3 Organization and Qualification. Holdings and each Obligor (a) is duly organized and validly existing in good standing under the laws of the jurisdiction of its organization, (b) is duly qualified as a foreign corporation, partnership or limited liability company, as applicable, and is in good standing in each jurisdiction in which the failure to be so qualified and in good standing would reasonably be expected to have a Material Adverse Effect, and (c) has all requisite power and authority to conduct its business and to own its property, except where the failure to have such power and authority would not reasonably be expected to have a Material Adverse Effect.

7.4 Subsidiaries. Schedule 7.4 is a correct and complete list of each and all of Holdings' Subsidiaries as of the Restatement Effective Date, the jurisdiction of their organization and the direct or indirect ownership interest of Holdings therein. Each Restricted Subsidiary (a) is duly organized and validly existing in good standing (to the extent such concept is applicable to any such Subsidiary) under the laws of the jurisdiction of its organization, (b) is duly qualified as a foreign corporation, partnership or limited liability company, as applicable, and is in good standing in each jurisdiction in which the failure to be so qualified and in good standing would reasonably be expected to have a Material Adverse Effect, and (c) has all requisite power and authority to conduct its business and to own its property, except where the failure to have such power and authority would not reasonably be expected to have a Material Adverse Effect.

7.5 Financial Statements and Borrowing Base Certificate.

(a) Holdings has delivered to the Agent (for further distribution to the Lenders) the Historical Financial Statements. The Historical Financial Statements, including the schedules and notes thereto, if any, have been prepared in reasonable detail in accordance with GAAP consistently applied throughout the periods covered thereby (except as approved by a Responsible Officer of Holdings, and disclosed in any such schedules and notes or otherwise disclosed to the Agent prior to the Restatement Effective Date) and present fairly, in all material respects, the Consolidated Parties' financial position as at the dates thereof and their results of operations for the periods then ended, subject, in the case of such unaudited Financial Statements, to changes resulting from normal year-end audit adjustments and to the absence of footnotes.

(b) [Reserved].

(c) The latest Borrowing Base Certificate furnished to the Agent pursuant to Section 6.4(a) presents accurately and fairly in all material respects the Borrowing Base and the calculation thereof as at the date thereof.

Each Lender and the Agent hereby acknowledges and agrees that Holdings, the Borrower and its Subsidiaries may be required to restate the Historical Financial Statements as the result of the implementation of changes in GAAP or the interpretation thereof, and that such restatements will not result in a Default under the Loan Documents (including any effect on any conditions required to be satisfied on the Restatement Effective Date) to the extent that the restatements do not reveal any material omission, misstatement or other material inaccuracy in the reported information from actual results for any relevant prior period.

7.6 Solvency. On the ~~Restatement~~Amendment No. 4 Effective Date after giving effect to the ~~Transactions~~transactions on the Amendment No. 4 Effective Date, Holdings and its Subsidiaries, on a consolidated basis, are Solvent.

7.7 Property. Except with respect to Intellectual Property, each Obligor and each of its Restricted Subsidiaries has good and defensible title in fee simple to, or valid leasehold interests in, or easements or other limited property interests in, all property necessary in the ordinary conduct of its business, free and clear of all Liens except for minor defects in title that do not materially interfere with its ability to conduct its business or to utilize such assets for their intended purposes and Permitted Liens and except where the failure to have such title or other interest could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

7.8 Intellectual Property. The conduct of the businesses of Holdings, the Borrower and each of its Restricted Subsidiaries (including their use of Intellectual Property) does not infringe upon, misappropriate or violate the Intellectual Property of any other Person, and no other Person is infringing or violating their own Intellectual Property, in each case except as would not reasonably be expected to have a Material Adverse Effect. Holdings, the Borrower and each of its Restricted Subsidiaries owns or is licensed or otherwise has the right to use all Intellectual Property that is used or held for use in or is otherwise reasonably necessary for the operation of its businesses as presently conducted, except as would not reasonably be expected to have a Material Adverse Effect.

7.9 Litigation. Except as set forth on Schedule 7.9, there is no pending, or to Holdings' or the Borrower's knowledge, threatened, action, suit, proceeding, or counterclaim by any Person, or to Holdings' or the Borrower's knowledge, investigation by any Governmental Authority, which, in any case, has a reasonable likelihood of being adversely determined and if so adversely determined, either (a) would reasonably be expected to have a Material Adverse Effect or (b) relates directly to any of the Loan Documents.

7.10 Labor Disputes. There is no strike, work stoppage, unfair labor practice claim, or other labor dispute pending or, to Holdings' or the Borrower's knowledge, reasonably expected to be commenced against Holdings or any of its Restricted Subsidiaries, which, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect.

7.11 Environmental Laws. Except as set forth on Schedule 7.11 and except for any matters that, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect:

(a) Holdings, the Borrower and its Restricted Subsidiaries and each of their respective facilities, locations and operations are and to the Borrower's knowledge within the past three (3) years have been in compliance with all Environmental Laws.

(b) Each of Holdings, the Borrower and its Restricted Subsidiaries have obtained all permits under Environmental Laws necessary for their current facilities and operations, all such permits are valid and in full force and effect, each of Holdings, the Borrower and its Restricted Subsidiaries are in compliance with all terms and conditions of such permits and none of such permits are, since the Restatement Effective Date, subject to any pending proceedings or other actions (or to Borrower's knowledge, any threatened proceedings or other actions) for modification or revocation of such permits.

(c) (i) Neither Holdings, the Borrower nor any of its Restricted Subsidiaries, nor to Holdings' or the Borrower's knowledge any of its predecessors in interest with respect to the Real Estate, has stored, treated or released any Contaminant at any location, and (ii) neither Holdings nor any Restricted Subsidiary nor any of the presently owned or leased Real Estate or presently conducted operations, nor, to any of Holdings' or the Borrower's knowledge, its previously owned or leased Real Estate or prior operations, is subject to any pending proceeding or other action for, and neither Borrower nor Holdings has any knowledge of any threatened proceeding or reasonable basis for any claim or liability arising out of or in connection with any Environmental Law (including from any Release or threatened Release of a Contaminant).

(d) None of the present or, to Holdings or the Borrower's knowledge, former operations, and none of the real estate interests of Holdings or any of its Restricted Subsidiaries, is subject to any investigation by any Governmental Authority against or involving Holdings or any of its Restricted Subsidiaries evaluating whether any remedial action is needed to respond to a Release or threatened Release of a Contaminant.

7.12 No Violation of Law. Neither Holdings nor any of its Restricted Subsidiaries is in violation of any Law, judgment, order or decree applicable to it, where such violation would reasonably be expected to have a Material Adverse Effect.

7.13 No Default. No Default or Event of Default has occurred and is continuing.

7.14 ERISA Compliance. Except as would not reasonably be expected to result in a Material Adverse Effect:

(a) Each Plan is in compliance with the applicable provisions of ERISA, the Code and other federal or state law or other applicable law. The Borrower, each Guarantor and each ERISA Affiliate, as applicable, has made all required contributions to any Pension Plan subject to Section 412 or 430 of the Code or Section 302 or 303 of ERISA or other applicable laws when due, and no application for a funding waiver or an extension of any amortization period (pursuant to Section 412 of the Code, or otherwise) has been made with respect to any Pension Plan.

(b) There are no pending or, to the best knowledge of Holdings and the other Obligors, threatened, claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan.

(c) (i) No ERISA Event has occurred or is reasonably expected to occur, (ii) ~~neither the Borrower nor~~ none of Holdings, a Restricted Subsidiary or any ERISA Affiliate has incurred, or reasonably expects to incur, any liability (and no event has occurred which, with the giving of notice under Section 4219 of ERISA, would result in liability) under Section 4201 or 4243 of ERISA with respect to a Multi-employer Plan and (iii) ~~neither the Borrower nor~~ none of Holdings, a Restricted Subsidiary or any ERISA Affiliate has engaged in a transaction that could be subject to Section 4069 or 4212(c) of ERISA.

7.15 Taxes. Holdings, the Borrower and each of its Restricted Subsidiaries have filed all material Tax returns required to have been filed by them, and have paid all Taxes and other governmental charges levied or imposed upon them or their properties, income or assets otherwise due and payable by them (including in their capacity as a withholding agent), other than Taxes (i) the failure of which to pay, in the aggregate, would not have a Material Adverse Effect or (ii) that are being contested in good faith and by the appropriate proceedings and for which adequate reserves have been established in accordance with GAAP. There are no current, pending or proposed Tax deficiencies, assessments or other claims against Holdings or any Restricted Subsidiary that would reasonably be expected to, in the aggregate, have a Material Adverse Effect.

7.16 Investment Company Act. None of Holdings, or any Restricted Subsidiary of Holdings, is an “Investment Company,” or a company “controlled” by an “Investment Company” within the meaning of the Investment Company Act of 1940, as amended.

7.17 Use of Proceeds. The proceeds of the Loans are to be used solely to finance ongoing working capital needs and for other general corporate purposes (including Permitted Acquisitions and other Permitted Investments, Permitted Distributions and the repayment or prepayment of Debt, in each case to the extent not prohibited pursuant to the terms hereof) of the Borrower and its Restricted Subsidiaries.

7.18 Margin Regulations. As of the ~~Restatement~~Amendment No. 4 Effective Date, none of the Collateral is comprised of any Margin Stock. None of Holdings or any Obligor is engaged, principally or as one of its important activities, in the business of purchasing or carrying Margin Stock (within the meaning of Regulation U issued by the Federal Reserve Board), or extending credit for the purpose of purchasing or carrying Margin Stock, and no proceeds of any Borrowings will be used for any purpose that violates Regulation U or Regulation X of Federal Reserve Board.

7.19 No Material Adverse Change. No Material Adverse Effect has occurred since the Restatement Effective Date.

7.20 Full Disclosure. (a) None of the information or data (taken as a whole) heretofore or contemporaneously furnished by Holdings, the Borrower, any of their respective Restricted Subsidiaries or any of their respective authorized representatives in writing to the Agent, the Collateral Agent, any Arranger or any Lender on or before the ~~Restatement~~Amendment No. 4 Effective Date for purposes of or in connection with this Agreement or any transaction contemplated herein contained any untrue statement of material fact or omitted to state any material fact necessary to make such information and data (taken as a whole) not materially misleading at such time (after giving effect to all supplements so furnished prior to such time) in light of the circumstances under which such information or data was furnished; it being understood and agreed that for purposes of this Section 7.20, such information and data shall not include projections (including financial estimates, forecasts and other forward-looking information), pro forma financial information or information of a general economic or general industry nature. The projections contained in the information and data referred to in this Section 7.20 were prepared in good faith based upon assumptions believed by Holdings and the Borrower to be reasonable at the time made and at the time delivered; it being recognized by the Agent, the Collateral Agent and the Lenders that such projections are as to future events and are not to be viewed as facts, the projections are subject to significant uncertainties and contingencies, many of which are beyond the control of Holdings, the Borrower and the Restricted Subsidiaries, that no assurance can be given that any particular projections will be realized and that actual results during the period or periods covered by any such projections may differ from the projected results and such differences may be material.

(b) If the Borrower has provided a Beneficial Ownership Certification to any Lender in connection with this Agreement on or prior to the ~~Restatement~~Amendment No. 4 Effective Date, as of the ~~Restatement~~Amendment No. 4 Effective Date, to the best knowledge of the Borrower, the information included in such Beneficial Ownership Certification is true and correct in all respects.

7.21 Government Authorization. No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or other Person is necessary or required in connection with the execution, delivery or performance by, or enforcement against, Holdings or any of its Restricted Subsidiaries of this Agreement or any other Loan Document, other than (i) those that have been obtained or made and are in full force and effect, (ii) those required to perfect the Liens created pursuant to the Security Documents, and (iii) where failure to obtain, effect or make any such approval, consent, exemption, authorization, or other action, notice or filing would not reasonably be expected to have a Material Adverse Effect.

7.22 Anti-Terrorism Laws.

(a) None of Holdings, the Borrower nor any of its Restricted Subsidiaries nor, to the knowledge of Holdings, the Borrower or any of its Restricted Subsidiaries, any of their respective officers, directors, or employees is in violation of any applicable Anti-Terrorism Law, or engages in any transaction that attempts to violate, or otherwise evades or avoids (or has the purpose of evading or avoiding) any prohibitions set forth in any applicable Anti-Terrorism Law.

(b) The use of proceeds of the Loans will not violate any applicable Anti-Terrorism Laws.

7.23 FCPA. No part of the proceeds of the Loans will be used, directly, or, to the knowledge of the Borrower, indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended, or other applicable anti-corruption laws.

7.24 Sanctioned Persons.

(a) None of Holdings, the Borrower nor any Restricted Subsidiary nor, to the knowledge of Holdings, the Borrower or any of its Restricted Subsidiaries, any officer, director or employee thereof is currently the target of any U.S. sanctions administered by the Office of Foreign Assets Control (“OFAC”) of the U.S. Treasury Department or the U.S. Department of State.

(b) The Borrower will not to its knowledge, directly or indirectly, use the proceeds of the Loans in any manner that will result in a violation by any Lender of any U.S. sanctions administered by OFAC or the U.S. Department of State.

7.25 Designation of Senior Debt. The Obligations are “Designated Senior Debt” (or any similar term) under the terms of the documentation governing any Subordinated Debt.

7.26 Compliance with Cash Management Provisions. As of the Restatement Effective Date, Holdings and the Borrower are in Compliance with Section 8.23 of the Original Credit Agreement. Schedule 8.23 sets forth, as of the Restatement Effective Date, each U.S. domestic Deposit Account in which funds of any of the Obligor are deposited.

ARTICLE VIII

AFFIRMATIVE AND NEGATIVE COVENANTS

Holdings, the Borrower and each Guarantor ~~(limited, in the case of Holdings, to Section 8.27)~~ covenant to the Agent and each Lender that, from and after the Restatement Effective Date, so long as any of the Commitments are outstanding and until Full Payment of the Obligations:

8.1 Taxes. ~~The Borrower~~Holdings shall, and shall cause each of its Restricted Subsidiaries to, (a) file when due all material Tax returns that it is required to file and (b) pay, or provide for the payment of, when due, all Taxes (including all Indemnified Taxes required to be paid by it under Section 5.1) imposed upon it or upon its property, income and franchises (including in its capacity as a withholding agent); provided, however, neither ~~the Borrower~~Holdings nor any of its Restricted Subsidiaries need pay any Tax described in this Section 8.1 as long as (i) such Tax is being contested in good faith and by the appropriate proceedings and adequate reserves have been established for such Tax in accordance with GAAP or (ii) the failure to pay such Taxes, in the aggregate would not reasonably be expected to have a Material Adverse Effect.

8.2 Legal Existence and Good Standing. ~~The Borrower~~Holdings shall, and shall cause each of its Restricted Subsidiaries to, maintain (a) its legal existence and good standing in its jurisdiction of organization, and (b) its qualification and good standing in all other jurisdictions necessary or desirable in the ordinary course of business of ~~the Borrower~~Holdings or such Restricted Subsidiary except, in the case of either clause (a) (other than with respect to the Borrower) or clause (b) of this Section 8.2, in such cases where the failure to maintain its existence, qualification or good standing would not reasonably be expected to have a Material Adverse Effect; provided, however, that ~~the Borrower~~Holdings and the Restricted Subsidiaries may consummate any transaction permitted under any of Section 8.8, 8.9 or 8.11.

8.3 Compliance with Law; Maintenance of Licenses. ~~The Borrower~~Holdings shall comply, and shall take all reasonable action to cause each of its Restricted Subsidiaries to comply, with all Requirements of Law of any Governmental Authority having jurisdiction over it or its business (including the Federal Fair Labor Standards Act, all Anti-Terrorism Laws, all Environmental Laws, Laws administered by OFAC and the Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations promulgated thereunder), except where noncompliance would not reasonably be expected to have a Material Adverse Effect. ~~The Borrower~~Holdings shall, and shall cause each of its Restricted Subsidiaries to take all reasonable action to, obtain and maintain all licenses, permits, franchises, and governmental authorizations necessary to own its property and to conduct its business, except where the failure to so obtain and maintain such licenses, permits, franchises, and governmental authorizations would not reasonably be expected to have a Material Adverse Effect.

8.4 Maintenance of Property, Inspection, Field Examinations and Appraisals.

(a) ~~The Borrower~~Holdings shall, and shall cause each of its Restricted Subsidiaries to, maintain all of its material property necessary and useful in the conduct of its business, taken as a whole, in good operating condition and repair (or, in the case of Inventory, in saleable, useable or rentable condition), ordinary wear and tear and Casualty Events excepted, except, in each case, to the extent the failure to do so would not reasonably be expected to have a Material Adverse Effect.

(b) ~~The Borrower~~Holdings shall, and shall cause each of its Restricted Subsidiaries to, permit representatives and independent contractors of the Agent and/or the Collateral Agent (at the expense of the Borrower) to visit and inspect any of ~~the Borrower's Holdings~~ or any of ~~their~~its Restricted Subsidiaries' properties (to the extent it is within such Person's control to permit such inspection), to examine ~~the Borrower's Holdings~~ and its Restricted Subsidiaries' corporate, financial and operating records, and make copies thereof or abstracts therefrom, to examine and audit the Collateral (to the extent it is within such Person's control to permit such examination and audit and subject to the limitations otherwise set forth in this Section 8.4), and to discuss ~~the Borrower's Holdings~~ and its Restricted Subsidiaries' affairs, finances and accounts with their respective directors, officers and independent public accountants, at such reasonable times during normal business hours, upon reasonable advance notice to the Borrower (and subject, in the case of any such meetings or advice from such independent public accountants, to such accountants' customary policies and procedures); provided, however, excluding any such visits and inspections during the continuation of an Event of Default and without in any way limiting the rights of the Agent and/or the Collateral Agent set forth in the last sentence of this clause (b), neither the Agent nor the Collateral Agent shall exercise such rights more often than once during any calendar year absent the existence of an Event of Default at the Borrower's expense; and provided, further, that when an Event of Default exists, the Agent and the Collateral Agent (or any of their respective representatives or independent contractors) may do any of the foregoing at the expense of the Borrower at any time during normal business hours and upon reasonable advance notice. The Agent and the Collateral Agent shall give the Borrower the opportunity to participate in any discussions with ~~the Borrower's Holdings~~ or any of its Restricted Subsidiaries' independent public accountants. Notwithstanding anything to the contrary in Article VI, none of Holdings, the Borrower or any Restricted Subsidiary will be required to disclose, permit the inspection, examination or making copies or abstracts of, or discussion of, any document, information or other matter (i) that constitutes non-financial trade secrets or non-financial proprietary information, (ii) in respect of which disclosure to the Agent, the Collateral Agent or any Lender (or their respective representatives or contractors) is prohibited by applicable Law or any binding agreement or (iii) that is subject to attorney-client or similar privilege or constitutes attorney work product. The Agent and the Collateral Agent may carry out (x) investigations and reviews of each Obligor's property at the reasonable expense of the Borrower (including field audits conducted by the Agent and the Collateral Agent) (each, a "Field Examination") and ~~-(y) Appraisals of Equipment and, in each case,~~ absent the continuance of an Event of Default, during each period of twelve (12) consecutive calendar months commencing on or after the Restatement Effective Date, the Agent and the Collateral Agent may, collectively, carry out, at the Borrower's expense, one (1) Field Examination (it being agreed and acknowledged that the Field Examination delivered to the Agent on or prior to the Restatement Effective Date shall constitute the Field Examination for the twelve (12) months ending on the anniversary of the Restatement Effective Date) and one (1) Appraisal; provided, however, that notwithstanding the foregoing limitation, (i) at any time on or after the date on which Availability has been less than the greater of (A) ~~\$16,875,000~~26,250,000 and (B) 15.0% of the Maximum Credit, in either case, for five (5) consecutive Business Days, the Agent and the Collateral Agent may, collectively, carry out, at the Borrower's expense, two (2) Field ~~Examinations~~Examination and two (2) Appraisals during any such period, and (ii) at any time during the continuation of an Event of Default, the Agent and/or the Collateral Agent may carry out, at the Borrower's expense, Field Examinations and Appraisals as frequently as determined by the Agent and/or the Collateral Agent in their respective reasonable discretion.

8.5 Insurance.

(a) ~~The Borrower~~Holdings shall, and shall cause each of its Restricted Subsidiaries to, shall maintain with financially sound and reputable insurance companies, insurance on (or self-insure in such amounts and against such risks) all property material to the business of ~~the Borrower~~Holdings and its Restricted Subsidiaries, taken as a whole, in at least such amounts and against at least such risks (but including, in any event, public liability, casualty, hazard, theft, product liability and business interruption) as are customarily insured against by companies of established reputation engaged in the same or similar business and in the same general area as ~~the Borrower~~Holdings and the Restricted Subsidiaries, all as determined in good faith by ~~the Borrower~~Holdings or such Restricted Subsidiaries.

(b) For any Mortgaged Property of the Obligors which is, at any time, located within an area that has been identified by a Governmental Authority (including, by the Federal Emergency Management Agency) as a special flood hazard area, ~~the Borrower~~Holdings and its Restricted Subsidiaries shall also (i) maintain, or cause to be maintained, with a financially sound and reputable insurer, flood insurance in an amount reasonably satisfactory to the Agent and each Lender and otherwise sufficient to comply with all applicable rules and regulations promulgated pursuant to the Flood Insurance Laws, and (ii) deliver to the Agent and each Lender evidence of such compliance in form and substance reasonably acceptable to the Collateral Agent, including, without limitation, evidence of annual renewals of such insurance. Each such insurance policy shall (i) indicate which Mortgaged Properties are located in a special flood hazard area and state the corresponding flood zone designation and, for each Mortgaged Property, the number of buildings located at such Mortgaged Property, (ii) indicate the flood insurance coverage and the deductible relating thereto, (iii) include a statement of values relating to all properties insured by the insurance policy, and (iv) be otherwise in form and substance satisfactory to the Collateral Agent. Each flood insurance policy shall provide that the insurer will give the Agent 45 days written notice of cancellation or non-renewal.

(c) ~~The Borrower~~Holdings shall cause the Collateral Agent, for the ratable benefit of the Collateral Agent and the other Secured Parties, to be named as secured parties or mortgagees and additional loss payees or additional insureds, as applicable, in a manner reasonably acceptable to the Collateral Agent, under all insurance policies required to be maintained by the Obligors under clauses (a) and (b) above. Each such policy of insurance shall contain a clause or endorsement requiring the insurer to give not less than thirty days prior written notice to the Collateral Agent in the event of cancellation of the policy for any reason whatsoever and, if obtainable, a clause or endorsement stating that the interest of the Collateral Agent shall not be impaired or invalidated by any act or neglect of any Obligor or the owner of any Real Estate for purposes more hazardous than are permitted by such policy. If the Obligors fail to procure any such material insurance or to pay the premium therefor when due, during the continuance of an Event of Default and after providing written notice thereof to the Borrower, the Agent may, and at the direction of the Required Lenders shall, do so from the proceeds of Revolving Loans on a pro rata basis.

8.6 Environmental Laws. ~~The Borrower~~Holdings shall, and shall take all commercially reasonable action to cause each of its Restricted Subsidiaries to, conduct its business in compliance with all Environmental Laws, except where such noncompliance would not reasonably be expected to have a Material Adverse Effect. ~~The Borrower~~Holdings shall, and shall take all commercially reasonable action to cause each of its Restricted Subsidiaries to, pursue commercially reasonable efforts to respond to any material non-compliance with Environmental Laws.

8.7 Compliance with ERISA. ~~The Borrower~~Holdings shall, and shall cause each of its ERISA Affiliates and Subsidiaries to: (a) maintain each Plan in compliance with the applicable provisions of ERISA and the Code; and (b) not cause an ERISA Event to occur with respect to a Pension Plan or Multi-employer Plan which ~~the Borrower~~Holdings, a Restricted Subsidiary or any ERISA Affiliate sponsors, maintains, or to which it makes, is making, or is obligated to make contributions, except in the case of each of clauses (a) and (b), to the extent such failure to do so would not reasonably be expected to have a Material Adverse Effect.

8.8 Dispositions. ~~The Borrower~~Holdings shall not, and shall not permit any of its Restricted Subsidiaries to, Dispose of any of its property, business or assets, except for Permitted Dispositions.

8.9 Mergers, Consolidations, etc. Except for Permitted Dispositions and Permitted Investments, ~~the Borrower~~Holdings shall not, and shall not permit any of its Restricted Subsidiaries to, merge, amalgamate or consolidate, or Dispose of all or substantially all of its business units, assets and properties, or wind up, liquidate or dissolve, except:

(a) any Subsidiary of the Borrower or any other Person (other than Holdings) may be merged, amalgamated or consolidated with or into the Borrower or the Borrower may Dispose of all or substantially all of its business units, assets and other properties; provided that (i) the Borrower shall be the continuing or surviving Person or, in the case of a merger, amalgamation or consolidation where the Borrower is not the continuing or surviving Person, the Person formed by or surviving any such merger, amalgamation or consolidation (if other than the Borrower) or in connection with a Disposition of all or substantially all of the Borrower's assets, the transferee of such assets or properties, in each case shall be an entity organized or existing under the laws of the United States, any state thereof, or the District of Columbia (the Borrower or such Person, as the case may be, being herein referred to as the "Successor Borrower"), (ii) the Successor Borrower (if other than the Borrower) shall expressly assume all the obligations of the Borrower under this Agreement and the other Loan Documents pursuant to a supplement hereto or thereto in form reasonably satisfactory to the Agent, and (iii) if such merger, amalgamation, consolidation or Disposition involves the Borrower and a Person that, prior to the consummation of such merger, amalgamation, consolidation, or Disposition, is not a Restricted Subsidiary of the Borrower (A) no Event of Default under any of Section 10.1(a), (e), (f) or (g) has occurred and is continuing on the date of such merger, amalgamation, consolidation or Disposition or would result from the consummation of such merger, amalgamation, consolidation or Disposition, (B) each Guarantor, unless it is the other party to such merger, amalgamation, consolidation or Disposition or unless the Successor Borrower is the Borrower, shall have confirmed by a supplement to the Guarantee Agreement that its guarantee shall apply to the Successor Borrower's obligations under this Agreement, (C) each Guarantor, unless it is the other party to such merger, amalgamation, consolidation or Disposition or unless the Successor Borrower is the Borrower, shall have by a supplement to the Security Documents to which it is a party confirmed that its obligations thereunder shall apply to the Successor Borrower's obligations under this Agreement, (D) the Borrower shall have delivered to the Agent an officer's certificate stating that such merger, amalgamation, consolidation or Disposition and any supplements to the Loan Documents preserve the enforceability of the Guarantee Agreement and the perfection of the Collateral Agent's Liens, (E) if reasonably requested by the Agent, the Borrower shall be required to deliver to the Agent an opinion of counsel to the effect that such merger, amalgamation, consolidation or Disposition does not breach or result in a default under this Agreement or any other Loan Document, (F) such merger, amalgamation, consolidation or Disposition shall comply with all the conditions set forth in the definition of the term "Permitted Acquisition" or otherwise constitutes a Permitted Investment and (G) as a condition to the assumption by the Successor Borrower of the obligations of the Borrower hereunder, the Successor Borrower shall deliver to the Agent and any applicable Lender any information and documentation reasonably requested by the Agent or such Lender for purposes of compliance with applicable "know your customer" and anti-money laundering rules and regulations, including, without limitation, the Act and the Beneficial Ownership Regulation; provided, further, that, if the foregoing are satisfied, the Successor Borrower (if other than the Borrower) will succeed to, and be substituted for, the Borrower under this Agreement and the other Loan Documents (provided, further, that, in the event of a Disposition of all or substantially all of the Borrower's assets or property to a Successor Borrower (which is not the Borrower) as set forth above and notwithstanding anything to the contrary set forth in this Agreement or the other Loan Documents, if the original Borrower retains any assets or property other than immaterial assets or property after such Disposition, such original Borrower shall remain obligated as a co-Borrower along with the Successor Borrower hereunder);

(b) any Subsidiary of the Borrower or any other Person (other than Holdings) may be merged, amalgamated or consolidated with or into any one or more Restricted Subsidiaries of the Borrower or any Restricted Subsidiary may Dispose of all or substantially all of its business units, assets and other properties; provided that, (i) in the case of any merger, amalgamation, consolidation or Disposition involving one or more Restricted Subsidiaries, (A) a Restricted Subsidiary shall be the continuing or surviving corporation or the transferee of such assets or (B) the Borrower shall take all steps necessary to cause the Person formed by or surviving any such merger, amalgamation, consolidation or Disposition (if other than a Restricted Subsidiary) to become a Restricted Subsidiary, (ii) in the case of any merger, amalgamation, consolidation or Disposition involving one or more Guarantors, a Guarantor shall be the continuing or surviving Person or the Person formed by or surviving any such merger, amalgamation, consolidation or the transferee of such assets (in each case, if other than such Guarantor) shall execute a “Guaranty Supplement” referred to in the Guarantee Agreement and a “Security Agreement Supplement” referred to in the Security Agreement, in order for the surviving or continuing Person or such transferee to become a Guarantor and (iii) if such merger, amalgamation, consolidation or Disposition involves a Restricted Subsidiary and a Person that, prior to the consummation of such merger, amalgamation, consolidation or Disposition, is not a Restricted Subsidiary of the Borrower, (A) no Event of Default under any of Section 10.1(a), (e), (f) or (g), has occurred and is continuing on the date of such merger, amalgamation, consolidation or Disposition or would result from the consummation of such merger, amalgamation, consolidation or Disposition, (B) the Borrower shall have delivered to the Agent a certificate of a Responsible Officer stating that such merger, amalgamation, consolidation or Disposition and any supplements to any Loan Document preserve the enforceability of the Guarantee Agreement and the perfection and priority of the Collateral Agent’s Liens and (C) such merger, amalgamation, consolidation or Disposition shall comply with all the conditions set forth in the definition of the term “Permitted Acquisition” or otherwise constitutes a Permitted Investment;

(c) any Restricted Subsidiary that is not a Guarantor may (i) merge, amalgamate or consolidate with or into any other Restricted Subsidiary (other than the Borrower), and (ii) Dispose of any or all of its assets (upon voluntary liquidation or otherwise) to the Borrower, a Guarantor or any other Restricted Subsidiary of ~~the Borrower~~ Holdings;

(d) any Guarantor (other than Holdings) may (i) merge, amalgamate or consolidate with or into any other Restricted Subsidiary that is a Guarantor (other than Holdings), (ii) merge, amalgamate or consolidate with or into any other Restricted Subsidiary that is not a Guarantor; provided that, if such Guarantor is not the surviving Person, such merger, amalgamation or consolidation shall be deemed to be an “Investment” and shall be only permitted if it constitutes a Permitted Investment and (iii) Dispose of any or all of its assets (upon voluntary liquidation or otherwise) to Holdings, the Borrower or any other Restricted Subsidiary that is a Guarantor;

(e) any Restricted Subsidiary may liquidate or dissolve if (x) the Borrower determines in good faith that such liquidation or dissolution is in the best interests of the Borrower and is not materially disadvantageous to the Lenders and (y) to the extent such Restricted Subsidiary is a Guarantor, any assets or business not otherwise Disposed of or transferred in accordance with Section 8.8 or Section 8.11, or, in the case of any such business, discontinued, shall be transferred to, or otherwise owned or conducted by, the Borrower or another Restricted Subsidiary that is a Guarantor after giving effect to such liquidation or dissolution; ~~and~~

(f) the Borrower and the Restricted Subsidiaries may consummate a merger, dissolution, liquidation, consolidation or Disposition, the purpose of which is to effect a Permitted Disposition; ~~and~~ and

(g) Holdings will not consummate any merger, consolidation or amalgamation, or liquidate, wind up or dissolve itself (or suffer any liquidation or dissolution), or Dispose all or substantially all of its assets and properties, except that Holdings may merge, amalgamate or consolidate with or into any other Person (other than the Borrower) or otherwise Dispose of all or substantially all of its assets and property; provided that (i) Holdings shall be the continuing or surviving Person of such merger, amalgamation or consolidation or, in the case of a merger, amalgamation or consolidation where Holdings is not the continuing or surviving Person or where Holdings has been liquidated or in connection with a Disposition of all or substantially all of its assets, in any such case, the Person formed by or surviving any such merger, amalgamation or consolidation or the Person into which Holdings has been liquidated or to which Holdings has transferred such assets shall be an entity organized or existing under the laws of the United States, any state thereof, the District of Columbia or any territory thereof (Holdings or such Person, as the case may be, being herein referred to as the "Successor Holdings"); (ii) the Successor Holdings (if other than Holdings) shall expressly assume all the obligations of Holdings under this Agreement and the other Loan Documents pursuant to a supplement hereto or thereto in form reasonably satisfactory to the Agent; (iii) each Guarantor, unless it is the other party to such merger, amalgamation, consolidation, liquidation or Disposition or unless the Successor Holdings is Holdings, shall have by a supplement to the Guarantee Agreement confirmed that its Guaranty shall apply to the Successor Holdings' obligations under this Agreement; (iv) each Guarantor, unless it is the other party to such merger, amalgamation, consolidation, liquidation or Disposition or unless the Successor Holdings is Holdings, shall have by a supplement to the Security Agreement confirmed that its obligations thereunder shall apply to the Successor Holdings' obligations under this Agreement; (v) Holdings shall have delivered to the Agent an officer's certificate stating that such merger, amalgamation, consolidation, liquidation or Disposition and any supplements to the Loan Documents, preserve the enforceability of the Guarantee Agreement and the perfection of the Collateral Agent's Liens; (vi) the Successor Holdings shall, immediately following such merger, amalgamation, consolidation, liquidation or Disposition, directly or indirectly, own all Subsidiaries owned by Holdings immediately prior to such merger, amalgamation, consolidation, liquidation or Disposition and (vii) if reasonably requested by the Agent, an opinion of counsel shall be required to be provided to the effect that such merger, amalgamation, consolidation, liquidation, or Disposition does not breach or result in a default under this Agreement or any other Loan Document; provided, further, that if the foregoing are satisfied, the Successor Holdings (if other than Holdings) will succeed to, and be substituted for, Holdings under this Agreement.

8.10 Distributions. ~~The Borrower~~Holdings shall not, and shall not permit any of its Restricted Subsidiaries to, make any Distribution, other than the following (collectively, "Permitted Distributions"):

(a) each Restricted Subsidiary may make Distributions to ~~the Borrower~~Holdings and to other Restricted Subsidiaries (and, in the case of a Distribution by a non-Wholly Owned Restricted Subsidiary, to ~~the Borrower~~Holdings and any other Restricted Subsidiary and to each other owner of Stock of such Restricted Subsidiary on a pro rata basis based on their relative ownership interests of the relevant class of Stock);

(b) (i) ~~the Borrower~~Holdings may (or may make Distributions to permit any Parent Entity to) redeem in whole or in part any of its Stock for another class of its (or such Parent Entity's) Stock or rights to acquire its Stock or with proceeds from substantially concurrent equity contributions or issuances of new Stock; provided that any terms and provisions material to the interests of the Lenders, when taken as a whole, contained in such other class of Stock are at least as advantageous to the Lenders as those contained in the Stock redeemed thereby and (ii) ~~the Borrower~~Holdings may declare and make any Distribution payable solely in the Stock (other than Disqualified Stock not otherwise permitted by Section 8.12) of such Person;

~~(e) [reserved];~~

~~(c) (i) Holdings may pay premiums in respect of, and otherwise perform its obligations under (including the unwinding of), any Permitted Bond Hedge Transaction(s), and (ii) Holdings may settle any related Permitted Warrant Transaction(s) by delivery of shares of Holdings' common stock upon settlement thereof, by set-off against the related Permitted Bond Hedge Transaction, or by payment of an early termination amount thereof in common stock upon any early termination thereof;~~

(d) to the extent constituting Distributions, ~~the Borrower~~Holdings and its Restricted Subsidiaries may enter into and consummate transactions expressly permitted by any provision of Section 8.11 (other than pursuant to ~~clause (p)~~ of the definition of "Permitted Investments"), or Sections 8.14(c), (g) and (i);

(e) repurchases of Stock in the ordinary course of business in ~~the Borrower~~Holdings (or any Parent Entity) or any Restricted Subsidiary deemed to occur upon exercise, vesting and/or settlement of Stock if such Stock represents a portion of the exercise price thereof or any portion of required withholding or similar taxes due upon the exercise, vesting and/or settlement thereof;

(f) so long as no Default or Event of Default shall be continuing, ~~the Borrower~~Holdings or any Restricted Subsidiary may pay (or make Distributions to allow any Parent Entity to pay) for the repurchase, retirement or other acquisition or retirement for value of Stock of it or any Parent Entity (or any options or warrants or stock appreciation or similar rights issued with respect to any of such Stock) held by any future, present or former employee, director, officer or other individual service provider (or any Affiliates, spouses, former spouses, other immediate family members, successors, executors, administrators, heirs, legatees or distributees of any of the foregoing) of ~~the Borrower~~Holdings (or any Parent Entity) or any of its Restricted Subsidiaries pursuant to any employee, management or director equity plan, employee, management or director stock option plan or any other employee, management or director benefit plan or any agreement (including any stock option or stock appreciation or similar rights plan, any management, director and/or employee stock ownership or equity-based incentive plan, stock subscription plan, employment termination agreement or any other employment agreements or equity holders' agreement) with any employee, director, officer or other individual service provider of ~~the Borrower~~Holdings (or any Parent Entity) or any Restricted Subsidiary; provided that any such payments do not exceed \$25,000,000 in any Fiscal Year, plus (ii) all net proceeds obtained by any Parent Entity (and contributed to ~~the Borrower~~ or ~~the Borrower~~Holdings) or Holdings during such calendar year from the sale or issuance of such Stock to other present or former officers, employees, directors and other individual service provider in connection with any plans or agreements set forth above in this clause (f), plus (iii) all net proceeds obtained from any key-man life insurance policies received by Holdings or the Borrower during such calendar year; provided that any unused portion of the preceding basket calculated pursuant to clauses (i) through (iii) above for any Fiscal Year may be carried forward to the next two (2) succeeding Fiscal Years up to a maximum of \$37,500,000 in the aggregate in any Fiscal Year; provided, further, that cancellation of Debt owing to ~~the Borrower~~Holdings (or any Parent Entity) or any of its Restricted Subsidiaries from employees, directors, officers or other individual service providers of ~~the Borrower~~Holdings, any of ~~the Borrower's~~Holdings' Parent Entity or any of ~~the Borrower's~~Holdings' Restricted Subsidiaries in connection with a repurchase of Stock of Holdings (or any of the Borrower's Parent Entity), will not be deemed to constitute a Distribution for purposes of this covenant or any other provision of this Agreement;

(g) ~~the Borrower~~Holdings and its Restricted Subsidiaries may make Distributions to any Parent Entity of ~~the Borrower~~Holdings:

(i) the proceeds of which will be used to pay, for any taxable period for which ~~the Borrower~~Holdings or any of its Subsidiaries is a member of a combined, consolidated or similar tax group for U.S. federal, state, local or foreign Tax purposes of which a direct or indirect parent of ~~the Borrower~~Holdings is the common parent (a "Tax Group"), the portion of any consolidated, combined or similar Tax liability of such Tax Group for such taxable period attributable to the income or operations of ~~the Borrower~~Holdings and its Subsidiaries; provided that (x) no such payments shall exceed the Tax liability that would have been imposed on ~~the Borrower~~Holdings and/or the applicable Subsidiaries had such entity(ies) paid such Taxes on a stand-alone basis (or as a stand-alone group) and (y) any such payments attributable to an Unrestricted Subsidiary shall be limited to the amount of any cash paid by such Unrestricted Subsidiary to ~~the Borrower~~Holdings or any Restricted Subsidiary for such purpose;

(ii) the proceeds of which shall be used to pay such Parent Entity's operating costs and expenses incurred in the ordinary course of business, other overhead costs and expenses and fees (including administrative, legal, accounting and similar expenses provided by third parties as well as trustee, directors and general partner fees) which are reasonable and customary and incurred in the ordinary course of business and attributable to the ownership or operations of ~~the Borrower~~Holdings and its Subsidiaries (including any reasonable and customary indemnification claims made by directors or officers of Parent Entity attributable to the direct or indirect ownership or operations of ~~the Borrower~~Holdings and its Subsidiaries) and fees and expenses otherwise due and payable by ~~the Borrower~~Holdings or any Restricted Subsidiary and permitted to be paid by ~~the Borrower~~Holdings or such Restricted Subsidiary under this Agreement not to exceed \$5,000,000 in any Fiscal Year;

(iii) the proceeds of which shall be used to pay franchise and excise taxes, and other fees and expenses, required to maintain its (or any of its direct or indirect parents') existence;

(iv) to finance any Permitted Acquisition or similar Investment; provided that (A) such Distribution shall be made substantially concurrently with the closing of such Investment and (B) ~~the Borrower~~Holdings or such Parent Entity shall, immediately following the closing thereof, cause all property acquired (whether assets or Stock) to be held by or contributed to ~~the Borrower~~Holdings or a Restricted Subsidiary;

(v) the proceeds of which shall be used to pay customary costs, fees and expenses (other than to Affiliates) related to any unsuccessful Stock or Debt offering, Refinancing, issuance or incurrence transaction or any Disposition, acquisition or Investment permitted by this Agreement; and

(vi) the proceeds of which shall be used to pay customary salary, compensation, bonus and other benefits payable to officers, employees, consultants and other service providers of any Parent Entity or partner of ~~the Borrower~~Holdings to the extent such salaries, compensation, bonuses and other benefits are attributable to the ownership or operation of ~~the Borrower~~Holdings and its Restricted Subsidiaries;

(h) ~~the Borrower~~Holdings or any Restricted Subsidiary may pay any dividend or distribution within sixty (60) consecutive calendar days after the date of declaration thereof, if at the date of declaration such payment would have complied with the provisions of this Agreement;

(i) ~~the Borrower Holdings~~ or any Restricted Subsidiary may (a) pay cash in lieu of fractional Stock in connection with any dividend, split or combination thereof or any Permitted Acquisition (or other similar Investment) and (b) honor any conversion request by a holder of convertible Debt and make cash payments in lieu of fractional shares in connection with any such conversion and may make payments on convertible Debt in accordance with its terms;

(j) in addition to the foregoing Distributions (i) ~~the Borrower Holdings~~ or any Restricted Subsidiary may make additional Distributions so long as the Specified Conditions shall have been satisfied with respect thereto at the time of such Distributions, (ii) ~~the Borrower Holdings~~ may make additional Distributions in an aggregate amount not to exceed an amount equal to the Available Equity Amount at the time such Distributions are paid and (iii) so long as no Default or Event of Default shall have occurred and be continuing or would result therefrom, ~~the Borrower Holdings~~ may make additional Distributions, measured at the time made, in an aggregate amount not to exceed \$5,000,000; and

(k) ~~the Borrower Holdings~~ may pay (or may make Distributions to allow any Parent Entity to) Distributions in an amount equal to withholding or similar taxes payable or expected to be payable by any present or former employee, director, manager, consultant or other service provider (or its Affiliates, or any of their respective estates or immediate family members) and any repurchases of Stock in consideration of such payments including deemed repurchases in connection with the exercise of Stock options.

For the avoidance of doubt, this Section 8.10 shall not prohibit the conversion by holders of (including any cash payment upon conversion), or required payment of any principal or premium on (including, for the avoidance of doubt, in respect of a required repurchase in connection with the redemption of Convertible Indebtedness upon satisfaction of a condition related to the stock price of Holdings' common stock) or required payment of any interest with respect to any Convertible Indebtedness in each case, in accordance with the terms of the indenture governing such Convertible Indebtedness.

Notwithstanding the foregoing, Holdings may repurchase, exchange or induce the conversion of Convertible Indebtedness by delivery of shares of Holdings' common stock and/or a different series of Convertible Indebtedness and/or by payment of cash; provided that, for the avoidance of doubt, Holdings may exercise or unwind or terminate early (whether in cash, shares or any combination thereof) the portion of the Permitted Bond Hedge Transactions and Permitted Warrant Transactions, if any, corresponding to such Convertible Indebtedness that is so repurchased, exchanged or converted.

8.11 Investments. ~~The Borrower Holdings~~ shall not, and shall not permit any of its Restricted Subsidiaries to, make any Investment, except Permitted Investments.

8.12 Debt. ~~The Borrower Holdings~~ shall not, and shall not permit any of its Restricted Subsidiaries to, incur or maintain any Debt, other than the following Debt (collectively, "Permitted Debt"):

(a) Debt of ~~the Borrower Holdings~~ and any of its Restricted Subsidiaries under the Loan Documents (including pursuant to Sections 2.6 and 2.7);

(b) Debt (i) described on Schedule 8.12 and any Refinancing Debt in respect thereof and (ii) that is intercompany Debt outstanding on the Restatement Effective Date;

(c) [reserved];

(d) Debt of (A) any Restricted Subsidiary that is not an Obligor owing to ~~Holdings or~~ another Restricted Subsidiary that is not an Obligor, (B) any Restricted Subsidiary that is not an Obligor owing to ~~Holdings or~~ any Obligor; provided that the aggregate amount of Debt incurred under this ~~clause (d)(B)~~ is permitted to be incurred as an Investment pursuant to Section 8.11 or (C) any Obligor that is owing to ~~Holdings or~~ any Restricted Subsidiary that is not an Obligor; provided that the Debt incurred under this ~~clause (d)(C)~~ shall be subject to the Subordinated Intercompany Note;

(e) Debt ~~(i)~~ incurred under Hedge Agreements entered into by Holdings, a Borrower or Restricted Subsidiary and (ii) in connection with any Permitted Bond Hedge Transaction and Permitted Warrant Transaction;

(f) Guaranties by ~~the Borrower~~Holdings and its Restricted Subsidiaries in respect of Debt of ~~the Borrower~~Holdings or any Restricted Subsidiary otherwise permitted under this Agreement; provided that (i) if the Debt being guaranteed is Subordinated Debt, such Guaranties shall be subordinated in right of payment to the Guaranty of the Obligations on terms at least as favorable to the Lenders as those contained in the subordination of such Subordinated Debt and (ii) no Guaranty by any Restricted Subsidiary of any Debt of an Obligor shall be permitted unless such Restricted Subsidiary shall have also provided a Guaranty of the Obligations;

(g) (i) Debt arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds; provided that such Debt is extinguished within five Business Days of its incurrence and (ii) customer deposits and advance payments received in the ordinary course of business from customers for goods and services purchased or rented in the ordinary course of business;

(h) Debt of any Obligor owing to any other Obligor;

(i) Debt of any Obligor or Restricted Subsidiary in respect of (i) performance bonds, completion guarantees, surety bonds, appeal bonds, bid bonds, bankers' acceptances, warehouse receipts, letters of credit or other similar bonds, instruments or obligations, in each case provided in the ordinary course of business, including Debt evidenced by letters of credit issued in the ordinary course of business to support the insurance or self-insurance (to the extent such self-insurance is permitted hereunder) obligations of any Obligor or any of its Restricted Subsidiaries (including to secure workers' compensation claims, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance or other Debt with respect to reimbursement-type obligations), but excluding any of the foregoing issued in respect of or to secure Debt for Borrowed Money; (ii) Debt owed to any Person providing workers' compensation, health, disability or other employee benefits or property, casualty, liability, or other insurance to any Obligor or any of its Restricted Subsidiaries, so long as the amount of such Debt is not in excess of the amount of the unpaid cost of, and shall be incurred only to defer the cost of, such insurance for the year in which such Debt is incurred and such Debt is outstanding only during such year, (iii) Cash Management Obligations and other Debt in respect of netting services, ACH arrangements, overdraft protection and other arrangements arising under standard business terms of any bank at which any Obligor or any Restricted Subsidiary maintains an overdraft, cash pooling or other similar facility or in connection with Deposit Accounts incurred in the ordinary course or (iv) Debt consisting of accommodation Guaranties for the benefit of trade creditors of any Obligor or any Subsidiary issued by such obligor or Subsidiary in the ordinary course of business;

(j) other Debt incurred under this clause (j) and then outstanding in an aggregate principal amount, measured at the time of incurrence and after giving Pro Forma Effect thereto and the use of the proceeds thereof, not to exceed the greater of (x) ~~\$25,000,000~~67,500,000 and (y) 4.5% of Consolidated Total Assets as of the last day of the Test Period most recently ended on or prior to the date such Debt was incurred (measured as of the date such Debt was incurred based upon the Section 6.2 Financials most recently delivered on or prior to such date of incurrence);

(k) Debt (x) representing deferred compensation, severance and health and welfare retirement benefits to current and former employees, directors, consultants, partners, members, contract providers, independent contractors or other service providers of Holdings (or any Parent Entity thereof), the Borrower and the Restricted Subsidiaries incurred in the ordinary course of business or (y) consisting of indemnities, obligations in respect of earnouts or other purchase price adjustments, or similar obligations created, incurred or assumed in connection with Permitted Acquisitions, other Investments and the Disposition of any business, assets or Stock permitted hereunder, other than Guaranties incurred by any Person acquiring all or any portion of such business, assets or Stock for the purpose of financing such acquisition;

(l) Debt consisting of (x) obligations of Holdings (or any Parent Entity thereof), the Borrower or the Restricted Subsidiaries under deferred compensation arrangements to their employees, directors, partners, members, consultants, independent contractors or other service providers, (y) other similar arrangements incurred by such Persons in connection with Permitted Acquisitions or (z) any other Investment permitted under Section 8.11;

(m) Debt consisting of promissory notes issued by ~~the Borrower~~Holdings or its Restricted Subsidiaries to their current or former officers, directors, partners, members, and employees and their respective spouses, former spouses, successors, executors, administrators, heirs, legatees or distributees to finance the retirement, acquisition, repurchase, purchase or redemption of Stock of Holdings (or any Parent Entity or the Borrower) in each case permitted by Section 8.10;

(n) Debt consisting of (i) the financing of insurance premiums or (ii) take or pay obligations entered into in the ordinary course of business;

(o) (i) Debt incurred by an Obligor or any of its Restricted Subsidiaries pursuant to transactions permitted under Section 8.18 and (ii) any Refinancing Debt incurred to Refinance such Debt; *provided* that the aggregate amount of Debt incurred under this clause (o) shall not exceed the greater of (x) ~~\$25,000,000~~67,500,000 and (y) 4.5% of Consolidated Total Assets as of the last day of the Test Period most recently ended on or prior to the date such Debt was incurred (measured as of the date such Debt was incurred based upon the Section 6.2 Financials most recently delivered on or prior to such date of incurrence);

(p) Debt of any Restricted Subsidiary that is not an Obligor incurred under this clause (p); *provided* that (i) such Debt is not guaranteed by ~~Holdings or any~~ Obligor, (ii) the holder of such Debt does not have, directly or indirectly, any recourse to any Obligor, whether by reason of representations or warranties, agreement of the parties, operation of law or otherwise, (iii) such Debt is not secured by any assets other than assets of such Restricted Subsidiary and its Subsidiaries and (iv) the aggregate amount of Debt incurred under this clause (p) shall not exceed the greater of (x) ~~\$10,000,000~~30,000,000 and 2.0% of Consolidated Total Assets (measured as of the date such Debt was incurred based upon the Section 6.2 financials most recently delivered on or prior to such date of incurrence);

(q) Debt of ~~the Borrower~~Holdings or any Restricted Subsidiary; so long as (x) in the case of secured Debt, at the time of incurrence thereof and after giving Pro Forma Effect thereto and the use of proceeds thereof, ~~the Borrower~~Holdings would be in compliance with a Senior Secured Net Leverage Ratio, calculated on a Pro Forma Basis as of the last date of the Test Period most recently ended on or prior to the incurrence of such secured Debt, that is no greater than ~~2.50~~3.75:1.00 and (y) in the case of unsecured Debt, at the time of incurrence thereof and after giving Pro Forma Effect thereto and the use of proceeds thereof, ~~the Borrower~~Holdings would be in compliance with a Total Net Leverage Ratio, calculated on a Pro Forma Basis as of the last date of the Test Period most recently ended on or prior to the incurrence of such unsecured Debt, that is no greater than ~~3.50~~4.75:1.00; *provided* that ~~(A)~~ any secured Debt incurred pursuant to clause (x) hereof may only be secured by either (A) a first priority security interest in the Fixed Asset Collateral and any fee-owned real property and/or a second priority security interest in the Current Asset Collateral (and (B) the holder of such Debt (or an agent or representative in respect thereof) shall have entered into the Intercreditor Agreement or another customary intercreditor agreement in form and substance reasonably satisfactory to the Collateral Agent and the Borrower; or (B) in the event such secured Debt is comprised of Capital Leases, purchase money Debt, or Specified Capital Leases, a first priority security interest granted in accordance with clause (c) of the "Permitted Liens" definition and (i) to the extent any Capital Leases, purchase money Debt or Specified Capital Leases are incurred in reliance on this clause (q), the Borrower shall deliver written notice to the Agent of such incurrence;

(r) so long as, at the time of incurrence and after giving Pro Forma Effect thereto, no Default or Event of Default has occurred and is continuing or would result from the incurrence of such Debt, (x) (i) Capital Leases and purchase money Debt incurred to finance the acquisition, construction, repair, replacement, lease or improvement of any Equipment held for sale or lease or any fixed or capital assets (whether pursuant to a loan, a Capital Lease or otherwise) and (ii) any Refinancing Debt incurred to Refinance such Debt and (y) (i) Specified Capital Leases and (ii) any Refinancing Debt incurred to Refinance such Specified Capital Leases; provided that, at the time of incurrence and after giving Pro Forma Effect thereto and the use of the proceeds thereof, the aggregate principal amount of Debt incurred under this Section 8.12(r) and then-outstanding of ~~the Borrower Holdings~~ and the Restricted Subsidiaries as at the last day of the Test Period ended on or prior to the date that such Debt was incurred shall not exceed ~~an amount equal to \$425,000,000~~ the greater of (x) \$600,000,000 and (y) 300.0% of Consolidated EBITDA for the most recently completed Test Period;

(s) Guaranties incurred in the ordinary course of business in respect of obligations to suppliers, customers, franchisees, lessors, licensees, sublicensees or distribution partners;

(t) (i) unsecured Debt in respect of obligations of ~~the Borrower Holdings~~ or any Restricted Subsidiary to pay the deferred purchase price of goods or services or progress payments in connection with such goods and services; provided that such obligations are incurred in connection with open accounts extended by suppliers on customary trade terms in the ordinary course of business and not in connection with the borrowing of money and (ii) unsecured Debt in respect of intercompany obligations of ~~the Borrower Holdings~~ or any Restricted Subsidiary in respect of accounts payable incurred in connection with goods sold or services rendered in the ordinary course of business and not in connection with the borrowing of money;

(u) Debt arising from the taking of deposits by a Restricted Subsidiary that constitutes a regulated bank; ~~and~~

(v) all premiums (if any), interest (including post-petition interest), fees, expenses, charges and additional or contingent interest on obligations described in clauses (a) through (u) above ~~and clause (w) below; and~~

(w) Debt in respect of the Convertible Notes or other Convertible Indebtedness, provided that the aggregate outstanding principal amount of Debt pursuant to this clause (w) shall not exceed \$690,000,000.

For purposes of determining compliance with this Section 8.12, in the event that an item of Debt meets the criteria of more than one of the types of Debt described in the above clauses, the Borrower, in its sole discretion, may classify and reclassify or later divide, classify or reclassify such item of Debt (or any portion thereof) and will only be required to include the amount and type of such Debt in one or more of the above clauses.

The accrual of interest, the accretion of accreted value and the payment of interest in the form of additional Debt shall not be deemed to be an incurrence of Debt for purposes of this Section 8.12.

8.13 Prepayments of Debt. ~~The Borrower~~ Holdings shall not, and shall not permit any of its Restricted Subsidiaries to, voluntarily 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 principal outstanding in respect of any Junior Debt, except (i) regularly scheduled repayments, purchases or redemptions of Junior Debt and regularly scheduled payments of interest, fees, expenses and premiums on any such Junior Debt, (ii) any prepayments, redemptions, purchases, defeasances or other satisfactions of any Junior Debt in connection with any Refinancing thereof with any Refinancing Debt, (iii) any prepayments, redemptions, purchases, defeasances or other satisfactions of any Junior Debt required as a result of any Disposition of any property securing such Junior Debt to the extent that such security is permitted under this Agreement and such prepayment is permitted under the terms of any intercreditor or subordination provisions with respect thereto, (iv) the conversion of any Junior Debt to Stock (other than Disqualified Stock) of Holdings, the Borrower or any Parent Entity, (v) prepayments, redemptions, purchases, defeasances and other satisfactions of any Junior Debt in an aggregate amount not to exceed the Available Equity Amount at such time, (vi) prepayments, redemptions, purchases, defeasances and other satisfactions (including, without limitation, any payments in respect of make-whole premiums) of Junior Debt so long as the Specified Conditions have been satisfied at the time of such prepayment, redemption, purchase, defeasances or other satisfaction and (vii) prepayments, redemptions, purchases, defeasances and other satisfactions of Junior Debt in an aggregate amount not to exceed \$5,000,000.

For the avoidance of doubt, this Section 8.13 shall not prohibit the conversion by holders of (including any cash payment upon conversion), or required payment of any principal or premium on (including, for the avoidance of doubt, in respect of a required repurchase in connection with the redemption of Convertible Indebtedness upon satisfaction of a condition related to the stock price of Holdings' common stock) or required payment of any interest with respect to, any Convertible Indebtedness in each case, in accordance with the terms of the indenture governing such Convertible Indebtedness.

Notwithstanding the foregoing, Holdings may repurchase, exchange or induce the conversion of Convertible Indebtedness by delivery of shares of Holdings' common stock and/or a different series of Convertible Indebtedness and/or by payment of cash, provided that, for the avoidance of doubt, Holdings may exercise or unwind or terminate early (whether in cash, shares or any combination thereof) the portion of the Permitted Bond Hedge Transactions and Permitted Warrant Transactions, if any, corresponding to such Convertible Indebtedness that is so repurchased, exchanged or converted.

8.14 Transactions with Affiliates. Except as set forth below, ~~the Borrower~~ Holdings shall not, and shall not permit any of its Restricted Subsidiaries to, sell, transfer, distribute, or pay any money or property, including, but not limited to, any fees or expenses of any nature (including, but not limited to, any fees or expenses for management services), to any Affiliate, or lend or advance money or property to any Affiliate, or invest in (by capital contribution or otherwise) or purchase or repurchase any Stock or Debt, or any property, of any Affiliate, or become liable on any Guaranty of the Debt, dividends, or other obligations of any Affiliate, in each case, involving aggregate payments or consideration in excess of \$1,000,000. Notwithstanding the foregoing, the following shall be permitted:

- (a) transactions between or among Holdings, the Borrower or any Restricted Subsidiary or any entity that becomes a Restricted Subsidiary as a result of such transaction;

- (b) transactions on terms substantially as favorable to ~~the Borrower~~Holdings or such Restricted Subsidiary as would be obtainable by ~~the Borrower~~Holdings or such Restricted Subsidiary at the time in a comparable arm's-length transaction with a Person other than an Affiliate;
- (c) the consummation of the initial public offering of Holdings (including the issuance of Stock to any officer, director, employee, consultant or other service provider of ~~the Borrower~~Holdings or any of its Subsidiaries or any Parent Entity in connection therewith) and the payment of fees and expenses in connection therewith;
- (d) Permitted Distributions;
- (e) loans and other transactions by and among ~~the Borrower~~Holdings and/or one or more Subsidiaries to the extent permitted under this Article VIII;
- (f) employment, compensation, severance or termination arrangements between any Parent Entity, the Borrower or any of its Restricted Subsidiaries and their respective officers, employees and consultants (including management and employee benefit plans or agreements, subscription agreements or similar agreements pertaining to the repurchase of equity interests held by officers, employees and consultants pursuant to put/call rights or similar rights with current or former employees, officers, directors consultants and stock option or incentive plans (including equity-based incentive plans) and other compensation arrangements) in the ordinary course of business and transactions pursuant to management equity plans, stock option plans and other employee benefit plans, agreements and arrangements;
- (g) the payment of (x) customary fees to directors, officers, managers, employees, consultants and other service providers of ~~the Borrower~~Holdings and its Restricted Subsidiaries or any Parent Entity in the ordinary course of business to the extent attributable to the ownership or operation of ~~the Borrower~~Holdings and its Restricted Subsidiaries and (y) reasonable out of pocket costs to, and indemnities provided on behalf of, directors, officers, managers, employees, consultants, partners, members and other service providers of ~~the Borrower~~Holdings and its Restricted Subsidiaries or any Parent Entity in the ordinary course of business to the extent attributable to the ownership or operation of ~~the Borrower~~Holdings and its Restricted Subsidiaries;
- (h) transactions pursuant to permitted agreements in existence on the Restatement Effective Date and set forth on Schedule 8.14 or any amendment thereto to the extent such an amendment, taken as a whole, is not adverse to the Lenders in any material respect;
- (i) customary payments by Holdings, the Borrower and any Restricted Subsidiaries to the Sponsor made for any financial advisory, financing, underwriting or placement services or in respect of other investment banking activities (including in connection with acquisitions or divestitures), which payments are approved, as applicable pursuant to requirements of law or the relevant constituent documents of the Borrower or such Restricted Subsidiary, by the majority of the members of the Board of Directors or a majority of the disinterested members of the Board of Directors of ~~the Borrower~~Holdings in good faith and such payments shall not exceed 1% of the transaction value for each such transaction;

(j) transactions entered into by an Unrestricted Subsidiary with an Affiliate prior to the redesignation of any such Unrestricted Subsidiary as a Restricted Subsidiary pursuant to the definition of “Unrestricted Subsidiary”;

(k) the issuance or transfer of Stock (other than Disqualified Stock) of Holdings (or any Parent Entity) to any Permitted Holder or to any former, current or future director, manager, officer, partner, member, employee, consultant or other service provider (or any Affiliate of any of the foregoing) of Holdings (or any Parent Entity), the Borrower, any of the Restricted Subsidiaries or any direct or indirect parent thereof;

(l) any issuance of Stock, or other payments, awards or grants in cash, securities, Stock or otherwise pursuant to, or the funding of, employment arrangements, compensation arrangements, stock options and stock ownership plans, and other employee benefit plans approved by the Board of Directors of any Parent Entity of ~~the Borrower or the Borrower~~ Holdings or Holdings, as the case may be;

(m) transactions with Wholly Owned Subsidiaries for the purchase or sale of goods, products, parts and services entered into in the ordinary course of business in a manner consistent with prudent business practice followed by companies in the industry of ~~the Borrower~~ Holdings and its Subsidiaries;

(n) transactions with joint ventures for the purchase or sale of goods, equipment and services entered into in the ordinary course of business and in a manner consistent with prudent business practice followed by companies in the industry of ~~the Borrower~~ Holdings and its Subsidiaries; and

(o) to the extent permitted by Section 8.10(g)(i), payments by any Parent Entity of ~~the Borrower, the Borrower~~ Holdings, Holdings and the Restricted Subsidiaries pursuant to Tax sharing agreements among any such Parent Entity, ~~the Borrower~~ Holdings and the Restricted Subsidiaries on customary terms; provided that payments by ~~Borrower~~ Holdings and the Restricted Subsidiaries under any such Tax sharing agreements shall not exceed the excess (if any) of the amount they would pay on a standalone basis over the amount they actually pay to Governmental Authorities.

For purposes of this Section 8.14, any transaction with any Affiliate shall be deemed to have satisfied the standard set forth in clause (b) if such transaction is approved by a majority of the Disinterested Directors of the board of directors of ~~the Borrower~~ Holdings or such Subsidiary, as applicable. “Disinterested Director” shall mean, with respect to any Person and transaction, a member of the board of directors of such Person who does not have any material direct or indirect financial interest in or with respect to such transaction.

8.15 Business Conducted. ~~The Borrower~~ Holdings and its Restricted Subsidiaries (taken as a whole) shall not engage at any time in any line of business other than the lines of business of the same general type currently conducted by it and by Pioneer at the time of the Pioneer Acquisition and, in each case, businesses incidental to, reasonably related or ancillary thereto.

8.16 Liens. ~~The Borrower~~ Holdings shall not, and shall not permit any of its Restricted Subsidiaries to, create, incur, assume, or permit to exist any Lien on any property now owned or hereafter acquired by any of them, except Permitted Liens.

8.17 Restrictive Agreements. ~~The Borrower~~Holdings shall not, and shall not permit any of its Restricted Subsidiaries to, enter into, incur or permit to exist any agreement or other arrangement that prohibits, restricts or imposes any condition upon (i) the ability of ~~the Borrower or any~~ GuarantorObligor to create, incur, assume or suffer to exist Liens on property of such Person for the benefit of the Secured Parties with respect to the Obligations or under the Loan Documents or (ii) the ability of any Restricted Subsidiary of ~~the Borrower~~Holdings that is not a Guarantor to pay dividends or other Distributions with respect to any of its Stock; provided that the foregoing shall not apply to:

- (a) restrictions and conditions imposed by (A) Law, (B) any Loan Document, (C) with respect to clause (ii) above, the documentation governing Debt incurred pursuant to Section 8.12(g), (D) with respect to clause (ii) above, any documentation related to any Permitted Debt, and (E) with respect to clause (ii) above, any documentation governing any Refinancing Debt incurred to Refinance any such Debt referenced in clauses (B) through (D) above;
- (b) customary restrictions and conditions existing on the Restatement Effective Date or to any extension, renewal, amendment, modification or replacement thereof, except to the extent any such amendment, modification or replacement expands the scope of any such restriction or condition;
- (c) restrictions and conditions contained in agreements relating to the sale of a Subsidiary or any assets pending such Disposition; provided that such restrictions and conditions apply only to the Subsidiary or assets that is or are to be Disposed and such Disposition is permitted hereunder;
- (d) customary restrictions in leases, subleases, licenses, sublicenses and other contracts so long as such restrictions relate solely to the assets subject thereto;
- (e) restrictions imposed by any agreement relating to secured Debt permitted by this Agreement to the extent such restriction applies only to specific property securing such Debt and not all assets;
- (f) any restrictions or conditions set forth in any agreement in effect at any time any Person becomes a Restricted Subsidiary (but not any modification or amendment expanding the scope of any such restriction or condition); provided that such agreement was not entered into in contemplation of such Person becoming a Restricted Subsidiary and the restriction or condition set forth in such agreement does not apply to ~~the Borrower~~Holdings or any other Restricted Subsidiary;
- (g) restrictions or conditions in any Permitted Debt that is incurred or assumed by a Subsidiary that is not a Guarantor to the extent such restrictions or conditions are no more restrictive than the restrictions and conditions in the Loan Documents or, in the case of Subordinated Debt, are market terms at the time of issuance or, in the case of any such Debt of any such Person, are imposed solely on such non-Guarantor and its Subsidiaries;
- (h) restrictions on cash, Cash Equivalents or other deposits imposed by agreements entered into in the ordinary course of business (or other restrictions on such cash, Cash Equivalents or deposits constituting Liens permitted hereunder);
- (i) customary provisions in joint venture agreements and other similar agreements applicable to joint ventures constituting Permitted Investments and applicable solely to such joint venture and entered into in the ordinary course of business;

(j) negative pledges and restrictions on Liens in favor of any holder of Debt permitted under clauses (c), (p) and (q) of Section 8.12, but solely to the extent any negative pledge relates to the property financed by or the subject of such Debt;

(k) customary provisions restricting assignment, transfer or sub-letting of any agreement entered into in the ordinary course of business;

(l) customary net worth provisions contained in Real Estate leases entered into by Subsidiaries of ~~the Borrower~~Holdings, so long as ~~the Borrower~~Holdings has determined in good faith that such net worth provisions could not reasonably be expected to impair the ability of ~~the Borrower~~Holdings and its Subsidiaries to meet their ongoing obligation;

(m) provisions restricting the granting of a security interest in Intellectual Property contained in licenses or sublicenses by ~~the Borrower~~Holdings and its Restricted Subsidiaries of such Intellectual Property, which licenses and sublicenses were entered into in the ordinary course of business (in which case such restriction shall relate only to such Intellectual Property);

(n) restrictions or conditions contained in any trading, netting, operating, construction, service, supply, purchase, sale or other agreement to which ~~the Borrower~~Holdings or any Restricted Subsidiary is a party entered into in the ordinary course of business; provided that such agreement prohibits the encumbrance of solely the property or assets of ~~the Borrower~~Holdings or such Restricted Subsidiary that are the subject of such agreement, the payment rights arising thereunder or the proceeds thereof and does not extend to any other asset or property of ~~the Borrower~~Holdings or such Restricted Subsidiary or the assets or property of another Restricted Subsidiary; and

(o) restrictions and conditions imposed by any extension, renewal, amendment, restatement, modification, increase, supplement, refunding, refinancing or replacement of the contracts, instruments or obligations referred to in clauses (a) through (n) above; provided that such extension, renewal, amendment, restatement, modification, increase, supplement, refunding, refinancing or replacement is, in the good faith judgment of the Borrower, not materially more restrictive with respect to such restriction or condition taken as a whole than those prior to such extension, renewal, amendment, restatement, modification, increase, supplement, refunding, refinancing or replacement.

8.18 Sale and Leaseback Transactions. ~~The Borrower~~Holdings shall not, and shall not permit any of its Restricted Subsidiaries to, directly or indirectly, enter into any arrangement with any Person providing for ~~the Borrower~~Holdings or such Restricted Subsidiary to lease or rent property that ~~the Borrower~~Holdings or such Restricted Subsidiary has sold or will sell or otherwise transfer to such Person, unless (i) such transfers are transfers of property (real or personal), equipment or other fixed or capital assets, (ii) such transfer occurs within ninety (90) days after the acquisition of such property by ~~the Borrower~~Holdings or any such Restricted Subsidiary, (iii) the Specified Conditions have been satisfied or (iv) such transfer would be permitted under clause (t) of the definition of “Permitted Dispositions.”

8.19 Fiscal Year. ~~The Borrower~~Holdings shall not, and shall cause its Restricted Subsidiaries not to, change their Fiscal Year end date from December 31; provided, however, that ~~the Borrower~~Holdings may, and may cause any of its Restricted Subsidiaries to, upon written notice to, and consent by, the Agent, change the Fiscal Year end date convention specified above to any other Fiscal Year end date reporting convention reasonably acceptable to the Agent, in which case the Borrower and the Agent will, and are hereby authorized by the Lenders to, make any adjustments to this Agreement that are necessary in order to reflect such change.

8.20 Fixed Charge Coverage Ratio. ~~The Borrower~~Holdings will not permit the Fixed Charge Coverage Ratio for any Test Period to be less than 1.0 to 1.0; provided that such Fixed Charge Coverage Ratio will only be tested on the date any Covenant Trigger Period commences (as of the last day of the Test Period ending on or immediately prior to the date on which such Covenant Trigger Period shall have commenced) and shall continue to be tested as of the last day of each Test Period thereafter until such Covenant Trigger Period is no longer continuing.

8.21 [Reserved].

8.22 Additional Obligors; Covenant to Give Security. At ~~the Borrower's~~Holdings' expense, ~~the Borrower~~Holdings shall, and shall cause each of its Restricted Subsidiaries to, take all action necessary or reasonably requested by the Collateral Agent to ensure that the Collateral and Guarantee Requirement (subject to the limitations set forth therein and in the Security Documents) continues to be satisfied, including:

(i) upon the formation or acquisition of any new direct or indirect Wholly Owned Domestic Subsidiary (in each case, other than an Excluded Subsidiary) by any Obligor, the designation in accordance with Section 8.26 of any existing direct or indirect Wholly Owned Subsidiary as a Restricted Subsidiary (in each case, other than an Excluded Subsidiary), or any Wholly Owned Restricted Subsidiary ceasing to be an Excluded Subsidiary, within thirty (30) days (or, in the case of Mortgages, ninety (90) days) after such formation, acquisition, designation or occurrence or such longer period as the Collateral Agent may agree in its reasonable discretion:

(A) causing each such Restricted Subsidiary that is required to become a Guarantor under the Collateral and Guarantee Requirement to furnish to the Collateral Agent a description of any Real Estate owned by such Restricted Subsidiary and required to become subject to a Mortgage in detail reasonably satisfactory to the Collateral Agent;

(B) causing each such Restricted Subsidiary that is required to become a Guarantor pursuant to the Collateral and Guarantee Requirement to duly execute and deliver to the Agent and the Collateral Agent (x) a "Guaranty Agreement Supplement" referred to in the Guarantee Agreement guaranteeing the Obligations under the Loan Documents and (y) Mortgages on any Real Estate required to be mortgaged pursuant to the Collateral and Guarantee Requirement, a "Security Agreement Supplement" referred to in the Security Agreement and any required Intellectual Property security agreements and other security agreements and documents or joinders or supplements thereto (consistent with the Security Agreement and other Security Documents in effect on the Restatement Effective Date), as reasonably requested by and in form and substance reasonably satisfactory to the Collateral Agent, in each case of this clause (y), granting the Collateral Agent's Liens required by the Collateral and Guarantee Requirement;

(C) delivering, and causing each such Restricted Subsidiary that is, or is required to become, a Guarantor pursuant to the Collateral and Guarantee Requirement to deliver, any and all certificates representing Stock (other than Excluded Stock and only to the extent certificated) that are required to be pledged pursuant to the Collateral and Guarantee Requirement, accompanied by undated stock powers or other appropriate instruments of transfer executed in blank (or any other documents customary under local Law) and instruments evidencing the Debt held by such Restricted Subsidiary and required to be pledged pursuant to the Collateral and Guarantee Requirement (including the execution of the Subordinated Intercompany Note), indorsed in blank to the Collateral Agent;

(D) taking and causing such Restricted Subsidiary and each direct or indirect parent of such Restricted Subsidiary that is required to become a Guarantor pursuant to the Collateral and Guarantee Requirement to take whatever action (including the recording of Mortgages and of any Intellectual Property security agreements, the filing of financing statements and delivery of share and membership interest certificates, if any) may be necessary in the reasonable opinion of the Collateral Agent to vest in the Collateral Agent (or in any representative of the Collateral Agent designated by it) valid and perfected Liens required by the Collateral and Guarantee Requirement, enforceable against all third parties in accordance with their terms; and

(E) causing each such Restricted Subsidiary that is required to become a Guarantor pursuant to the Collateral and Guarantee Requirement to duly execute and deliver to the Agent opinions, certificates and other documents, as reasonably requested by and in form and substance reasonably satisfactory to the Agent (it being understood and agreed that any opinions, certificates and other documents that are consistent with those delivered by the Obligors on the Restatement Effective Date shall be deemed to be in form and substance reasonably satisfactory to the Agent); and

(ii) not later than ninety (90) days after the acquisition by any Obligor of any Real Estate (or such longer period as the Collateral Agent may agree to in writing in its discretion) that is required to be provided as Collateral pursuant to the Collateral and Guarantee Requirement, which property would not be automatically subject to another Lien pursuant to pre-existing Security Documents, causing such property to be subject to a Lien and Mortgage in favor of the Collateral Agent for the benefit of the Secured Parties and taking, or causing the relevant Obligor to take, such actions as shall be necessary or reasonably requested by the Collateral Agent to grant and perfect or record such Lien, in each case to the extent required by, and subject to the limitations and exceptions of, the Collateral and Guarantee Requirement and otherwise complying with the requirements of the Collateral and Guarantee Requirement.

8.23 Cash Management; Cash Dominion.

(a) Each Obligor shall enter into, as soon as possible after the Closing Date, an effective account control agreement (a “Deposit Account Control Agreement”) with each account bank, in each case in form and substance reasonably satisfactory to the Agent, with respect to (i) each U.S. domestic Deposit Account in which funds of any of the Obligors from any Cash Receipts of the Obligors are deposited, and (ii) the Designated Account into which the proceeds of the Loans are deposited (but in any event, excluding all Excluded Accounts); provided, further, that, (i) if on or prior to ninety (90) days after the Closing Date (or such longer period following such date as the Agent may agree in its sole discretion), the ~~Borrower~~applicable Obligor shall not have entered into a Deposit Account Control Agreement with respect to any such Deposit Account or the Designated Account, such Deposit Account shall be closed and all funds therein transferred to a Deposit Account at the Agent or the Collateral Agent, an Affiliate of the Agent or the Collateral Agent, or another financial institution that has executed a Deposit Account Control Agreement prior to the expiration of such 90-day period and (ii) the ~~Borrower~~applicable Obligor shall enter into a Deposit Account Control Agreement with respect to any such Deposit Account, or any new Designated Account, which is established after the Closing Date, substantially concurrently with such establishment (or within such longer period as the Collateral Agent may agree in its discretion) but in any event prior to a deposit of any funds in such account. Notwithstanding anything in this section to the contrary, the provisions of this Section 8.23(a) shall not apply to any Deposit Account acquired by an Obligor in connection with a Permitted Acquisition (or similar Investment) prior to the date that is ninety (90) days (or such later date as the Agent may agree) following the consummation of such Permitted Acquisition (or similar Investment).

(b) Each Obligor shall deposit, or cause to be deposited and instruct all Account Debtors to deposit, in an Approved Deposit Account promptly upon receipt all Cash Receipts received by any Obligor from any other Person.

(c) Each Deposit Account Control Agreement shall require (without further consent of the Obligors), and the Obligors shall cause, after the occurrence and during the continuance of a Cash Dominion Period and subject to the Intercreditor Agreement, the ACH or wire transfer no less frequently than daily (and whether or not there are then any outstanding Obligations) to the concentration account maintained by and in the name of the Borrower at Barclays Bank PLC, Wells Fargo Bank, National Association or another bank reasonably acceptable to the Agent and the Collateral Agent, which concentration account is under the sole dominion and control of the Collateral Agent (the "Concentration Account"), of all cash receipts and collections set forth below, other than amounts constituting Excluded Funds (collectively, the "Cash Receipts"):

- (i) all available cash proceeds otherwise received from the Disposition of Equipment or non-ordinary course sales of Inventory of the Borrower and the Guarantors;
- (ii) all proceeds of Accounts; and
- (iii) the contents of each Approved Deposit Account (in each case, net of any minimum balance as may be required to be kept therein by the institution at which such Deposit Account is maintained).

(d) During the continuance of a Cash Dominion Period, the Concentration Account shall at all times be under the sole dominion and control of the Collateral Agent. The Obligors hereby acknowledge and agree that, during the continuance of a Cash Dominion Period, (i) the Obligors have no right of withdrawal from the Concentration Account, (ii) the funds on deposit in the Concentration Account shall at all times be collateral security for all of the Obligations and (iii) the funds on deposit in the Concentration Account shall be applied as provided in this Agreement, including pursuant to Section 4.3. In the event that, notwithstanding the provisions of this Section 8.23, during the continuation of any Cash Dominion Period, any Obligor receives or otherwise has dominion and control of any Cash Receipts, such Cash Receipts shall be held in trust by such Obligor for the Collateral Agent, shall not be commingled with any of such Obligor's other funds or deposited in any account of such Obligor and shall, not later than the Business Day after receipt thereof, be deposited into the Concentration Account or dealt with in such other fashion as such Obligor may be instructed by the Collateral Agent.

(e) So long as no Cash Dominion Period is continuing, the Obligors may direct, and shall have sole control over, the manner of disposition of funds in the Approved Deposit Accounts. The Agent and the other Secured Parties hereby acknowledge and agree that so long as no Cash Dominion Period is continuing the Obligors shall have the right to withdraw all funds remaining on deposit in any Concentration Account and the Collateral Agent shall no longer be permitted to direct any account bank under any Deposit Account Control Agreement to ACH or wire transfer any Cash Receipts into any Concentration Account.

(f) Any amounts received in the Concentration Account at any time after the Full Payment of the Obligations shall be remitted to the operating account of the Obligors maintained with the Agent or Collateral Agent or to an operating account otherwise designated by the Borrower.

(g) Upon the Borrower's request, the Collateral Agent shall promptly furnish written notice to each Approved Account Bank of any termination of a Cash Dominion Period.

8.24 Use of Proceeds. The Borrower shall use the proceeds of the Loans in the manner set forth in Sections 7.17, 7.22(b), 7.23 and 7.24(b).

8.25 Further Assurances. Subject to any limitations and exceptions set forth in the Security Documents and in the definition of “Collateral and Guarantee Requirement”, Holdings and the Borrower shall, and shall cause each of the other Obligor to, promptly execute and deliver, or cause to be promptly executed and delivered, to the Collateral Agent, such documents and agreements, and shall promptly take or cause to be taken such actions, as the Collateral Agent may, from time to time, reasonably request to grant, preserve, protect or perfect the Liens created or intended to be created by the Security Documents or the validity or priority of any such Lien.

8.26 Designation of Subsidiaries. The Board of Directors of ~~the Borrower~~ Holdings may at any time designate any Restricted Subsidiary (other than the Borrower) as an Unrestricted Subsidiary or any Unrestricted Subsidiary as a Restricted Subsidiary by notice to the Agent; provided that, in each case, (i) no Default or Event of Default is then continuing or would result therefrom ~~and~~, (ii) the Borrower may not be an Unrestricted Subsidiary and (iii) Holdings and the Restricted Subsidiaries shall be in compliance on a Pro Forma Basis with a Fixed Charge Coverage Ratio, as such ratio is calculated as of the last day of the Test Period most recently ended on or prior to the date of such designation, as if such designation and any related transactions had occurred on the first day of such Test Period, of not less than 1.00:1.00. The designation of any Restricted Subsidiary as an Unrestricted Subsidiary after the Restatement Effective Date shall constitute an Investment by ~~the Borrower's~~ Holdings therein at the date of designation in an amount equal to the Fair Market Value of ~~the Borrower's~~ Holdings' investment therein. The designation of any Unrestricted Subsidiary as a Restricted Subsidiary shall constitute the incurrence at the time of designation of any Debt or Liens of such Subsidiary existing at such time.

8.27 ~~Passive Holding Company; Etc.~~ [Reserved]

(a) Holdings will not conduct, transact or otherwise engage in any business or operations other than (i) the ownership and/or acquisition of the Stock (other than Disqualified Stock) of the Borrower, (ii) the maintenance of its legal existence, including the ability to incur fees, costs and expenses relating to such maintenance and to open and maintain bank accounts, (iii) to the extent applicable, participating in tax, accounting and other administrative matters as a member of the consolidated group that includes Holdings and the Borrower, (iv) the performance of its obligations under and in connection with the Loan Documents and any documents relating to other Permitted Debt, (v) any public offering of its common Stock or any other issuance or registration of its Stock for sale or resale not prohibited by this Agreement, including the costs, fees and expenses related thereto, (vi) any transaction that Holdings is permitted to enter into or consummate under this Agreement and any transaction between Holdings and the Borrower or any Restricted Subsidiary permitted under this Agreement, including (A) making any dividend or distribution or other transaction similar to a Distribution not prohibited by Section 8.10 (or the making of a loan to its Parent Entities in lieu of any such permitted Distribution or other distribution or other transaction similar to a Distribution) or holding any cash received in connection with Distributions made by the Borrower in accordance with Section 8.10 pending application thereof by Holdings in the manner contemplated by Section 8.10 (including the redemption in whole or in part of any of its Stock (other than Disqualified Stock) in exchange for another class of Stock (other than Disqualified Stock) or rights to acquire its Stock (other than Disqualified Stock) or with proceeds from substantially concurrent equity contributions or issuances of new shares of its Stock (other than Disqualified Stock)), (B) making any Investment to the extent (1) payment therefor is made solely with the Stock of Holdings (other than Disqualified Stock), the proceeds of Distribution received from the Borrower and/or proceeds of the issuance of, or contribution in respect of, the Stock (other than Disqualified Stock) of Holdings and (2) any property (including Stock) acquired in connection therewith is contributed to the Borrower or a Guarantor (or, if otherwise constituting Permitted Investments, a Restricted Subsidiary) or the Person formed or acquired in connection therewith is merged or consolidated with the Borrower or a Restricted Subsidiary and (C) the (w) provision of Guaranties in the ordinary course of business in respect of obligations of the Borrower or any of its Subsidiaries to suppliers, customers, franchisees, lessors, licensees, sublicensees or distribution partners; provided, for the avoidance of doubt, that such Guaranty shall not be in respect of Debt for Borrowed Money, (x) incurrence of Debt of Holdings contemplated by Section 8.12, (y) incurrence of Guaranties and the performance of its other obligations in respect of Debt incurred pursuant to Section 8.12 and (z) granting of Liens to the extent the Debt contemplated by subclause (y) is permitted to be secured under Section 8.16 or Liens imposed by operation of law, (vii) incurring fees, costs and expenses relating to overhead and general operating including professional fees for legal, tax and accounting issues and paying taxes, (viii) providing indemnification to officers and directors and as otherwise permitted in this Agreement, (ix) activities incidental to the consummation of the Transactions, (x) organizational activities incidental to Permitted Acquisitions or similar Investments consummated by the Borrower or a Subsidiary, including the formation of acquisition vehicle entities and intercompany loans and/or investments incidental to such Permitted Acquisitions or similar Investments in each case consummated substantially contemporaneously with the consummation of the applicable Permitted Acquisitions or similar Investments, (xi) the making of any loan to any officers or directors not prohibited by Section 8.11, the making of any Investment in the Borrower or any Guarantor or, to the extent otherwise allowed under Section 8.11, a Restricted Subsidiary, (xii) the entry into customary shareholder agreements, and (xiii) activities incidental to the businesses or activities described in clauses (i) to (xii) of this Section 8.27.

~~(b) Holdings will not consummate any merger, consolidation or amalgamation, or liquidate, wind up or dissolve itself (or suffer any liquidation or dissolution), or Dispose all or substantially all of its assets and properties, except that Holdings may merge, amalgamate or consolidate with or into any other Person (other than the Borrower) or otherwise Dispose of all or substantially all of its assets and property; provided that (i) Holdings shall be the continuing or surviving Person of such merger, amalgamation or consolidation or, in the case of a merger, amalgamation or consolidation where Holdings is not the continuing or surviving Person or where Holdings has been liquidated or in connection with a Disposition of all or substantially all of its assets, in any such case, the Person formed by or surviving any such merger, amalgamation or consolidation or the Person into which Holdings has been liquidated or to which Holdings has transferred such assets shall be an entity organized or existing under the laws of the United States, any state thereof, the District of Columbia or any territory thereof (Holdings or such Person, as the case may be, being herein referred to as the "Successor Holdings"); (ii) the Successor Holdings (if other than Holdings) shall expressly assume all the obligations of Holdings under this Agreement and the other Loan Documents pursuant to a supplement hereto or thereto in form reasonably satisfactory to the Agent; (iii) each Guarantor, unless it is the other party to such merger, amalgamation, consolidation, liquidation or Disposition or unless the Successor Holdings is Holdings, shall have by a supplement to the Guarantee Agreement confirmed that its Guaranty shall apply to the Successor Holdings' obligations under this Agreement; (iv) each Guarantor, unless it is the other party to such merger, amalgamation, consolidation, liquidation or Disposition or unless the Successor Holdings is Holdings, shall have by a supplement to the Security Agreement confirmed that its obligations thereunder shall apply to the Successor Holdings' obligations under this Agreement; (v) Holdings shall have delivered to the Agent an officer's certificate stating that such merger, amalgamation, consolidation, liquidation or Disposition and any supplements to the Loan Documents preserve the enforceability of the Guarantee Agreement and the perfection of the Collateral Agent's Liens; (vi) the Successor Holdings shall, immediately following such merger, amalgamation, consolidation, liquidation or Disposition, directly or indirectly, own all Subsidiaries owned by Holdings immediately prior to such merger, amalgamation, consolidation, liquidation or Disposition and (vii) if reasonably requested by the Agent, an opinion of counsel shall be required to be provided to the effect that such merger, amalgamation, consolidation, liquidation, or Disposition does not breach or result in a default under this Agreement or any other Loan Document; provided, further, that if the foregoing are satisfied, the Successor Holdings (if other than Holdings) will succeed to, and be substituted for, Holdings under this Agreement~~

8.28 Amendments to Certain Documents. ~~The Borrower~~Holdings shall not, and shall not permit any of its Restricted Subsidiaries to, amend, modify or change in any manner that is materially adverse to the interests of the Lenders any term or condition of the documentation governing the Junior Debt or any Charter Document of Holdings, the Borrower or any Subsidiary that is a Guarantor, except amendments and modifications to the Charter Documents of the Borrower in connection with the Pioneer Acquisition.

ARTICLE IX

CONDITIONS OF LENDING

9.1 Conditions Precedent to Effectiveness of Agreement and Making of Loans on the Closing Date. The effectiveness of this Agreement, the obligation of the Lenders to make any Loans on the Closing Date, and the obligation of the Letter of Credit Issuers to issue any Letter of Credit on the Closing Date, are subject to the satisfaction (or waiver in writing by the Agent and the Arrangers) of the following conditions precedent:

(a) The Agent's receipt of the following, each of which shall be originals or facsimiles (followed promptly by originals) unless otherwise specified, each properly executed by a Responsible Officer of the signing Obligor:

(i) executed counterparts of this Agreement and the Guarantee Agreement;

(ii) each Security Document set forth on Schedule 1.5 of the Original Credit Agreement (including the delivery of documents and instruments necessary to satisfy the Collateral and Guarantee Requirement) required to be executed on the Closing Date as indicated on such schedule, duly executed by Holdings (to the extent a party thereto) and/or each Obligor thereto, together with (except as provided in such Security Documents):

(A) certificates, if any, representing the pledged Stock referred to therein for the Borrower and Wholly Owned Restricted Subsidiaries (other than Excluded Stock) organized under the laws of the United States and not constituting Immaterial Subsidiaries and accompanied by undated stock powers executed in blank and instruments evidencing the pledged debt referred to therein endorsed in blank;

(B) evidence that all financing statements under the Uniform Commercial Code have been filed or are otherwise in a form appropriate for filing; and

(C) arrangements reasonably satisfactory to the Agent shall have been made for the execution, delivery and filing of such Security Documents; and

(D) an executed Perfection Certificate and lien searches reasonably satisfactory to the Agent;

(iii) certificates substantially in the form of Exhibit H for Holdings and the Borrower which attach (A) resolutions or other equivalent action documentation, (B) incumbency certificates, (C) Organization Documents and (D) good standing certificates;

(iv) an opinion from Latham & Watkins LLP, counsel to the Obligors, addressed to the Agent and the Lenders as of the Closing Date;

(v) a certificate, in the form of Exhibit G, attesting to the Solvency of the Borrower and its Subsidiaries (on a consolidated basis) on the Closing Date after giving effect to the Transactions, from the Chief Financial Officer of the Borrower;

(vi) a Notice of Borrowing relating to the initial Borrowing (if any); and

(vii) a copy of, or a certificate as to coverage under, the insurance policies required by Section 8.5 and the applicable provisions of the Security Documents.

(b) All fees and expenses required to be paid hereunder or pursuant to the Engagement Letter (as defined in the Original Credit Agreement), in the case of expenses, to the extent invoiced at least three (3) Business Days prior to the Closing Date (except as otherwise agreed by the Borrower) shall, substantially concurrently with the initial Borrowing, have been paid (which amounts may, at the Borrower's option, be offset against the proceeds of the Loans borrowed on the Closing Date).

(c) Prior to or simultaneously with the initial Borrowing, the initial public offering of the common stock of Holdings shall have been consummated.

(d) The Arrangers shall have received the Historical Financial Statements (as defined in the Original Credit Agreement).

(e) Prior to or simultaneously with the initial Borrowing, subject to Section 8.29, the Existing Debt Refinancing (as defined in the Original Credit Agreement) shall have been consummated.

(f) Availability on the Closing Date shall not be less than \$70,000,000.

(g) The Agent and the Arrangers shall have received at least three (3) Business Days prior to the Closing Date all documentation and other information about the Borrower and the Guarantors as has been reasonably requested in writing at least ten (10) Business Days prior to the Closing Date by the Agent and the Arrangers that they reasonably determine is required by United States regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including without limitation the USA PATRIOT Act.

(h) Since December 31, 2016, there has not been any fact, change, event, circumstance, effect, development or occurrence which, individually or in the aggregate with any other facts, changes, events, circumstances, effects, developments or occurrences, has had, or would reasonably be expected to have, a Material Adverse Effect.

(i) The Borrower shall have delivered to the Agent a Borrowing Base Certificate for the month ending February 28, 2017.

(j) The Agent shall have completed a field examination at least three (3) Business Days prior to the Closing Date.

(k) The Agent shall have received the consolidated audited balance sheet, income statement and cash flow statement of the Consolidated Parties and, if different, Holdings, the Borrower and its Restricted Subsidiaries for the fiscal year ending December 31, 2016.

9.2 Conditions Precedent to Restatement Effective Date. The amendment and restatement of the Original Credit Agreement contemplated hereby shall not become effective until the date on which each of the conditions set forth in Section 3 of the Restatement Agreement is satisfied (or waived in accordance with Section 12.1).

9.3 Conditions Precedent to Each Loan. The obligation of the Lenders to make each Loan, and the obligation of the Letter of Credit Issuers to issue any Letter of Credit shall be subject to the conditions precedent that on and as of the date of any such extension of credit:

(a) The following statements shall be true, and the acceptance by the Borrower of any extension of credit shall be deemed to be a statement to the effect set forth in clauses (i) and (ii), with the same effect as the delivery to the Agent and the Lenders of a certificate signed by a Responsible Officer, dated the date of such extension of credit, stating that:

(i) the representations and warranties contained in this Agreement and the other Loan Documents are true and correct in all material respects (and any representation and warranty that is qualified as to materiality or Material Adverse Effect is true and correct in all respects) on and as of the date of such extension of credit as though made on and as of such date, other than any such representation or warranty which relates to a specified prior date, in which case such representations and warranties were true and correct in all material respects as of such prior date, and except to the extent the Agent and the Lenders have been notified in writing by the Borrower that any representation or warranty is not correct in all material respects (or that any representation and warranty that is qualified as to materiality or Material Adverse Effect is not correct in all respects) and the Required Lenders have explicitly waived in writing compliance with such representation or warranty;

(ii) no Default or Event of Default has occurred and is continuing, or would result from such extension of credit; and

(iii) the Borrowing or issuance of the Letter of Credit is in compliance with the provisions of Article II.

(b) No such Borrowing or issuance of the Letter of Credit shall exceed the then-current Availability.

Notwithstanding anything to the contrary, the foregoing conditions precedent in this Section 9.3 are not conditions to any Lender participating in or reimbursing the Swingline Lender or the Agent for such Lender's Pro Rata Share of any applicable Swingline Loan or Agent Advance made in accordance with the provisions of Section 2.4(f) or Section 2.4(g), as applicable.

ARTICLE X

DEFAULT; REMEDIES

10.1 Events of Default. It shall constitute an event of default ("Event of Default") if any one or more of the following shall occur for any reason:

(a) any failure by the Borrower to pay: (i) the principal of any of the Loans when due, whether upon demand or otherwise, or the reimbursement of any Letter of Credit issued pursuant to this Agreement when the same is due and payable; or (ii) any interest, fee or other amount owing hereunder or under any of the other Loan Documents within five (5) Business Days after the due date therefor, whether upon demand or otherwise;

(b) any representation or warranty made or deemed made by Holdings or the Borrower in this Agreement or by any Obligor in any of the other Loan Documents or any certificate furnished by any Obligor at any time to the Agent, the Collateral Agent or any Lender pursuant to the Loan Documents shall prove to be untrue in any material respect as of the date on which made, deemed made, or furnished;

(c) any default shall occur in the observance or performance of any of the covenants and agreements contained in:

(i) Section 6.3(a), Section 8.2(a) (with respect to the maintenance of the Borrower's existence only), Section 8.8, Section 8.9, Section 8.10, Section 8.11, Section 8.12, Section 8.13, Section 8.14, Section 8.16, Section 8.17, Section 8.18, Section 8.23 (and, other than during a Cash Dominion Period, such default continues for five (5) Business Days after receipt by the Borrower of written notice thereof by the Agent or the Required Lenders), Section 8.24, Section 8.27 and Section 8.28;

(ii) Section 8.20; provided that an Event of Default shall not occur under this clause (ii) until the expiration of the Cure Deadline for the applicable Test Period for which ~~the Borrower~~Holdings was not in compliance with such Financial Covenant;

(iii) Section 6.4(a) and such default continues for five (5) Business Days (or two (2) Business Days during any Cash Dominion Period) after receipt by the Borrower of written notice thereof by the Agent or the Required Lenders; or

(iv) any other provision of this Agreement or any other Loan Document and such default shall continue for thirty (30) days after receipt by the Borrower of written notice thereof by the Agent or the Required Lenders;

(d) any default shall occur with respect to any Debt (other than the Obligations) of any Obligor or any of its Restricted Subsidiaries in an outstanding principal amount which constitutes Material Indebtedness, or under any agreement or instrument under or pursuant to which any such Debt may have been issued, created, assumed, or guaranteed by any Obligor or any of its Restricted Subsidiaries, and such default shall continue for more than the period of grace, if any, therein specified, if the effect thereof (with or without the giving of notice) is to accelerate, or to permit the holders of any such Debt to accelerate, the maturity of any such Debt; or any such Debt shall be declared due and payable or be required to be prepaid (other than by a regularly scheduled required prepayment) prior to the stated maturity thereof; or any such Debt shall not be paid in full upon the scheduled maturity thereof; provided that this clause (d) shall not apply to ~~(x)~~(w) termination events or equivalent events not constituting events of default pursuant to the terms of any Hedge Agreement ~~and~~, ~~(y)~~(x) Debt that becomes due or as to which an offer to prepay is required to be made as a result of the voluntary Disposition of the property or assets securing such Debt, if such Disposition is permitted hereunder and under the documents providing for such Debt ~~and~~, ~~(z)~~(y) any Debt permitted to exist or be incurred under the terms of this Agreement that is required to be repurchased, prepaid, defeased, redeemed or satisfied (or as to which an offer to repurchase, prepay, defease, redeem or satisfy is required to be made) in connection with any asset sale event, casualty or condemnation event, change of control (without limiting the rights of the Agent and the Lenders under Section 10.1(l) below), excess cash flow or other customary provision in such Debt giving rise to such requirement to offer, prepay, redeem, defease or satisfy in the absence of any default thereunder; ~~and~~ (z) (i) the occurrence of any customary event or condition that vests the right of any holder of Convertible Indebtedness to submit any Convertible Indebtedness for conversion, exchange or exercise in accordance with its terms so long as such event or condition does not result from a breach by Holdings or any Subsidiary of the terms of such Convertible Indebtedness or (ii) any actual conversion, exchange or exercise of any Convertible Indebtedness in accordance with its terms;

(e) Holdings, the Borrower or any Significant Subsidiary shall (i) file a voluntary petition in bankruptcy or file a voluntary petition, proposal, notice of intent to file a proposal or an answer or otherwise commence any action or proceeding seeking reorganization, arrangement or readjustment of its debts or for any other relief under the federal Bankruptcy Code, as amended, or under any other bankruptcy or insolvency act or Law, state, or federal, now or hereafter existing, or consent to, approve of, or acquiesce in, any such petition, action or proceeding; (ii) apply for or acquiesce in the appointment of a receiver, assignee, liquidator, sequestrator, custodian, monitor, trustee or similar officer for it or for all or any part of its property; or (iii) make an assignment for the benefit of creditors;

(f) an involuntary petition shall be filed or an action or proceeding otherwise commenced seeking reorganization, arrangement, consolidation or readjustment of the debts of Holdings, the Borrower or any Significant Subsidiary for any other relief under the federal Bankruptcy Code, as amended, or under any other bankruptcy or insolvency act or Law, state or federal, now or hereafter existing, and such petition or proceeding shall not be dismissed within sixty (60) days after the filing or commencement thereof or an order of relief shall be entered with respect thereto;

(g) (i) a receiver, interim receiver, assignee, liquidator, sequestrator, custodian, monitor, trustee or similar officer for Holdings, the Borrower or any Significant Subsidiary or for all or any material part of such Person's property shall be appointed or (ii) a warrant of attachment, execution or similar process shall be issued against any material part of the property of Holdings, the Borrower or any Significant Subsidiary and such warrant or similar process shall not be vacated, discharged, stayed or bonded pending appeal within sixty (60) days after the entry thereof;

(h) this Agreement, the Guarantee Agreement, any Security Document or any Intercreditor Agreement shall be terminated (other than in accordance with its terms or the terms hereof or thereof), revoked or declared void or invalid or unenforceable or challenged by Holdings or any Obligor;

(i) one or more monetary judgments, orders, decrees or arbitration awards is entered against any Holdings, the Borrower or any Restricted Subsidiary involving in the aggregate for all Obligors and Restricted Subsidiaries liability as to any single or related or unrelated series of transactions, incidents or conditions, in excess of ~~\$25,000,000~~ 75,000,000 (except to the extent covered by insurance through an insurer who does not deny or dispute coverage), and the same shall remain unsatisfied, unbonded, unvacated and unstayed pending appeal for a period of sixty (60) days after the entry thereof;

(j) for any reason, any Lien on any Collateral having a Fair Market Value in excess of \$15,000,000 ceases to be, or is not, valid, perfected and prior to all other Liens (subject to (A) the terms of the Collateral and Guarantee Requirement and (B) Permitted Liens) or is terminated, revoked or declared void other than (i) as a result of a release of Collateral permitted by Section 13.10 or in accordance with the terms of the relevant Security Document, (ii) in connection with the Full Payment of the Obligations or (iii) any loss of perfection (x) that results from the failure of the Collateral Agent to (A) maintain possession of certificates, promissory notes or other instruments delivered to it representing securities or other assets pledged under the Security Documents or (B) file and maintain proper UCC financing statements or similar filings (including continuation statements) or (y) as to Collateral consisting of real property, to the extent such real property is covered by a title insurance policy and such insurer has not denied coverage;

(k) (i) an ERISA Event shall occur which has resulted or could reasonably be expected to result in a Material Adverse Effect or (ii) an Obligor or any ERISA Affiliate shall fail 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 Multi-employer Plan which has resulted or could reasonably be expected to result in a Material Adverse Effect; or

(l) there occurs a Change of Control.

10.2 Remedies.

(a) If an Event of Default has occurred and is continuing, the Agent may, in its discretion, and shall, at the direction of the Required Lenders, do one or more of the following at any time or times and in any order, without notice to or demand on the Borrower:

(i) reduce the Maximum Revolver Amount or the advance rates against Eligible Accounts ~~or~~, Eligible Unbilled Accounts or Eligible Power Generation Equipment or used in computing the Borrowing Base, or reduce one or more of the other elements used in computing the Borrowing Base, in each case to the extent determined by the Agent or the Required Lenders, as the case may be;

(ii) restrict the amount of or refuse to make Loans;

(iii) instruct the Letter of Credit Issuers to restrict or refuse to provide Letters of Credit;

(iv) terminate the Commitments;

(v) declare the Loans to be immediately due and payable; provided, however, that upon the occurrence of any Event of Default described in Section 10.1(e), 10.1(f), or 10.1(g) with respect to the Borrower, the Commitments shall automatically and immediately expire and terminate and all Loans shall automatically become immediately due and payable without notice or demand of any kind;

(vi) require the Obligors to cash collateralize all outstanding Letters of Credit; and

(vii) pursue its other rights and remedies under the Loan Documents and applicable Law.

(b) If an Event of Default has occurred and is continuing: (i) the Agent shall have, for the benefit of the respective Secured Parties, in addition to all other rights of the Agent and the Lenders, the rights and remedies of a secured party under the Loan Documents or the UCC; (ii) the Agent may, at any time, take possession of the respective Collateral and keep it on the Obligors' premises, at no cost to the Agent or any Lender, or remove any part of it to such other place or places as the Agent may desire, or the Borrower shall, and shall cause their Restricted Subsidiaries to, upon the Agent's demand, at the Borrower's cost, assemble the Collateral and make it available to the Agent at a place reasonably convenient to the Agent; and (iii) the Agent may sell and deliver any Collateral at public or private sales, for cash, upon credit or otherwise, at such prices and upon such terms as the Agent deems advisable, in its sole discretion, and may, if the Agent deems it reasonable, postpone or adjourn any sale of any Collateral by an announcement at the time and place of sale or of such postponed or adjourned sale without giving a new notice of sale. Without in any way requiring notice to be given in the following manner, each Obligor agrees that any notice by the Agent of sale, disposition or other intended action hereunder or in connection herewith, whether required by the UCC or otherwise, shall constitute reasonable notice to the Borrower if such notice is mailed by registered or certified mail, return receipt requested, postage prepaid, or is delivered personally against receipt, at least ten (10) days prior to such action to the Borrower at the address specified in or pursuant to Section 14.8. If any Collateral is sold on terms other than payment in full at the time of sale, no credit shall be given against the Obligations until the Agent or the Lenders receive payment, and if the buyer defaults in payment, the Agent may resell the Collateral without further notice to the Borrower or any other Obligor. In the event the Agent seeks to take possession of all or any portion of the Collateral by judicial process, the Borrower and each other Obligor irrevocably waives: (A) the posting of any bond, surety or security with respect thereto which might otherwise be required; (B) any demand for possession prior to the commencement of any suit or action to recover the Collateral; and (C) any requirement that the Agent retain possession and not dispose of any Collateral until after trial or final judgment. The Borrower and the other Obligors agree that the Agent has no obligation to preserve rights to the Collateral or marshal any Collateral for the benefit of any Person.

10.3 Application of Funds. Subject to any Intercreditor Agreement in effect, if the circumstances described in Section 4.7 have occurred, or after the exercise of remedies provided for in Section 10.2 or under any other Loan Document (or after the Commitments have automatically been terminated, the Loans have automatically become immediately due and payable as set forth in Section 10.2 and the Letters of Credit have automatically been required to be cash collateralized, in each case as set forth in Section 10.2), including in any bankruptcy or insolvency proceeding, any amounts received on account of the Obligations shall be applied by the Agent in the following order:

First, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (other than principal and interest, but including Attorney Costs payable under Section 14.7) payable to the Agent and/or the Collateral Agent in its capacity as such (other than in connection with Cash Management Obligations or Obligations in respect of Secured Hedge Agreements);

Second, to pay interest due in respect of all Agent Advances until paid in full;

Third, to pay the principal of all Agent Advances until paid in full;

Fourth, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal and interest) payable to the Lenders (including Attorney Costs payable under Section 14.7), ratably among them in proportion to the amounts described in this clause Fourth payable to them (other than in connection with Cash Management Obligations or Obligations in respect of Secured Hedge Agreements);

Fifth, to pay interest accrued in respect of the Swingline Loans until paid in full;

Sixth, to pay the principal of all Swingline Loans until paid in full;

Seventh, to pay interest accrued in respect of the Revolving Loans (other than Agent Advances or Swingline Loans) until paid in full;

Eighth, ratably (i) to pay the principal of all Revolving Loans (other than Agent Advances and Swingline Loans) until paid in full, (ii) to the Agent, to be held by the Agent, for the benefit of the Letter of Credit Issuers, as cash collateral in an amount up to 103% of the maximum drawable amount of any outstanding Letters of Credit and (iii) to pay any Obligations under Noticed Hedges (in an amount not to exceed the Bank Product Reserves);

Ninth, ratably to pay (i) any amounts owing with respect to any Obligations in respect of Secured Hedge Agreements (other than Noticed Hedges), until paid in full, (ii) any amounts owing with respect to any Obligations in respect of the unreserved portion of a Noticed Hedge, until paid in full, and (iii) any amounts owing with respect to Cash Management Obligations, in each case, until paid in full;

Tenth, to the payment of all other Obligations of the Obligors that are due and payable to the Agent and the other Secured Parties (other than any Defaulting Lenders) on such date, ratably based upon the respective aggregate amounts of all such Obligations owing to the Agent and the other Secured Parties (other than any Defaulting Lenders) on such date, until paid in full;

Eleventh, ratably to pay any amounts owing with respect to any Obligations in respect of any FILO Tranche, until paid in full;

Twelfth, ratably to pay any Obligations owed to Defaulting Lenders, until paid in full; and

Last, the balance, if any, after all of the Obligations have been indefeasibly paid in full, to the Borrower or as otherwise required by Law.

Amounts used to cash collateralize the aggregate undrawn amount of Letters of Credit pursuant to clause Eighth 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 and, if no Obligations remain outstanding, to the Borrower. Notwithstanding the foregoing, no amounts received from any Guarantor shall be applied to any Excluded Swap Obligations of such Guarantor.

10.4 Permitted Holders' Right to Cure.

(a) Notwithstanding anything to the contrary contained in Section 10.1(c), in the event that ~~the Borrower~~Holdings fails to comply with the requirement of the Financial Covenant, any of the Permitted Holders, ~~Holdings~~ or any other Person designated by the Borrower shall have the right, during the period beginning at the end of the last Fiscal Quarter of the applicable Test Period and until the later of (i) the tenth (10th) Business Day after the date on which Financial Statements with respect to the Test Period in which such covenant is being measured are required to be delivered pursuant to Section 6.2 and (ii) the tenth (10th) Business Day after the beginning of a Covenant Trigger Period (such later date, the "Cure Deadline"), to make a direct or indirect equity investment in ~~the Borrower~~Holdings in cash in the form of common Stock (or other Stock reasonably acceptable to the Agent) (which shall be contributed in cash to the common equity of the Borrower) (the "Cure Right"), and upon the receipt by the Borrower of net proceeds pursuant to the exercise of the Cure Right (the "Cure Amount"), the Financial Covenant shall be recalculated, giving effect to a pro forma increase to Consolidated EBITDA for such Test Period in an amount equal to such Cure Amount; provided that such pro forma adjustment to Consolidated EBITDA shall be given solely for the purpose of determining the existence of a Default or an Event of Default under the Financial Covenant with respect to any Test Period that includes the Fiscal Quarter for which such Cure Right was exercised and not for any other purpose under any Loan Document.

(b) If, after the receipt of the Cure Amount and the recalculations pursuant to clause (a) above, ~~the Borrower~~Holdings shall then be in compliance with the requirements of the Financial Covenant during such Test Period, ~~the Borrower~~Holdings shall be deemed to have satisfied the requirements of the Financial Covenant as of the relevant date of determination with the same effect as though there had been no failure to comply therewith at such date, and the applicable Default that had occurred shall be deemed cured; provided that (i) the Cure Right may be exercised on no more than five (5) occasions, (ii) in each four Fiscal Quarter period, there shall be at least two Fiscal Quarters in respect of which no Cure Right is exercised, (iii) with respect to any exercise of the Cure Right, the Cure Amount shall be no greater than the amount required to cause ~~the Borrower~~Holdings to be in compliance with the Financial Covenant, (iv) all Cure Amount shall be disregarded for purposes of determining any baskets, with respect to the covenants contained in the Loan Documents or the usage of the Available Equity Amount and (v) there shall be no pro forma reduction in Debt (by netting or otherwise) with the proceeds of any Cure Amount for determining compliance with the Financial Covenant for the Fiscal Quarter for which such Cure Amount is deemed applied.

(c) Prior to the Cure Deadline, neither the Agent, the Collateral Agent nor any Lender shall exercise any rights or remedies under Article X (or under any other Loan Document available during the continuance of any Default or Event of Default) solely on the basis of any actual or purported failure to comply with the Financial Covenant unless such failure is not cured by the Cure Deadline (it being understood that this sentence shall not have any effect on the rights and remedies of the Lenders with respect to any other Default or Event of Default pursuant to any other provision of any Loan Document other than breach of the Financial Covenant).

ARTICLE XI

TERM AND TERMINATION

11.1 Term and Termination. The term of this Agreement shall end on the Stated Termination Date unless sooner terminated in accordance with the terms hereof. The Agent upon direction from the Required Lenders may terminate this Agreement without notice upon the occurrence and during the continuance of an Event of Default. Upon the effective date of termination of this Agreement for any reason whatsoever, all Obligations (other than contingent obligations not then due and payable, Obligations under Secured Hedge Agreements and Cash Management Obligations) (including all unpaid principal, accrued and unpaid interest and any amounts due under Section 5.4) shall become immediately due and payable and the Borrower shall immediately arrange, with respect to all Letters of Credit then outstanding, for (a) the cancellation and return thereof, or (b) the cash collateralization thereof or issuance of Supporting Letters of Credit with respect thereto in accordance with Section 2.3(g). Notwithstanding the termination of this Agreement, until Full Payment of all Obligations, the Borrower shall remain bound by the terms of this Agreement and shall not be relieved of any of its Obligations hereunder or under any other Loan Document, and the Agent, the Collateral Agent and the Lenders shall retain all their rights and remedies hereunder (including the Collateral Agent's Liens in and all rights and remedies with respect to all then-existing and after-arising Collateral).

ARTICLE XII

AMENDMENTS; WAIVERS; PARTICIPATIONS; ASSIGNMENTS; SUCCESSORS

12.1 Amendments and Waivers.

(a) (i) Except as otherwise specifically set forth in this Agreement, no amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent with respect to any departure by the Borrower or other Obligor therefrom, shall be effective unless the same shall be in writing and signed by the Required Lenders (or by the Agent with the consent of the Required Lenders) and the Obligors party thereto and then any such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given;

(ii) Notwithstanding the foregoing, no such waiver, amendment, or consent shall be effective to modify eligibility criteria, or sublimits contained in the definitions of “Borrowing Base”, “Eligible Accounts”, “Eligible Unbilled Accounts” ~~or~~, “Eligible Investment Grade Accounts”, “Eligible Power Generation Equipment”, “Eligible Power Generation Equipment Component” or any successor or related definition, in each case that would have the effect of increasing the Borrowing Base unless it is consented to in writing by the Supermajority Lenders and the Borrower;

(iii) Notwithstanding the foregoing, no such waiver, amendment, or consent shall be effective with respect to the following, unless consented to in writing by all Lenders (or the Agent with the consent of all Lenders) and the Borrower:

- (A) increase any of the advance rates or sublimits set forth in the definition of “Borrowing Base” or add any new classes of eligible assets to such definition;
- (B) amend this Section 12.1 or any provision of this Agreement providing for consent or other action by all Lenders;
- (C) release all or substantially all of the value of the Guarantors with respect to their Obligations owing under the Guarantee Agreement other than as permitted by Section 13.10;
- (D) subject to any Intercreditor Agreement then in effect, release all or substantially all of the Collateral other than as permitted by Section 13.10;
- (E) change the voting percentages included in the definitions of “Required Lenders” or “Supermajority Lenders”; or
- (F) amend the definition of “Pro Rata Share” or Section 4.7.

(iv) Notwithstanding the foregoing, no such waiver, amendment, or consent shall be effective with respect to the following, unless consented to in writing by all adversely affected Lenders (or the Agent with the consent of all adversely affected Lenders) and the Borrower:

- (A) increase or extend any Commitment of any Lender (other than as contemplated in Section 2.6 or 2.7);
- (B) postpone or delay any date fixed by this Agreement or any other Loan Document for any (i) scheduled payment of principal, interest or fees or (ii) other amounts due to the Lenders (or any of them) hereunder or under any other Loan Document;

(C) reduce the principal of, or the rate of interest specified herein (other than waivers of the Default Rate) on any Loan, or any fees or other amounts payable hereunder or under any other Loan Document;

(D) amend the “default waterfall” set forth in Section 10.3;

(E) (x) subordinate, or have the effect of subordinating, the Obligations to any other Debt, or (y) subordinate, or have the effect of subordinating, the Liens securing the Obligations to Liens securing any other Debt; or

(F) extend the expiration date of any Letter of Credit beyond the Stated Termination Date.

It is understood that a waiver of any condition precedent or the waiver of any Default, Event of Default or mandatory prepayment or commitment reduction under this Agreement and the other Loan Documents shall not give rise to an all affected Lender vote pursuant to this clause (iv).

(v) Notwithstanding the foregoing, no such waiver, amendment, or consent shall be effective to increase the obligations or adversely affect the rights of the Agent, the Collateral Agent, the Swingline Lender, any Letter of Credit Issuer or any Arranger without the consent of the party adversely affected thereby;

provided, however, that (A) the Agent may, in its sole discretion and notwithstanding the limitations contained in clause (ii) or (iii)(A) above and any other terms of this Agreement, make applicable Agent Advances in accordance with Section 2.4(g); (B) Schedule 1.1 hereto (Lenders’ Commitments) may be amended from time to time by the Agent alone to reflect assignments of Commitments in accordance herewith and changes in Commitments in accordance with Section 2.6 or 2.7; (C) no amendment or waiver shall be made to Section 13.19 or to any other provision of any Loan Document as such provisions relate to the rights and obligations of any Arranger without the written consent of such Arranger and (D) the Engagement Letter may be amended or waived in a writing signed by the Borrower and Barclays. Further, notwithstanding anything to the contrary contained in Section 12.1, if the Agent and the Borrower shall have jointly identified an 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 Agent and the Borrower 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 Document if the same is not objected to in writing by the Required Lenders within five (5) Business Days following receipt of notice thereof. Notwithstanding the foregoing, the L/C Commitment of any Letter of Credit Issuer listed on Schedule 1.1 hereto may be modified with the consent of the Borrower, such Letter of Credit Issuer and the Agent (and without the consent of any Lender).

Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder, except that (i) the Commitment of such Lender may not be increased or extended and (ii) the accrued and unpaid amount of any principal, interest or fees payable to such Lender shall not be reduced, in either case, without the consent of such Lender.

(b) If, in connection with any proposed amendment, waiver or consent (a “Proposed Change”) requiring the consent of the Supermajority Lenders, all Lenders or all affected Lenders, the consent of Required Lenders is obtained, but the consent of other Lenders is not obtained (any such Lender whose consent is not obtained being referred to as a “Non-Consenting Lender”), then, so long as the Agent is not a Non-Consenting Lender, at the Borrower’s request (and if applicable, payment by the Borrower of the processing fee referred to in Section 12.2(a)), the Agent or an Eligible Assignee shall have the right (but not the obligation), to purchase from the Non-Consenting Lenders, and the Non-Consenting Lenders agree that they shall sell, all of the Non-Consenting Lenders’ interests, rights and obligations under the Loan Documents, in accordance with the procedures set forth in clauses (i) through (v) in the proviso to Section 5.8 and the last sentence in Section 5.8, as if each such Non-Consenting Lender is an assignor Lender thereunder.

12.2 Assignments; Participations.

(a) Any Lender may, with the written consent of (i) the Agent, (ii) the Swingline Lender and the Letter of Credit Issuers, and (iii) so long as no Event of Default under any of Section 10.1(a), (e), (f) or (g) has occurred and is continuing, the Borrower (in each case, which consents shall not be unreasonably withheld or delayed), assign and delegate to one or more Eligible Assignees (provided that (x) no such consent shall be required in connection with any assignment to a then-existing Lender, any Affiliate of a then-existing Lender (including, for the avoidance of doubt, any assignments between Goldman Sachs Bank USA and Goldman Sachs Lending Partners LLC) or any Approved Fund and (y) such consent shall be deemed to have been given if the Borrower has not responded within ten (10) Business Days of receipt of a written request for consent) (each an “Assignee”) all, or any ratable part of all, of the Loans, the Commitments and the other rights and obligations of such Lender hereunder, in a minimum amount of \$5,000,000, or an integral multiple of \$1,000,000 in excess thereof (provided that an amount less than the minimum amount of \$5,000,000 may be assigned if agreed to by the Borrower and the Agent, or if such amount represents all of the Loans, the Commitments and the other rights and obligations of the Lender hereunder) (provided, further that no such minimum amount shall apply to any assignment to an Approved Fund or to a Lender or to an Affiliate of a Lender); provided, however, that (A) written notice of such assignment, together with payment instructions, addresses and related information with respect to the Assignee, shall be given to the Borrower and the Agent by such Lender and the Assignee; (B) such Lender and its Assignee shall deliver to the Borrower and the Agent an Assignment and Acceptance; and (C) the assignor Lender or Assignee shall pay to the Agent a processing fee in the amount of \$3,500; provided, further, that the Agent may elect to waive such processing fee in its sole discretion.

(b) From and after the date that the Agent has received an executed Assignment and Acceptance, the Agent has received payment of the above-referenced processing fee and the Agent has recorded such assignment in the Register as provided in Section 13.20 herein, (i) the Assignee thereunder shall be a party hereto and, to the extent that rights and obligations, including, but not limited to, the obligation to participate in Letters of Credit, have been assigned to it pursuant to such Assignment and Acceptance, shall have the rights and obligations of a Lender under the Loan Documents, and (ii) the assignor Lender shall, to the extent that rights and obligations hereunder and under the other Loan Documents have been assigned by it pursuant to such Assignment and Acceptance, relinquish its rights and be released from its obligations under this Agreement (and in the case of an Assignment and Acceptance covering all or the remaining portion of an assignor Lender’s rights and obligations under this Agreement, such assignor Lender shall cease to be a party hereto).

(c) By executing and delivering an Assignment and Acceptance, the assignor Lender thereunder and the Assignee thereunder confirm to and agree with each other and the other parties hereto as follows: (i) other than as provided in such Assignment and Acceptance, such assignor Lender makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with this Agreement or any other Loan Document or the execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement or any other Loan Document furnished pursuant hereto or the attachment, perfection, or priority of any Lien granted by any Obligor to the Agent or any Lender in the applicable Collateral; (ii) such assignor Lender makes no representation or warranty and assumes no responsibility with respect to the financial condition of any Obligor or the performance or observance by any Obligor of any of its obligations under this Agreement or any other Loan Document furnished pursuant hereto; (iii) such Assignee confirms that it has received a copy of this Agreement, together with such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into such Assignment and Acceptance; (iv) such Assignee will, independently and without reliance upon the Agent, such assignor Lender or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement; (v) such Assignee appoints and authorizes the Agent to take such action as agent on its behalf and to exercise such powers under this Agreement as are delegated to the Agent by the terms hereof, together with such powers, including the discretionary rights and incidental powers, as are reasonably incidental thereto; and (vi) such Assignee agrees that it will perform in accordance with their terms all of the obligations which by the terms of this Agreement are required to be performed by it as a Lender.

(d) Immediately upon satisfaction of the requirements of Section 12.2(a), this Agreement shall be deemed to be amended to the extent, but only to the extent, necessary to reflect the addition of the Assignee and the resulting adjustment of the Commitments arising therefrom. Each Commitment allocated to each Assignee shall reduce the applicable Commitment of the assignor Lender *pro tanto*.

(e) Any Lender may at any time sell to one or more commercial banks, financial institutions, or other Persons not Affiliates of the Borrower (a “Participant”), in each case that is not a Disqualified Lender so long as the list of Disqualified Lenders shall have been made available to all Lenders, participating interests in any Loans, any Commitment of that Lender and the other interests of that Lender (the “Originating Lender”) hereunder and under the other Loan Documents; provided, however, that (i) the Originating Lender’s obligations under this Agreement shall remain unchanged, (ii) the Originating Lender shall remain solely responsible for the performance of such obligations, (iii) the Borrower and the Agent shall continue to deal solely and directly with the Originating Lender in connection with the Originating Lender’s rights and obligations under this Agreement and the other Loan Documents, and (iv) no Lender shall transfer or grant any participating interest under which the Participant has rights to approve any amendment to, or any consent or waiver with respect to, this Agreement or any other Loan Document except the matters set forth in Sections 12.1(a)(iii)(C) and (D) and Section 12.1(a)(iv), and, except as expressly provided below, all amounts payable by the Borrower hereunder shall be determined as if such Lender had not sold such participation; except that, if amounts outstanding under this Agreement are due and unpaid, or shall have become due and payable upon the occurrence of an Event of Default, each Participant shall be deemed to have the right of set-off in respect of its participating interest in amounts owing under this Agreement to the same extent and subject to the same limitation as if the amount of its participating interest were owing directly to it as a Lender under this Agreement. Subject to paragraph (g) of this Section 12.2, the Borrower agrees that each Participant shall be entitled to the benefits of Sections 5.1, 5.2 and 5.3, subject to the requirements and limitations of such Sections (including Sections 5.1(d) and Sections 5.6 and 5.8, to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (a) of this Section 12.2 (provided that any documentation required to be provided pursuant to Section 5.1(d) shall be provided solely to the Originating Lender and provided further, for the avoidance of doubt, that if the Originating Lender is not a U.S. Person, such Lender shall include a copy of such documentation as an exhibit to its IRS Form W-8IMY in accordance with Section 5.1(d)(ii)(D)).

(f) Notwithstanding any other provision in this Agreement, any Lender may at any time create a security interest in, or pledge, all or any portion of its rights under and interest in this Agreement (including its Note, if any) in favor of any Federal Reserve Bank or any other central bank having jurisdiction over such Lender in accordance with Regulation A of the FRB or U.S. Treasury Regulation 31 CFR §203.14, and such Federal Reserve Bank may enforce such pledge or security interest in any manner permitted under applicable law.

(g) A Participant shall not be entitled to receive any greater payment under Section 5.1 or 5.3 than the Originating Lender would have been entitled to receive with respect to the participating interest sold to such Participant, unless the sale of the participating interest to such Participant is made with the Borrower's prior written consent and such Participant agrees to be subject to the provisions of Section 5.8 as though it were a Lender, or to the extent that such entitlement to a greater payment results from a Change in Law after the Participant became a Participant.

ARTICLE XIII

THE APPOINTED AGENTS

13.1 Appointment and Authorization. Each Lender hereby designates and appoints the Agent and the Collateral Agent (collectively, the "Appointed Agents") as its agents under this Agreement and the other Loan Documents and each Lender hereby irrevocably authorizes each Appointed Agent, in its respective capacity, to take such action on its behalf under the provisions of this Agreement and each other Loan Document and to exercise such powers and perform such duties as are expressly delegated to it by the terms of this Agreement or any other Loan Document, together with such powers as are reasonably incidental thereto. Each Appointed Agent agrees to act as such on the express conditions contained in this Article XIII. The provisions of this Article XIII (other than Sections 13.9, 13.10(a) and 13.10(b)) are solely for the benefit of the Appointed Agents and the Lenders, and the Borrower shall have no rights as third party beneficiaries of any of the provisions contained herein. Notwithstanding any provision to the contrary contained elsewhere in this Agreement or in any other Loan Document, each Appointed Agent shall not have any duties or responsibilities, except those expressly set forth herein, nor shall any Appointed Agent have or be deemed to have any fiduciary relationship with any Lender, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against any Appointed Agent. Without limiting the generality of the foregoing sentence, the use of the term "agent" in this Agreement with reference to any Appointed 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 merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties. Except as expressly otherwise provided in this Agreement, each Appointed Agent shall have and may use its sole discretion with respect to exercising or refraining from exercising any discretionary rights or taking or refraining from taking any actions which such Appointed Agent is expressly entitled to take or assert under this Agreement and the other Loan Documents, including (a) the determination of the applicability of ineligibility criteria with respect to the calculation of the Borrowing Base, (b) the making of Agent Advances pursuant to Section 2.4(g) and (c) the exercise of remedies pursuant to Section 10.2, and any action so taken or not taken shall be deemed consented to by the Lenders.

13.2 Delegation of Duties. Each Appointed Agent may execute any of its duties under this Agreement or any other Loan Document by or through agents, employees or attorneys-in-fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. Each Appointed Agent shall not be responsible for the negligence or misconduct of any agent or attorney in fact that it selects as long as such selection was made without gross negligence, bad faith or willful misconduct.

13.3 Liability of Appointed Agents. None of the Agent-Related Persons shall (a) be liable for any action taken or omitted to be taken by any of them under or in connection with this Agreement or any other Loan Document or the transactions contemplated hereby (except for its own gross negligence, bad faith or willful misconduct (as determined by a court of competent jurisdiction in a final and non-appealable decision)), (b) be responsible in any manner to any of the Lenders for any recital, statement, representation or warranty made by any Obligor or any Subsidiary or Affiliate of any Obligor, or any officer thereof, contained in this Agreement or in any other Loan Document, or in any certificate, report, statement or other document referred to or provided for in, or received by any Appointed Agent under or in connection with, this Agreement or any other Loan Document, or the validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document, or the perfection or priority of any Lien or security interest created or purported to be created under the Collateral Documents, or for any failure of any Obligor or any other party to any Loan Document to perform its obligations hereunder or thereunder or (c) 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 Lenders; further, without limiting the generality of the foregoing clause (c), no Agent-Related Person shall (x) be obligated to ascertain, monitor or inquire as to whether any Lender or Participant or prospective Lender or Participant is a Disqualified Lender or (y) have any liability with respect to or arising out of any assignment or participation of Loans, or disclosure of confidential information, to any Disqualified Lender. No Agent-Related Person shall be under any obligation to any Lender to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any other Loan Document, or to inspect the properties, books or records of any Obligor or any of their Subsidiaries or Affiliates.

13.4 Reliance by Appointed Agent. Each Appointed Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, resolution, notice, consent, certificate, affidavit, letter, telegram, facsimile, telex or telephone message, statement or other document or conversation believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons, and upon advice and statements of legal counsel (including counsel to any Obligor), independent accountants and other experts selected by such Appointed Agent. Each Appointed Agent shall be fully justified in failing or refusing to take any action under this Agreement or any other Loan Document unless it shall first receive such advice or concurrence of the Required Lenders as it deems appropriate and, if it so requests, it shall first be indemnified to its satisfaction by the Lenders against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. Each Appointed Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement or any other Loan Document in accordance with a request or consent of the Required Lenders (or the Supermajority Lenders, all Lenders or all affected Lenders if so required by Section 12.1) and such request and any action taken or failure to act pursuant thereto shall be binding upon all of the Lenders.

13.5 Notice of Default. The Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default, unless the Agent shall have received written notice from a Lender or the Borrower referring to this Agreement, describing such Default or Event of Default and stating that such notice is a “notice of default.” The Agent will notify the Lenders of its receipt of any such notice. The Agent shall take such action with respect to such Default or Event of Default as may be requested by the Required Lenders in accordance with Article X; provided, however, that unless and until the Agent has received any such request, the Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable.

13.6 Credit Decision. Each Lender acknowledges that none of the Agent-Related Persons has made any representation or warranty to it, and that no act by any Appointed Agent hereinafter taken, including any review of the affairs of the Borrower and its Affiliates, shall be deemed to constitute any representation or warranty by any Agent-Related Person to any Lender. Each Lender represents to each Appointed Agent that it has, independently and without reliance upon any Agent-Related Person and based on such documents and information as it has deemed appropriate, made its own appraisal of, and investigation into, the business, prospects, operations, property, financial and other condition and creditworthiness of the Obligors and their Affiliates, and all applicable bank 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. Each Lender also represents that it will, independently and without reliance upon any Agent-Related Person and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Loan Documents, 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 Obligors and their Affiliates. Except for notices, reports and other documents expressly herein required to be furnished to the Lenders by the Agent, the Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of the Obligors or any of their Affiliates which may come into the possession of any of the Agent-Related Persons.

13.7 Indemnification. Whether or not the transactions contemplated hereby are consummated, the Lenders shall indemnify upon demand the Agent-Related Persons (to the extent not reimbursed by or on behalf of the Borrower and without limiting the obligation of the Borrower to do so), ratably in accordance with their respective Pro Rata Shares, from and against any and all Losses as such term is defined in Section 14.10; provided, however, that no Lender shall be liable for the payment to such Agent-Related Persons of any portion of such Losses to the extent resulting from such Person's gross negligence, bad faith or willful misconduct (as determined by a court of competent jurisdiction in a final and non-appealable decision); provided, further, that any action taken by any Agent-Related Person at the request of the Required Lenders shall not constitute gross negligence, bad faith or willful misconduct. Without limitation of the foregoing, each Lender shall ratably reimburse the Agent upon demand for its share of any costs or out-of-pocket expenses (including Attorney Costs) incurred by the Agent in connection with the preparation, execution, delivery, administration, modification, amendment or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement, any other Loan Document, or any document contemplated by or referred to herein, to the extent that the Agent is not reimbursed for such expenses by or on behalf of the Borrower. The undertaking in this Section 13.7 shall survive the payment of all Obligations hereunder and the resignation or replacement of the Agent.

13.8 Appointed Agents in Individual Capacity. Each Appointed Agent and its Affiliates may make loans to, issue letters of credit for the account of, accept deposits from, acquire Stock in and generally engage in any kind of banking, trust, financial advisory, underwriting or other business with the Obligors and their Subsidiaries and Affiliates as though such Appointed Agent was not an Appointed Agent hereunder and without notice to or consent of the Lenders. Each Appointed Agent and its Affiliates may receive information regarding the Obligors, their Affiliates and Account Debtors (including information that may be subject to confidentiality obligations in favor of the Obligors or such Affiliates) and the Lenders hereby acknowledge that each Appointed Agent shall be under no obligation to provide such information to them. With respect to its Loans, each Appointed Agent shall have the same rights and powers under this Agreement as any other Lender and may exercise the same as though it were not an Appointed Agent, and the terms "Lender" and "Lenders" include each Appointed Agent in its individual capacity.

13.9 Successor Agents. Each Appointed Agent may resign as an Appointed Agent upon at least 30 days' prior notice to the Lenders and the Borrower. In the event any Appointed Agent sells all of its Loans and/or Commitments as part of a sale, transfer or other disposition by such Appointed Agent of substantially all of its loan portfolio, such Appointed Agent shall resign as an Appointed Agent and such purchaser or transferee shall become the successor Appointed Agent hereunder. In the event that an Appointed Agent becomes a Defaulting Lender, such Appointed Agent may be removed at the reasonable request of the Borrower and the Required Lenders. Subject to the foregoing, if an Appointed Agent resigns or is removed under this Agreement, the Required Lenders (with the prior consent of the Borrower, such consent not to be unreasonably withheld and such consent not to be required if an Event of Default under any of Section 10.1(a), (e), (f) or (g) has occurred and is continuing) shall appoint from among the Lenders a successor agent, which successor agent shall be a Lender or a commercial bank, commercial finance company or other asset based lender having total assets in excess of \$5,000,000,000. If no successor agent is appointed prior to the effective date of the resignation of any Appointed Agent, such Appointed Agent may appoint, after consulting with the Lenders and the Borrower (but without the need for the consent of the Borrower), a successor agent from among the Lenders. Upon the acceptance of its appointment as successor agent hereunder, such successor agent shall succeed to all the rights, powers and duties of the retiring Appointed Agent and the term "Appointed Agent" shall mean such successor agent and the retiring Appointed Agent's appointment, powers and duties as an Appointed Agent shall be terminated. After any retiring Appointed Agent's resignation hereunder as an Appointed Agent, the provisions of this Article XIII and Section 14.10 shall continue to inure to its benefit as to any actions taken or omitted to be taken by it while it was an Appointed Agent under this Agreement.

13.10 Collateral Matters.

(a) The Lenders (and each other Secured Party by their acceptance of the benefits of the Loan Documents shall be deemed to) hereby irrevocably authorize the Collateral Agent (and if applicable, any subagent appointed by the Collateral Agent under [Section 13.2](#) or otherwise) to release its Liens on the Collateral, and the Collateral Agent's Liens upon any Collateral shall be automatically released (i) upon Full Payment of the Obligations; (ii) upon a disposition of Collateral permitted by [Section 8.8](#) to a Person that is not an Obligor; (iii) if any such Collateral constitutes property in which the Obligors owned no interest at the time the Lien was granted or at any time thereafter; (iv) if any such Collateral constitutes property leased to an Obligor under a lease which has expired or been terminated in a transaction permitted under this Agreement; (v) to the extent the property constituting such Collateral is owned by any Guarantor ([other than Holdings](#)), upon the release of such Guarantor ([other than Holdings](#)) from its obligations under the Guarantee Agreement (in accordance with the second succeeding sentence and the Guarantee Agreement); (vi) as required by the Collateral Agent to effect any sale, transfer or other Disposition of Collateral in connection with any exercise of remedies of the Collateral Agent pursuant to the Security Documents and (vii) to the extent such Collateral otherwise becomes an Excluded Stock or an Excluded Asset. Except as provided above, the Collateral Agent will not release any of the Collateral Agent's Liens without the prior written authorization of the Required Lenders (or such other percentage of Lenders whose consent is required in accordance with [Section 12.1](#)); provided that, in addition to the foregoing, the Collateral Agent may, in its discretion, release such Collateral Agent's Liens on Collateral valued in the aggregate not in excess of \$2,500,000 during each Fiscal Year without the prior written authorization of any Lender, so long as all proceeds received in connection with such release are applied to the Obligations in accordance with [Section 4.7](#) and, after giving effect to the application of such proceeds and the updating of the Borrowing Base, as the case may be, to reflect the deletion of any assets subject to such release, Availability shall be no less than the Availability immediately prior to such release. Upon request by the Collateral Agent or the Borrower at any time, subject to the Borrower having certified to the Collateral Agent that the disposition is made in compliance with [Section 8.8](#) (which the Collateral Agent may rely conclusively on any such certificate, without further inquiry), the Lenders will confirm in writing the Collateral Agent's authority to release any applicable Collateral Agent's Liens upon particular types or items of Collateral pursuant to this [Section 13.10](#). In addition, the Lenders hereby irrevocably authorize (x) the Collateral Agent to subordinate any Lien on any property granted to or held by the Collateral Agent under any Loan Document to the holder of any Lien on such property that is permitted by [Section 8.12\(c\)](#) and (y) the Agent to release automatically any Guarantor ([other than Holdings](#)) from its obligations under the Guarantee Agreement if such Person ceases to be a Restricted Subsidiary as a result of a transaction permitted under this Agreement or such Person otherwise becomes an Excluded Subsidiary, in each case, solely to the extent such Subsidiary ceasing to constitute a Restricted Subsidiary or otherwise becoming an Excluded Subsidiary is not prohibited by this Agreement. Upon request by any Appointed Agent at any time, the Required Lenders will confirm in writing such Appointed Agent's authority to release or subordinate its interest in particular types or items of property, or to release any Guarantor from its obligations pursuant to this [Section 13.10\(a\)](#).

(b) Upon receipt by any Appointed Agent of any authorization required pursuant to [Section 13.10\(a\)](#) from the Lenders of such Appointed Agent's authority to release or subordinate the applicable Collateral Agent's Liens upon particular types or items of Collateral, or to release any Guarantor from its obligations under the Guarantee Agreement, and upon at least three (3) Business Days' prior written request by the Borrower, such Appointed Agent shall (and is hereby irrevocably authorized by the Lenders and the other Secured Parties to) execute such documents as may be necessary to evidence the release of such Collateral Agent's Liens upon such Collateral or to subordinate its interest therein, or to release such Guarantor from its obligations under the Guarantee Agreement; provided, however, that (i) such Appointed Agent shall not be required to execute any such document on terms which, in such Appointed Agent's opinion, would expose such Appointed Agent to liability or create any obligation or entail any consequence other than the release of such Liens without recourse or warranty, and (ii) such release shall not in any manner discharge, affect or impair the Obligations or any Liens (other than those expressly being released) upon (or obligations of the Obligors in respect of) all interests retained by the Obligors, including the proceeds of any sale, all of which shall continue to constitute part of such Collateral.

(c) The Collateral Agent shall have no obligation whatsoever to any of the Lenders to assure that the Collateral exists or is owned by the Obligors or is cared for, protected or insured or has been encumbered, or that the applicable Collateral Agent's Liens have been properly or sufficiently or lawfully created, perfected, protected or enforced or are entitled to any particular priority, or to exercise at all or in any particular manner or under any duty of care, disclosure or fidelity, or to continue exercising, any of the rights, authorities and powers granted or available to the Collateral Agent pursuant to any of the Loan Documents, it being understood and agreed that in respect of the Collateral, or any act, omission or event related thereto, the Collateral Agent may act in any manner it may deem appropriate, in its sole discretion, given the Collateral Agent's own interest in the Collateral in its capacity as one of the Lenders and that the Collateral Agent shall have no other duty or liability whatsoever to any Lender as to any of the foregoing.

13.11 Restrictions on Actions by Lenders; Sharing of Payments.

(a) Each of the Lenders agrees that it shall not, without the express consent of the Required Lenders, set off against the Obligations, any amounts owing by such Lender to any Obligor or any accounts of any Obligor now or hereafter maintained with such Lender. Each of the Lenders further agrees that it shall not, unless specifically requested to do so by any Appointed Agent, take or cause to be taken any action to enforce its rights under this Agreement or against any Obligor, including the commencement of any legal or equitable proceedings, to foreclose any Lien on, or otherwise enforce any security interest in, any of the applicable Collateral.

(b) Except as may be expressly permitted by this Agreement, if at any time or times any Lender shall receive (i) by payment, foreclosure, setoff or otherwise, any proceeds of Collateral or any payments with respect to the Obligations of any Obligor to such Lender arising under, or relating to, this Agreement or the other Loan Documents, except for any such proceeds or payments received by such Lender from the Agent pursuant to the terms of this Agreement or to which such Lender is otherwise entitled to receive directly pursuant to the terms of this Agreement, or (ii) payments from the Agent in excess of such Lender's ratable portion of all such distributions by the Agent, such Lender shall promptly (A) turn the same over to the Agent, in kind, and with such endorsements as may be required to negotiate the same to the Agent, or in same day funds, as applicable, for the account of all of the Lenders and for application to the Obligations in accordance with the applicable provisions of this Agreement, or (B) purchase, without recourse or warranty, an undivided interest and participation in the Obligations owed to the other Lenders so that such excess payment received shall be applied ratably as among the Lenders in accordance with their Commitments; provided, however, that (A) if all or part of such excess payment received by the purchasing party is thereafter recovered from it, those purchases of participations shall be rescinded in whole or in part, as applicable, and the applicable portion of the purchase price paid therefor shall be returned to such purchasing party, but without interest except to the extent that such purchasing party is required to pay interest in connection with the recovery of the excess payment and (B) the provisions of this paragraph shall not be construed to apply to (x) any payment made by the Borrower or any other Obligor pursuant to and in accordance with the express terms of this Agreement and the other Loan Documents, (y) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans, Commitments or participations in a Letter of Credit or Swingline Loans to any Assignee or Participant or (z) any disproportionate payment obtained by a Lender of any Class as a result of the extension by Lenders of the maturity date or expiration date of some but not all Loans or Commitments of that Class or any increase in the Applicable Margin (or other pricing term, including any fee, discount or premium) in respect of Loans or Commitments of Lenders that have consented to any such extension to the extent such transaction is permitted hereunder. For purposes of clause (b) of the definition of Excluded Taxes, a Lender that acquires a participation pursuant to this Section 13.11 shall be treated as having acquired an interest in such participation on the earlier date(s) on which it acquired the interest(s) in the Loan(s) or Commitment(s) to which such participation relates.

13.12 Agency for Perfection. Each Lender hereby appoints each other Lender as agent for the purpose of perfecting the Lenders' security interest in assets which, in accordance with the UCC or under other applicable law, as applicable may be perfected by possession. Should any Lender (other than the Collateral Agent) obtain possession of any such Collateral, such Lender shall notify the Collateral Agent thereof, and, promptly upon the Collateral Agent's request therefor, shall deliver such Collateral to the Collateral Agent or in accordance with the Collateral Agent's instructions.

13.13 Payments by Agent to Lenders. All payments to be made by the Agent to the applicable Lenders shall be made by bank wire transfer or internal transfer of immediately available funds to each such Lender pursuant to wire transfer instructions delivered in writing to the Agent on or prior to the Restatement Effective Date (or if such Lender is an Assignee, on the applicable Assignment and Acceptance), or pursuant to such other wire transfer instructions as each party may designate for itself by written notice to the Agent. Concurrently with each such payment, the Agent shall identify whether such payment (or any portion thereof) represents principal, interest or fees on the Loans or otherwise. Unless the Agent receives notice from the Borrower prior to the date on which any payment is due to the Lenders that the Borrower will not make such payment in full as and when required, the Agent may assume that the Borrower have made such payment in full to the Agent on such date in immediately available funds and the Agent may (but shall not be so required), in reliance upon such assumption, distribute to each such Lender on such due date an amount equal to the amount then due such Lender. If and to the extent the Borrower has not made such payment in full to the Agent, each applicable Lender shall repay to the Agent on demand such amount distributed to such Lender, together with interest thereon at the Federal Funds Rate for each day from the date such amount is distributed to such Lender until the date repaid.

13.14 Settlement.

(a) Each Lender's funded portion of the applicable Loans is intended by the applicable Lenders to be equal at all times to such Lender's Pro Rata Share of the outstanding applicable Loans. Notwithstanding such agreement, the Agent, the Swingline Lender, and the other applicable Lenders agree (which agreement shall not be for the benefit of or enforceable by the Borrower) that in order to facilitate the administration of this Agreement and the other Loan Documents, settlement among them as to the applicable Loans (including the applicable Swingline Loans and the applicable Agent Advances) shall take place on a periodic basis in accordance with the following provisions:

(i) The Agent shall request settlement ("Settlement") with the applicable Lenders at least once every week, or on a more frequent basis at the Agent's election, (A) on behalf of the Swingline Lender, with respect to each applicable outstanding Swingline Loan, (B) for itself, with respect to each applicable Agent Advance, and (C) with respect to collections received, in each case, by notifying the Lenders of such requested Settlement by telecopy or other electronic transmission, no later than 12:00 noon (New York City time) on the date of such requested Settlement (the "Settlement Date"). Each Lender (other than the Swingline Lender, in the case of applicable Swingline Loans and the Agent in the case of applicable Agent Advances) shall transfer the amount of such Lender's Pro Rata Share of the outstanding principal amount of the applicable Swingline Loans and the applicable Agent Advances with respect to each Settlement to the Agent, to the Agent's account, not later than 2:00 p.m. (New York City time), on the Settlement Date applicable thereto. Settlements shall occur during the continuation of a Default or an Event of Default and whether or not the applicable conditions precedent set forth in Article IX have then been satisfied. Such amounts made available by the applicable Lenders to the Agent shall be applied against the amounts of the applicable Swingline Loan or Agent Advance and, together with the portion of such Swingline Loan or Agent Advance representing the Swingline Lenders' Pro Rata Share thereof, shall cease to constitute Swingline Loans or Agent Advances, but shall constitute Revolving Loans of such Lenders. If any such amount is not transferred to the Agent by any Lender on the Settlement Date applicable thereto, the Agent shall be entitled to recover such amount on demand from such Lender together with interest thereon at the Federal Funds Rate, the first three (3) days from and after the Settlement Date and thereafter at the Interest Rate then applicable to Base Rate Loans, (A) on behalf of the Swingline Lender, with respect to each outstanding Swingline Loan, and (B) for itself, with respect to each applicable Agent Advance.

(ii) Notwithstanding the foregoing, not more than one (1) Business Day after demand is made by the Agent (whether before or after the occurrence of a Default or an Event of Default and regardless of whether the Agent has requested a Settlement with respect to an applicable Swingline Loan or applicable Agent Advance), each other applicable Lender (A) shall irrevocably and unconditionally purchase and receive from the Swingline Lender or the Agent, as applicable, without recourse or warranty, an undivided interest and participation in such Swingline Loan or Agent Advance equal to such Lender's Pro Rata Share of such Swingline Loan or Agent Advance and (B) if Settlement has not previously occurred with respect to such Swingline Loans or Agent Advances, upon demand by the Agent, as applicable, shall pay to the Swingline Lender or the Agent, as applicable, as the purchase price of such participation an amount equal to one-hundred percent (100%) of such Lender's Pro Rata Share of such Swingline Loans or Agent Advances. If such amount is not in fact made available to the Agent by any applicable Lender, the Agent shall be entitled to recover such amount on demand from such Lender together with interest thereon at the Federal Funds Rate for the first three (3) days from and after such demand and thereafter at the Interest Rate then applicable to Base Rate Loans, (A) on behalf of the Swingline Lender, with respect to each outstanding Swingline Loan, and (B) for itself, with respect to each applicable Agent Advance.

(iii) Notwithstanding any provisions of Section 2.4(f) to the contrary, from and after the date, if any, on which any Lender purchases an undivided interest and participation in any applicable Swingline Loan or applicable Agent Advance pursuant to clause (ii) above, the Agent shall promptly distribute to such Lender, such Lender's Pro Rata Share of all payments of principal and interest and all proceeds of Collateral received by the Agent in respect of such Swingline Loan or Agent Advance.

(iv) Between Settlement Dates, the Agent, to the extent no applicable Agent Advances are outstanding, may pay over to the Swingline Lender any payments received by the Agent, which in accordance with the terms of this Agreement would be applied to the reduction of the applicable Loans, for application to the Swingline Lender's Loans including applicable Swingline Loans. If, as of any Settlement Date, collections received since the then immediately preceding Settlement Date have been applied to the Swingline Lender's Loans (other than to applicable Swingline Loans or applicable Agent Advances in which such Lender has not yet funded its purchase of a participation pursuant to clause (ii) above), as provided for in the previous sentence, the Swingline Lender shall pay to the Agent for the accounts of the applicable Lenders, to be applied to the applicable outstanding Loans of such Lenders, an amount such that each Lender shall, upon receipt of such amount, have, as of such Settlement Date, its Pro Rata Share of the applicable Loans. During the period between Settlement Dates, the Swingline Lender with respect to applicable Swingline Loans, the Agent with respect to applicable Agent Advances, and each Lender with respect to the applicable Loans other than applicable Swingline Loans and applicable Agent Advances, shall be entitled to interest at the applicable rate or rates payable under this Agreement on the actual average daily amount of funds employed by the Agent and the other Lenders, respectively.

(v) Unless the Agent has received written notice from the Required Lenders to the contrary, the Agent may assume that the applicable conditions precedent set forth in Article IX have been satisfied.

(b) Lenders' Failure to Perform. All Loans (other than Swingline Loans and Agent Advances) shall be made by the Lenders simultaneously and in accordance with their Pro Rata Shares thereof. It is understood that (i) no Lender shall be responsible for any failure by any other Lender to perform its obligation to make any applicable Loans hereunder, nor shall any applicable Commitment of any Lender be increased or decreased as a result of any failure by any other Lender to perform its obligation to make any Loans hereunder, (ii) no failure by any Lender to perform its obligation to make any Loans hereunder shall excuse any other Lender from its obligation to make any Loans hereunder, and (iii) the obligations of each Lender hereunder shall be several, not joint and several.

(c) Defaulting Lenders. Unless the Agent receives notice from a Lender on or prior to the Restatement Effective Date or, with respect to any Borrowing after the Restatement Effective Date, at least one Business Day prior to the date of such Borrowing, that such Lender will not make available as and when required hereunder to the Agent that Lender's Pro Rata Share of a Borrowing, the Agent may assume that each such Lender has made such amount available to the Agent in immediately available funds on the Funding Date. Furthermore, the Agent may, in reliance upon such assumption, make available to the Borrower on such date a corresponding amount. If any Lender has not transferred its full Pro Rata Share to the Agent in immediately available funds, and the Agent has transferred the corresponding amount to the Borrower, on the Business Day following such Funding Date such Lender shall make such amount available to the Agent, together with interest at the Federal Funds Rate for that day. A notice by the Agent submitted to any Lender with respect to amounts owing shall be conclusive, absent manifest error. If each Lender's full Pro Rata Share is transferred to the Agent as required, the amount transferred to the Agent shall constitute that Lender's applicable Loan for all purposes of this Agreement. If that amount is not transferred to the Agent on the Business Day following the Funding Date, the Agent will notify the Borrower of such failure to fund and, upon demand by the Agent, the Borrower shall pay such amount to the Agent for the Agent's account, together with interest thereon for each day elapsed since the date of such Borrowing, at a rate per annum equal to the Interest Rate applicable at the time to the applicable Loans comprising that particular Borrowing. The failure of any Lender to make any applicable Loan on any Funding Date shall not relieve any other Lender of its obligation hereunder to make an applicable Loan on that Funding Date. No Lender shall be responsible for any other Lender's failure to advance such other Lender's Pro Rata Share of any Borrowing.

13.15 Letters of Credit; Intra-Lender Issues.

(a) Notice of Letter of Credit Balance. On each Settlement Date, the Agent shall notify each Lender of the issuance of all Letters of Credit since the prior Settlement Date. In addition, upon the reasonable request of a Lender from time to time, the Agent shall provide such Lender with a list of the then-outstanding Letters of Credit.

(b) Participations in Letters of Credit.

(i) Purchase of Participations. Immediately upon issuance of any Letter of Credit in accordance with Section 2.3(d), each Lender shall be deemed to have irrevocably and unconditionally purchased and received without recourse or warranty, an undivided interest and participation equal to such Lender's Pro Rata Share of the face amount of such Letter of Credit in connection with the issuance or acceptance of such Letter of Credit (including all obligations of the Borrower with respect thereto, and any security therefor or guaranty pertaining thereto).

(ii) Sharing of Reimbursement Obligation Payments. Whenever the Agent receives a payment from the Borrower on account of reimbursement obligations in respect of a Letter of Credit as to which the Agent has previously received for the account of the applicable Letter of Credit Issuer thereof payment from a Lender, the Agent shall promptly pay to such Lender such Lender's applicable Pro Rata Share of such payment from the Borrower. Each such payment shall be made by the Agent on the next Settlement Date.

(iii) Documentation. Upon the request of any applicable Lender, the Agent shall furnish to such Lender copies of any Letter of Credit, reimbursement agreements executed in connection therewith, applications for any Letter of Credit, and such other documentation relating to such Letter of Credit as may reasonably be requested by such Lender.

(iv) Obligations Irrevocable. The obligations of each applicable Lender to make payments to the Agent with respect to any applicable Letter of Credit or with respect to their participation therein or with respect to the Revolving Loans made as a result of a drawing under a Letter of Credit and the obligations of the Borrower for whose account the Letter of Credit was issued to make payments to the Agent, for the account of the applicable Lenders, shall be irrevocable and shall not be subject to any qualification or exception whatsoever, including any of the following circumstances:

(A) any lack of validity or enforceability of this Agreement or any of the other Loan Documents;

(B) the existence of any claim, setoff, defense or other right which the Borrower may have at any time against a beneficiary named in a Letter of Credit or any transferee of any Letter of Credit (or any Person for whom any such transferee may be acting), any Lender, the Agent, the applicable Letter of Credit Issuer, or any other Person, whether in connection with this Agreement, any applicable Letter of Credit, the transactions contemplated herein or any unrelated transactions (including any underlying transactions between the Borrower or any other Person and the beneficiary named in any Letter of Credit);

(C) any draft, certificate or any other document presented under the 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;

(D) the surrender or impairment of any security for the performance or observance of any of the terms of any of the Loan Documents;

- (E) the occurrence of any Default or Event of Default; or
- (F) the failure of the Borrower to satisfy the applicable conditions precedent set forth in Article IX.

(c) Recovery or Avoidance of Payments; Refund of Payments In Error. In the event any payment by or on behalf of the Borrower received by the Agent with respect to any Letter of Credit and distributed by the Agent to the applicable Lenders on account of their respective participations therein is thereafter set aside, avoided or recovered from the Agent or the applicable Letter of Credit Issuer in connection with any receivership, liquidation or bankruptcy proceeding, the Lenders shall, upon demand by the Agent, pay to the Agent their respective applicable Pro Rata Shares of such amount set aside, avoided or recovered, together with interest at the rate required to be paid by the Agent or the applicable Letter of Credit Issuer upon the amount required to be repaid by it. Unless the Agent receives notice from the Borrower prior to the date on which any payment is due to the applicable Lenders that the Borrower will not make such payment in full as and when required, the Agent may assume that the Borrower have made such payment in full to the Agent on such date in immediately available funds and the Agent may (but shall not be so required), in reliance upon such assumption, distribute to each applicable Lender on such due date an amount equal to the amount then due such applicable Lender. If and to the extent the Borrower have not made such payment in full to the Agent, each Lender shall repay to the Agent on demand such amount distributed to such Lender, together with interest thereon at the Federal Funds Rate for each day from the date such amount is distributed to such Lender until the date repaid.

(d) Indemnification by Lenders. To the extent not reimbursed by the Borrower and without limiting the obligations of the Borrower hereunder, the Lenders agree to indemnify the applicable Letter of Credit Issuer ratably in accordance with their respective Pro Rata Shares, for any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses (including attorneys' fees) or disbursements of any kind and nature whatsoever that may be imposed on, incurred by or asserted against such Letter of Credit Issuer in any way relating to or arising out of any Letter of Credit or the transactions contemplated thereby or any action taken or omitted by such Letter of Credit Issuer under any Letter of Credit or any Loan Document in connection therewith; provided that no Lender shall be liable for any of the foregoing to the extent it arises from the gross negligence or willful misconduct of the Person to be indemnified (as determined by a court of competent jurisdiction in a final and non-appealable decision). Without limitation of the foregoing, each Lender agrees to reimburse the applicable Letter of Credit Issuer promptly upon demand for its Pro Rata Share of any costs or expenses payable by the Borrower to such Letter of Credit Issuer, to the extent that such Letter of Credit Issuer is not promptly reimbursed for such costs and expenses by the Borrower. The agreement contained in this Section 13.15(e) and (d) shall survive payment in full of all other Obligations.

13.16 Concerning the Collateral and the Related Loan Documents. Each Lender authorizes and directs each Appointed Agent to enter into the other Loan Documents, including any Intercreditor Agreement, for the ratable benefit and obligation of the Appointed Agents and the Lenders. Each Lender agrees that any action taken by any Appointed Agent or the Required Lenders, as applicable, in accordance with the terms of this Agreement or the other Loan Documents, and the exercise by any Appointed Agent or the Required Lenders, as applicable, of their respective powers set forth therein or herein, together with such other powers that are reasonably incidental thereto, shall be binding upon all of the Lenders. The Lenders acknowledge that the Loans, applicable Agent Advances, applicable Swingline Loans, Secured Hedge Agreements and Secured Cash Management Agreements and all interest, fees and expenses hereunder constitute one Debt, secured equally by all of the applicable Collateral, subject to the order of distribution set forth in Section 10.2.

13.17 Field Examination and Appraisal; Disclaimer by Lenders. By signing this Agreement, each Lender:

- (a) is deemed to have requested that an Appointed Agent furnish such Lender, promptly after it becomes available, a copy of each Field Examination and each Appraisal (each, a “Report” and collectively, “Reports”) prepared by or on behalf of any Appointed Agent;
- (b) expressly agrees and acknowledges that each Appointed Agent (i) makes no representation or warranty as to the accuracy of any Report and (ii) shall not be liable for any information contained in any Report;
- (c) expressly agrees and acknowledges that the Reports are not comprehensive audits or examinations, that any Appointed Agent or other party performing any audit or examination will inspect only specific information regarding the Obligors and will rely significantly upon the Obligors’ books and records, as well as on representations of Obligors’ personnel;
- (d) agrees to keep all Reports confidential and strictly for its internal use, and not to distribute except to its participants, or use any Report in any other manner; and
- (e) without limiting the generality of any other indemnification provision contained in this Agreement, agrees: (i) to hold each Appointed Agent and any such other Person preparing a Report harmless from any action the indemnifying Lender may take or conclusion the indemnifying Lender may reach or draw from any Report in connection with any loans or other credit accommodations that the indemnifying Lender has made or may make to the Borrower, or the indemnifying Lender’s participation in, or the indemnifying Lender’s purchase of, a loan or loans of the Borrower; and (ii) to pay and protect, and indemnify, defend and hold each Appointed Agent and any such other Person preparing a Report harmless from and against, the claims, actions, proceedings, damages, costs, expenses and other amounts (including Attorney Costs) incurred by such Appointed Agent and any such other Person preparing a Report as the direct or indirect result of any third parties who might obtain all or part of any Report through the indemnifying Lender.

13.18 Relation Among Lenders. The Lenders are not partners or co-venturers, and no Lender shall be liable for the acts or omissions of, or (except as otherwise set forth herein in the case of the Appointed Agents) authorized to act for, any other Lender.

13.19 Arrangers. Each of the parties to this Agreement acknowledges that, other than any rights and duties explicitly assigned to the Arrangers under this Agreement, the Arrangers do not have any obligations hereunder and shall not be responsible or accountable to any other party hereto for any action or failure to act hereunder. Without limiting the foregoing, no Arranger shall have or be deemed to have any fiduciary relationship with any Lender. Each Lender acknowledges that it has not relied, and will not rely, on the Arrangers in deciding to enter into this Agreement or in taking or not taking action hereunder.

13.20 The Register.

(a) The Agent shall maintain a register (each, a “Register”), which shall include a master account and a subsidiary account for each applicable Lender and in which accounts (taken together) shall be recorded (i) the date and amount of each Borrowing made hereunder, the Type of each Loan comprising such Borrowing and any Interest Period applicable thereto, (ii) the effective date and amount of each Assignment and Acceptance delivered to and accepted by it and the parties thereto, (iii) the amount of any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder or under the notes payable by the Borrower to such Lender, and (iv) the amount of any sum received by the Agent from the Borrower or any other Obligor and each Lender’s ratable share thereof. Each Register shall be available for inspection by the Borrower or any applicable Lender (with respect to its own Loans and Commitments only) at the office of the Agent referred to in Section 14.8 at any reasonable time and from time to time upon reasonable prior notice. The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Agent, and the Lenders shall treat each person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. Any failure of the Agent to record in the applicable Register, or any error in doing so, shall not limit or otherwise affect the obligation of the Borrower hereunder (or under any Loan Document) to pay any amount owing with respect to the Loans or provide the basis for any claim against the Agent. The Loans and Letters of Credit are registered obligations and the right, title and interest of any Lender and their assignees in and to such Loans and Letters of Credit as the case may be, shall be transferable only upon notation of such transfer in the applicable Register. Upon the request of any Lender made through the Agent, the Borrower shall execute and deliver to such Lender (through the Agent) a Note payable to such Lender, 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. Solely for purposes of this Section 13.20, the Agent shall be the Borrower’s agent for purposes of maintaining the applicable Register (but the Agent shall have no liability whatsoever to the Borrower or any other Person on account of any inaccuracies contained in the applicable Register). The Obligors and the Agent intend that the Loans and Letters of Credit will be treated as at all times maintained in “registered form” within the meaning of Sections 163(f), 871(h)(2) and 881(c)(2) of the Internal Revenue Code and any related regulations (and any other relevant or successor provisions of the Internal Revenue Code or such regulations).

(b) In the event that any Lender sells participations in any Loan, Commitment or other interest of such Lender hereunder or under any other Loan Document, such Lender, acting solely for this purpose as a non-fiduciary agent of the Borrower, shall maintain a register on which it enters the name of all Participants in the Loans held by it and the principal amount (and related interest thereon) of the portion of the Loans or Commitments which are the subject of the participation (the “Participant Register”). A Loan or Commitment may be participated in whole or in part only by registration of such participation on the Participant Register (and each note shall expressly so provide). Any participation of such Loans or Commitments may be effected only by the registration of such participation on the Participant Register. No Lender shall have any obligation to disclose all or any portion of the Participant Register to any Person (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) except to the extent that such disclosure is necessary to establish that such Commitment, Loan, Letter of Credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and the Lenders shall treat each person whose name is recorded in the Participant Register pursuant to the terms hereof as a participant hereunder for all purposes of this Agreement, notwithstanding notice to the contrary.

13.21 Secured Cash Management Agreements and Secured Hedge Agreements. Except as otherwise expressly set forth herein or in the Guarantee Agreement or any Security Document, no Cash Management Bank or Hedge Bank that obtains the benefits of any Guaranty or any Collateral by virtue of the provisions hereof or of the Guarantee Agreement or any Security 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) 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 XIII to the contrary, the 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 Agent has received written notice of such Obligations, together with such supporting documentation as the Agent may request, from the applicable Cash Management Bank or Hedge Bank, as the case may be.

13.22 Withholding Taxes. To the extent required by any applicable Law, the Agent may deduct or withhold from any payment to any Lender an amount equivalent to any applicable withholding Tax. If the Internal Revenue Service or any other Governmental Authority asserts a claim that the Agent did not properly withhold Tax from amounts paid to or for the account of any Lender for any reason (including because the appropriate form was not delivered or was not properly executed or because such Lender failed to notify the Agent of a change in circumstance that rendered the exemption from, or reduction of, withholding Tax ineffective), such Lender shall indemnify and hold harmless the Agent fully for all amounts paid, directly or indirectly, by the Agent as Tax or otherwise, including any penalties, additions to Tax or interest and together with all expenses (including legal expenses, allocated internal costs and out-of-pocket expenses) incurred, whether or not such Tax was 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 Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Agent to set-off and apply any and all amounts at any time owing to such Lender under this Agreement, any other Loan Document or otherwise against any amount due the Agent under this Section 13.22. The agreements in this Section 13.22 shall survive the resignation and/or replacement of the Agent, any assignment of rights by, or the replacement of, a Lender, the termination of this Agreement and the repayment, satisfaction or discharge of all other obligations. For the avoidance of doubt, (1) the term "Lender" shall, for purposes of this Section 13.22, include any Letter of Credit Issuer and any Swingline Lender and (2) this Section 13.22 shall not limit or expand the obligations of the Borrower or any Guarantor under Section 5.1 or any other provision of this Agreement.

13.23 Erroneous Payment.

(a) Each Lender and each Letter of Credit Issuer (and each Participant of any of the foregoing, by its acceptance of a Participation) hereby acknowledges and agrees that if the Agent notifies such Lender or Letter of Credit Issuer that the Agent has determined in its sole discretion that any funds (or any portion thereof) received by such Lender or Letter of Credit Issuer (any of the foregoing, a "Payment Recipient") from the Agent (or any of its Affiliates) were erroneously transmitted to, or otherwise erroneously or mistakenly received by, such Payment Recipient (whether or not known to such Payment Recipient) (whether as a payment, prepayment or repayment of principal, interest, fees or otherwise; individually and collectively, a "Payment") and demands the return of such Payment, such Payment Recipient shall promptly, but in no event later than one Business Day thereafter, return to the Agent the amount of any such Payment as to which such a demand was made. A notice of the Agent to any Payment Recipient under this Section shall be conclusive, absent manifest error.

(b) Without limitation of clause (a) above, each Payment Recipient further acknowledges and agrees that if such Payment Recipient receives a Payment from the Agent (or any of its Affiliates) (x) that is in an amount, or on a date different from the amount and/or date specified in a notice of payment sent by the Agent (or any of its Affiliates) with respect to such Payment (a "Payment Notice"), (y) that was not preceded or accompanied by a Payment Notice, or (z) that such Payment Recipient otherwise becomes aware was transmitted, or received, in error or by mistake (in whole or in part), in each case, it understands and agrees at the time of receipt of such Payment that an error has been made (and that it is deemed to have knowledge of such error) with respect to such Payment. Each Payment Recipient agrees that, in each such case, it shall promptly notify the Agent of such occurrence and, upon demand from the Agent, it shall promptly, but in no event later than one Business Day thereafter, return to the Agent the amount of any such Payment (or portion thereof) as to which such a demand was made.

(c) Any Payment required to be returned by a Payment Recipient under this Section shall be made in same-day funds in the currency so received, together with interest thereon in respect of each day from and including the date such Payment (or portion thereof) was received by such Payment Recipient to the date such amount is repaid to the Agent at the greater of the Federal Funds Rate and a rate determined by the Agent in accordance with banking industry rules on interbank compensation from time to time in effect. Each Payment Recipient hereby agrees that it shall not assert and, to the fullest extent permitted by applicable law, hereby waives, any right to retain such Payment, and any claim, counterclaim, defense or right of set-off or recoupment or similar right to any demand by the Agent for the return of any Payment received, including without limitation any defense based on "discharge for value" or any similar doctrine.

(d) The Borrower and each other Subsidiary hereby agrees that (x) in the event an erroneous Payment (or portion thereof) is not recovered from any Lender that has received such Payment (or portion thereof) for any reason, the Agent shall be subrogated to all the rights of such Lender with respect to such amount and (y) an erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Obligations owed by the Borrower or any other Subsidiary except, in each case, to the extent such erroneous Payment is, and with respect to the amount of such erroneous Payment that is, comprised of funds of the Borrower or any other Subsidiary.

(e) Each party's obligations, agreements and waivers under this Section 13.23 shall survive the resignation or replacement of the Agent, any transfer of rights or obligations by, or the replacement of, a Lender or Letter of Credit Issuer, the termination of the Commitments and/or the repayment, satisfaction or discharge of all Obligations (or any portion thereof) under any Loan Document.

ARTICLE XIV

MISCELLANEOUS

14.1 No Waivers; Cumulative Remedies. No failure by any Appointed Agent or any Lender to exercise any right, remedy, or option under this Agreement or any present or future supplement hereto, or in any other Loan Documents, or delay by any Appointed Agent or any Lender in exercising the same, will operate as a waiver thereof. No waiver by any Appointed Agent or any Lender will be effective unless it is in writing, and then only to the extent specifically stated. No waiver by any Appointed Agent or the Lenders on any occasion shall affect or diminish any Appointed Agent's and each Lender's rights thereafter to require strict performance by the Obligors of any provision of this Agreement and the other Loan Documents. Each Appointed Agent's and each Lender's rights under this Agreement and the other Loan Documents will be cumulative and not exclusive of any other right or remedy which the Appointed Agent or any Lender may have.

14.2 Severability. The illegality or unenforceability of any provision of this Agreement or any Loan Document or any instrument or agreement required hereunder shall not in any way affect or impair the legality or enforceability of the remaining provisions of this Agreement or any instrument or agreement required hereunder.

14.3 Governing Law; Choice of Forum; Service of Process.

(a) THIS AGREEMENT SHALL BE INTERPRETED AND THE RIGHTS AND LIABILITIES OF THE PARTIES HERETO DETERMINED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

(b) ANY LEGAL ACTION OR PROCEEDING (WHETHER IN TORT, CONTRACT, LAW OR EQUITY) WITH RESPECT TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT SHALL BE BROUGHT IN THE COURTS OF THE STATE OF NEW YORK OR OF THE UNITED STATES OF AMERICA LOCATED IN NEW YORK COUNTY, AND BY EXECUTION AND DELIVERY OF THIS AGREEMENT, EACH OF THE PARTIES HERETO CONSENTS, FOR ITSELF AND IN RESPECT OF ITS PROPERTY, TO THE EXCLUSIVE JURISDICTION OF THOSE COURTS. EACH OF THE PARTIES HERETO IRREVOCABLY WAIVES ANY OBJECTION, INCLUDING ANY OBJECTION TO THE LAYING OF VENUE OR BASED ON THE GROUNDS OF FORUM NON CONVENIENCE, WHICH IT MAY NOW OR HEREAFTER HAVE TO THE BRINGING OF ANY ACTION OR PROCEEDING (WHETHER IN TORT, CONTRACT, LAW OR EQUITY) IN SUCH JURISDICTION IN RESPECT OF THIS AGREEMENT OR ANY LOAN DOCUMENT. NOTWITHSTANDING THE FOREGOING: (i) THE AGENT SHALL HAVE THE RIGHT TO BRING ANY ACTION OR PROCEEDING (WHETHER IN TORT, CONTRACT, LAW OR EQUITY) AGAINST THE BORROWER, ANY GUARANTOR OR ANY COLLATERAL IN THE COURTS OF ANY OTHER JURISDICTION THE AGENT DEEMS NECESSARY OR APPROPRIATE IN ORDER TO REALIZE ON THE COLLATERAL OR OTHER SECURITY FOR THE OBLIGATIONS AND (ii) EACH OF THE PARTIES HERETO ACKNOWLEDGES THAT ANY APPEALS FROM THE COURTS DESCRIBED IN THE IMMEDIATELY PRECEDING SENTENCE MAY HAVE TO BE HEARD BY A COURT LOCATED OUTSIDE THOSE JURISDICTIONS.

(c) EACH OF THE PARTIES HERETO HEREBY WAIVES PERSONAL SERVICE OF ANY AND ALL PROCESS UPON IT AND CONSENTS THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE BY REGISTERED MAIL (RETURN RECEIPT REQUESTED) DIRECTED TO THE APPLICABLE ADDRESS SET FORTH IN SECTION 14.8 AND SERVICE SO MADE SHALL BE DEEMED TO BE COMPLETED FIVE (5) DAYS AFTER THE SAME SHALL HAVE BEEN SO DEPOSITED IN THE MAILS POSTAGE PREPAID.

14.4 WAIVER OF JURY TRIAL. EACH OF THE PARTIES HERETO IRREVOCABLY WAIVES THEIR RESPECTIVE RIGHTS TO A TRIAL BY JURY OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF OR RELATED TO THIS AGREEMENT, THE OTHER LOAN DOCUMENTS, OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY, IN ANY ACTION, PROCEEDING OR OTHER LITIGATION OF ANY TYPE BROUGHT BY ANY OF THE PARTIES AGAINST ANY OTHER PARTY OR ANY AGENT-RELATED PERSON, PARTICIPANT OR ASSIGNEE, WHETHER WITH RESPECT TO CONTRACT CLAIMS, TORT CLAIMS, OR OTHERWISE. EACH OF THE PARTIES HERETO AGREES THAT ANY SUCH CLAIM OR CAUSE OF ACTION SHALL BE TRIED BY A COURT TRIAL WITHOUT A JURY. WITHOUT LIMITING THE FOREGOING, THE PARTIES FURTHER AGREE THAT THEIR RESPECTIVE RIGHT TO A TRIAL BY JURY IS WAIVED BY OPERATION OF THIS SECTION AS TO ANY ACTION, COUNTERCLAIM OR OTHER PROCEEDING WHICH SEEKS, IN WHOLE OR IN PART, TO CHALLENGE THE VALIDITY OR ENFORCEABILITY OF THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS OR ANY PROVISION HEREOF OR THEREOF. THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS.

14.5 Survival of Representations and Warranties. All of the Borrower's and other Obligors' representations and warranties contained in this Agreement and the other Loan Documents shall survive the execution, delivery, and acceptance thereof by the parties, notwithstanding any investigation by the Agent or the Lenders or their respective agents.

14.6 Other Security and Guarantees. The Agent may, without notice or demand and without affecting the Borrower's or any Obligor's obligations hereunder, from time to time: (a) take from any Person and hold collateral (other than the Collateral) for the payment of all or any part of the Obligations and exchange, enforce or release such collateral or any part thereof; and (b) accept and hold any endorsement or guaranty of payment of all or any part of the Obligations and release or substitute any such endorser or guarantor, or any Person who has given any Lien in any other collateral as security for the payment of all or any part of the Obligations, or any other Person in any way obligated to pay all or any part of the Obligations.

14.7 Fees and Expenses. Except for the costs and expenses relating to Field Examinations and Appraisals, which shall be covered by Section 8.4, the Borrower agrees (a) if the Restatement Effective Date occurs, to pay or reimburse the Agent, the Collateral Agent and the Arrangers (without duplication) for all reasonable and documented or invoiced out-of-pocket costs and expenses associated with the syndication of the Revolving Credit Facility and the preparation, execution and delivery, administration, amendment, modification, waiver and/or enforcement of the Restatement Agreement and the other Loan Documents, and any amendment, waiver, consent or other modification of the provisions hereof and thereof (whether or not the transactions contemplated thereby are consummated), such costs and expenses to be limited in the case of legal costs and expenses to the Attorney Costs) and (b) to pay or reimburse the Agent ~~and~~, the Collateral Agent and the Lenders for all reasonable and documented or invoiced out-of-pocket costs and expenses incurred in connection with the enforcement of any rights or remedies under this Agreement or the other Loan Documents (such costs and expenses to be limited in the case of legal costs and expenses to the Attorney Costs). Subject to the limitations above, the foregoing costs and expenses shall include all reasonable and documented or invoiced search, filing, recording and title insurance charges and fees related thereto, all reasonable and documented or invoiced costs and expenses in connection with the opening and maintenance of the Concentration Account. The agreements in this Section 14.7 shall survive the Termination Date and repayment of all other Obligations. All amounts due under this Section 14.7 shall be paid within twenty (20) Business Days of receipt by the Borrower of an invoice relating thereto setting forth such expenses in reasonable detail.

14.8 Notices. Except as otherwise provided herein, all notices, demands and requests that any party is required or elects to give to any other shall be in writing, or by a telecommunications device capable of creating a written record, and any such notice shall become effective (a) upon personal delivery thereof, including, but not limited to, delivery by overnight mail and courier service, (b) four (4) days after it shall have been mailed by United States mail, first class, certified or registered, with postage prepaid, or (c) in the case of notice by such a telecommunications device, when properly transmitted, in each case addressed to the party to be notified as follows:

If to the Agent:	BARCLAYS BANK PLC 745 Seventh Avenue New York, NY 10019 Attention: Arup Ghosh Email: arup.ghosh@barclays.com Telecopy No.: 201-499-8460
If to the Borrower:	PROPETRO SERVICES, INC. 110 N. Marienfeld, Suite 300 Midland, TX 79701 Attention: Caleb Weatherl Email: caleb.weatherl@propetroservices.com

If to a Lender or Letter of Credit Issuer:	To the address of such Lender or Letter of Credit Issuer set forth on the signature page hereto or on the Assignment and Acceptance for such Lender, as applicable

or to such other address as each party may designate for itself by like notice. Failure or delay in delivering copies of any notice, demand, request, consent, approval, declaration or other communication to the persons designated above to receive copies shall not adversely affect the effectiveness of such notice, demand, request, consent, approval, declaration or other communication.

14.9 Binding Effect. The provisions of this Agreement shall be binding upon and inure to the benefit of the respective representatives, successors, and assigns of the parties hereto. The rights and benefits of the Agent and the Lenders hereunder shall, if such Persons so agree, inure to any party acquiring any interest in the Obligations or any part thereof.

14.10 Indemnity of the Agent, the Collateral Agent and the Lenders. The Borrower agrees to defend, indemnify and hold all Agent-Related Persons, each Arranger and each Lender (without duplication) and each of their respective Affiliates, officers, directors, employees, agents, trustees, controlling persons, advisors and other representatives, successors and permitted assigns of the foregoing (each, an “Indemnified Person”) harmless from and against any and all losses, claims, costs, damages and liabilities (collectively, “Losses”) of any kind or nature and the reasonable and documented or invoiced out-of-pocket fees and expenses incurred in connection with investigating, responding to or defending any of the foregoing (such expenses, in the case of legal expenses, to be limited to the reasonable fees, disbursements and other charges of a single firm of counsel for all Indemnified Persons, taken as a whole, and, if necessary, of a single firm of local counsel in each appropriate jurisdiction (which may include a single firm of special counsel acting in multiple jurisdictions) for all Indemnified Persons taken as a whole (and, in the case of an actual or perceived conflict of interest, where the Indemnified Person(s) affected by such conflict notifies the Borrower of the existence of such conflict and thereafter retains its own counsel, by such other firm of counsel for such affected Indemnified Person)) of any such Indemnified Person arising out of or relating to any claim, litigation, investigation or other proceeding or any actual or alleged Release or threat of Release of any Contaminant at any facility or location currently or formerly owned or operated by Holdings or the Borrower or any liability under Environmental Laws relating in any way to Holdings or the Borrower (including any inquiry or investigation of the foregoing) (regardless of whether such Indemnified Person is a party thereto or whether or not such action, claim, litigation or proceeding was brought by the Borrower, its equity holders, affiliates or creditors or any other third Person) that relates to the Transactions, including the financing contemplated hereby and the use of proceeds hereof; provided that no Indemnified Person will be indemnified for any Loss or related expense to the extent it has resulted from (i) the gross negligence, bad faith or willful misconduct of such Indemnified Person or any of its Affiliates or any of the officers, directors, employees, agents, controlling persons, advisors or other representatives, successors or permitted assigns of any of the foregoing (as determined by a court of competent jurisdiction in a final and non-appealable decision), (ii) a material breach of the obligations under this Agreement or the other Loan Documents of such Indemnified Person or any of such Indemnified Person’s Affiliates or any of the officers, directors, employees, agents, controlling persons, advisors or other representatives, successors or permitted assigns of any of the foregoing (as determined by a court of competent jurisdiction in a final and non-appealable decision) or (iii) any claim, litigation, investigation or other proceeding that does not arise from any act or omission by the Borrower or any of its Affiliates and that is brought by any Indemnified Person against any other Indemnified Person; provided that the Agent, the Collateral Agent and the Arrangers to the extent fulfilling their respective roles as an agent or arranger under this Agreement and the other Loan Documents and in their capacities as such, shall remain indemnified in respect of such proceedings to the extent that none of the exceptions set forth in any of clauses (i) and (ii) of the immediately preceding proviso applies to such person at such time. The agreements in this Section shall survive payment of all other Obligations. For the avoidance of doubt, this Section 14.10 shall not apply to Taxes other than Taxes that represent liabilities, obligations, losses or damages, with respect to a non-Tax claim.

14.11 Limitation of Liability. Notwithstanding any other provision of this Agreement to the contrary, (i) no Indemnified Person shall be liable for any damages arising from the use by others of information or other materials obtained through internet, electronic, telecommunications or other information transmission systems, except to the extent that such damages have resulted from the willful misconduct, bad faith or gross negligence of such Indemnified Person or any of such Indemnified Person's affiliates or any of its or their respective officers, directors, employees, agents, controlling persons, advisors or other representatives, successors or permitted assigns (as determined by a court of competent jurisdiction in a final and non-appealable decision) and (ii) none of the Borrower, the other Obligors or any of their respective Subsidiaries or Affiliates, or any Indemnified Person shall be liable for any indirect, special, punitive or consequential damages (including, without limitation, any loss of profits, business or anticipated savings) in connection with this Agreement, the other Loan Documents, the Transactions (including the use of proceeds hereof), or with respect to any activities related to this Agreement and the other Loan Documents, including the preparation of this Agreement and the other Loan Documents; provided that nothing in this Section 14.11 shall limit the Borrower's indemnity and reimbursement obligations set forth in Section 14.10 to the extent that such indirect, special, punitive or consequential damages are included in any claim by a third party unaffiliated with the applicable Indemnified Person with respect to which the applicable Indemnified Person is entitled to indemnification as set forth in Section 14.10.

14.12 Final Agreement. This Agreement and the other Loan Documents are intended by the parties hereto to be the final, complete, and exclusive expression of the agreement between them. This Agreement supersedes any and all prior oral or written agreements relating to the subject matter hereof, except for the fee provisions in Section 1(i) of the Engagement Letter.

14.13 Counterparts; Facsimile Signatures. This Agreement may be executed in any number of counterparts, and by the Agent, the Collateral Agent, the Letter of Credit Issuers, each Lender and the Borrower in separate counterparts, each of which shall be an original, but all of which shall together constitute one and the same agreement; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document. This Agreement and the other Loan Documents may be executed by facsimile or other electronic communication and the effectiveness of this Agreement and the other Loan Documents and signatures thereon shall have the same force and effect as manually signed originals and shall be binding on all parties thereto. The Agent may require that any such documents and signatures be confirmed by a manually-signed original thereof, provided that the failure to request or deliver the same shall not limit the effectiveness of any facsimile signature.

14.14 Captions. The captions contained in this Agreement are for convenience of reference only, are without substantive meaning and should not be construed to modify, enlarge, or restrict any provision.

14.15 Right of Setoff. In addition to any rights and remedies of the Lenders provided by Law, if an Event of Default is then continuing or the Loans have been accelerated prior to the Stated Termination Date, each Lender is authorized at any time and from time to time, without prior notice to the Borrower or any Guarantor, any such notice being waived by each Obligor to the fullest extent permitted by Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held by, and other indebtedness at any time owing by, such Lender or any Affiliate of such Lender to or for the credit or the account of the Borrower or any Guarantor against any and all Obligations then due and owing by an Obligor under this Agreement or any other Loan Document to such Lender, now or hereafter existing, irrespective of whether or not the Agent or such Lender shall have made demand under this Agreement or any Loan Document. Each Lender agrees promptly to notify the Borrower and the Agent after any such set-off and application made by such Lender; provided, however, that the failure to give such notice shall not affect the validity of such set-off and application. NOTWITHSTANDING THE FOREGOING, NO LENDER SHALL EXERCISE ANY RIGHT OF SET-OFF, BANKER'S LIEN, OR THE LIKE AGAINST ANY DEPOSIT ACCOUNT OR PROPERTY OF THE BORROWER OR ANY GUARANTOR HELD OR MAINTAINED BY SUCH LENDER WITHOUT THE PRIOR WRITTEN CONSENT OF THE REQUIRED LENDERS.

14.16 **Confidentiality.** Each Lender, each Letter of Credit Issuer and the Agent severally agrees to treat confidentially and not publish, disclose or otherwise divulge any non-public information provided to any of them or any of their Affiliates by or on behalf of the Borrower or any of its Subsidiaries or in connection with this Agreement, the other Loan Documents or the Transactions; provided that nothing herein shall prevent such Person from disclosing any such information (a) pursuant to the order of any court or administrative agency or in any pending legal, judicial or administrative proceeding, or otherwise as required by applicable law, rule or regulation, or compulsory legal process based on the reasonable advice of counsel (in which case such Person agrees (except with respect to any audit or examination conducted by bank accountants or any self-regulatory authority or Governmental Authority exercising examination or regulatory authority), to the extent practicable and not prohibited by applicable Law, rule or regulation, to inform you promptly thereof prior to disclosure), (b) upon the request or demand of any regulatory authority having jurisdiction or purporting to have jurisdiction over such Person or any of its Affiliates (in which case such Person agrees (except with respect to any audit or examination conducted by bank accountants or any regulatory authority exercising examination or regulatory authority), to the extent practicable and not prohibited by applicable Law, rule or regulation, to inform you promptly thereof prior to disclosure), (c) to the extent that such information becomes publicly available other than by reason of improper disclosure by such Person or any of its Affiliates or any related parties thereto (including any of the persons referred to in clause (f) below) in violation of any confidentiality obligations owing to the Borrower or any of its Subsidiaries or Affiliates, (d) to the extent that such information is or was received by such Person from a third party that is not, to such Person's knowledge, subject to contractual or fiduciary confidentiality obligations owing to the Borrower, any of its Subsidiaries or Affiliates, (e) to the extent that such information is independently developed by such Person or its Affiliates without the use of any confidential information and without violating the terms of this Agreement, (f) to such Person's Affiliates and to its and their respective directors, officers, employees, legal counsel, independent auditors, professionals and other experts or agents who need to know such information in connection with this Agreement and who are informed of the confidential nature of such information or who are subject to customary confidentiality obligations of professional practice (with such Person, to the extent within its control, responsible for such person's compliance with this Section 14.16), (g) for purposes of establishing a "due diligence" defense ~~and~~, (h) to any other party hereto, (i) 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, (j) on a confidential basis to (x) any rating agency in connection with rating the Borrower or its Subsidiaries or the Revolving Facility or (y) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers with respect to the Revolving Facility, (k) with the consent of the Borrower, (l) to potential or prospective Lenders, Participants or Assignees and to any direct or indirect contractual counterparty to any swap or derivative transaction relating to the Borrower or any of its Subsidiaries, in each case who agree to be bound by the terms of this paragraph (or language substantially similar to this paragraph); provided that, for purposes of this clause (h), (i) the disclosure of any such information to any Lenders, hedge providers, Participants or Assignees, or prospective Lenders, hedge providers, Participants or Assignees referred to above shall be made subject to the acknowledgment and acceptance by such Lender, hedge provider, Participant or Assignee, or prospective Lender, hedge provider, Participant or Assignee that such information is being disseminated on a confidential basis (on substantially the terms set forth in this paragraph or as is otherwise reasonably acceptable to the Borrower and such Person) in accordance with the standard syndication processes of the Agent or customary market standards for dissemination of such type of information, which shall in any event require "click through" or other affirmative actions on the part of recipient to access such information and (ii) no such disclosure shall be made by such Person to any person that is at such time a Disqualified Lender ~~and (m) to any credit insurance provider or broker relating to the Borrower and its Obligations. In addition, the Administrative Agent, the Letter of Credit Issuers 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 or any Letter of Credit Issuer or Lender in connection with the administration of this Agreement, the other Loan Documents, and the Commitments.~~

For the avoidance of doubt, nothing herein prohibits any individual from communicating or disclosing information regarding suspected violations of laws, rules, or regulations to a governmental, regulatory, or self-regulatory authority without any notification to any Person.

14.17 Conflicts with Other Loan Documents. Unless otherwise expressly provided in this Agreement (or in another Loan Document by specific reference to the applicable provision contained in this Agreement), if any provision contained in this Agreement conflicts with any provision of any other Loan Document, the provision contained in this Agreement shall govern and control.

14.18 No Fiduciary Relationship. Each Obligor acknowledges and agrees that, (i) in connection with all aspects of each transaction contemplated by this Agreement, the Obligors, on the one hand, and the Appointed Agents, the Arrangers, the Lenders and each of their Affiliates through which they may be acting (collectively, the “Applicable Entities”), on the other hand, have an arms-length business relationship that creates no fiduciary duty on the part of any Applicable Entity, and each Obligor expressly disclaims any fiduciary relationship, (ii) the Applicable Entities may be engaged in a broad range of transactions that involve interests that differ from those of such Obligor, and no Applicable Entity has any obligation to disclose any of such interests to such Obligor and (iii) such Obligor has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate. Each Obligor further acknowledges and agrees that such Obligor is responsible for making its own independent judgment with respect to the transactions contemplated by this Agreement and the process leading thereto, and agrees that it will not claim that the Applicable Entities have rendered advisory services of any nature or respect, or owe a fiduciary or similar duty to such Obligor or its affiliates, in connection with such transactions or the process leading thereto.

14.19 Judgment Currency. If for the purpose of obtaining judgment in any court it is necessary to convert an amount due hereunder in the currency in which it is due (the “Original Currency”) into another currency (the “Second Currency”), the rate of exchange applied shall be that at which, in accordance with normal banking procedures, the Agent could purchase in the New York foreign exchange market, the Original Currency with the Second Currency on the date two (2) Business Days preceding that on which judgment is given. Each Obligor agrees that its obligation in respect of any Original Currency due from it hereunder shall, notwithstanding any judgment or payment in such other currency, be discharged only to the extent that, on the Business Day following the date the Agent receives payment of any sum so adjudged to be due hereunder in the Second Currency, the Agent may, in accordance with normal banking procedures, purchase, in the New York foreign exchange market, the Original Currency with the amount of the Second Currency so paid; and if the amount of the Original Currency so purchased or could have been so purchased is less than the amount originally due in the Original Currency, each Obligor agrees as a separate obligation and notwithstanding any such payment or judgment to indemnify the Agent against such loss. The term “rate of exchange” in this Section 14.19 means the spot rate at which the Agent, in accordance with normal practices, is able on the relevant date to purchase the Original Currency with the Second Currency, and includes any premium and costs of exchange payable in connection with such purchase.

14.20 USA PATRIOT Act. Each Lender that is subject to the Act (as hereinafter defined) and the Agent (for itself and not on behalf of any Lender) hereby notifies each Obligor 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 Obligor, which information includes the name and address of each Obligor and other information that will allow such Lender or the Agent, as applicable, to identify each Obligor in accordance with the Act. Each Obligor shall, promptly following a request by the Agent or any Lender, provide all documentation and other information that the Agent or such Lender requests in order to comply with its ongoing obligations under applicable “know your customer” and anti-money laundering rules and regulations, including the Act.

14.21 Acknowledgement and Consent to Bail-In of EEA Financial Institutions.

(a) Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Affected Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(i) the application of any Write-down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an Affected Financial Institution; and

(ii) the effects of any Bail-In Action on any such liability, including, if applicable:

(A) a reduction in full or in part or cancellation of any such liability;

(B) 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

(C) 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.

14.22 Acknowledgement Regarding any Supported QFCs. To the extent that the Loan Documents provide support, through a guarantee or otherwise, for Hedge Agreements or any other agreement or instrument that is a QFC (such support, “QFC Credit Support” and each such QFC a “Supported QFC”), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the “U.S. Special Resolution Regimes”) in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

(a) In the event a Covered Entity that is party to a Supported QFC (each, a “Covered Party”) becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

(b) As used in this Section 14.22, the following terms have the following meanings:

“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.

“Covered Entity” means any of the following: (i) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b); (ii) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or (iii) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

“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.

“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).

14.23 Certain ERISA Matters

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Agent and not, for the avoidance of doubt, to or for the benefit of ~~the~~ BorrowerHoldings or any other Subsidiary, that at least one of the following is and will be true:

(i) such Lender is not using “plan assets” (within the meaning of Section 3(42) of ERISA or otherwise) of one or more Benefit Plans with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments or this Agreement;

(ii) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement;

(iii) (A) such Lender is an investment fund managed by a “Qualified Professional Asset Manager” (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Letters of Credit, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement; or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Agent, in its sole discretion, and such Lender;

(b) In addition, unless either (1) sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or (2) such Lender has provided another representation, warranty and covenant as provided in sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Agent and not, for the avoidance of doubt, to or for the benefit of ~~the Borrower~~ Holdings or any other Subsidiary, that the Agent is not a fiduciary with respect to the assets of such Lender involved in such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement (including in connection with the reservation or exercise of any rights by the Agent under this Agreement, any Loan Document or any documents related hereto or thereto).

[Signature Pages Intentionally Omitted]

Exhibit B

[See attached.]

Exhibit C

[See attached.]

ProPetro Holding Corp. Prices Upsized \$600 Million Convertible Senior Notes Offering

MIDLAND, Texas, May 4, 2026, (Business Wire) – ProPetro Holding Corp. (NYSE: PUMP) (together with its subsidiaries, “ProPetro” or the “Company”) today announced the pricing of its previously announced private offering of \$600 million aggregate principal amount of 0.00% convertible senior notes due 2031 (the “notes”) to persons reasonably believed to be qualified institutional buyers pursuant to Rule 144A under the Securities Act of 1933, as amended (the “Securities Act”). The offering size was increased from the previously announced offering size of \$500 million aggregate principal amount of notes. The issuance and sale of the notes are scheduled to settle on May 7, 2026, subject to customary closing conditions. ProPetro also granted the initial purchasers of the notes an option to purchase, for settlement within a period of 13 calendar days from, and including, the date the notes are first issued, up to an additional \$90 million aggregate principal amount of notes.

ProPetro estimates that the net proceeds from the offering will be approximately \$581.3 million (or approximately \$668.6 million if the initial purchasers fully exercise their option to purchase additional notes), after deducting the initial purchasers’ discounts and commissions and ProPetro’s estimated offering expenses. ProPetro intends to use approximately \$32.0 million of the net proceeds to fund the cost of entering into the capped call transactions described below. ProPetro intends to use the remainder of the net proceeds from the offering for general corporate purposes, including to fund growth capital for additional power generation equipment. If the initial purchasers exercise their option to purchase additional notes, then ProPetro intends to use a portion of the additional net proceeds to fund the cost of entering into additional capped call transactions as described below.

The notes will be senior, unsecured obligations of ProPetro. The notes will not bear regular interest, and the principal amount of the notes will not accrete. The notes will mature on November 15, 2031, unless earlier repurchased, redeemed or converted. Before August 15, 2031, noteholders will have the right to convert their notes only upon the occurrence of certain events. From and after August 15, 2031, noteholders may convert their notes at any time at their election until the close of business on the second scheduled trading day immediately before the maturity date. ProPetro will settle conversions of notes by paying or delivering, as applicable, cash, shares of its common stock or a combination of cash and shares of its common stock, par value \$0.001 per share (“common stock”) at ProPetro’s election. The initial conversion rate is 43.1616 shares of common stock per \$1,000 principal amount of notes, which represents an initial conversion price of approximately \$23.17 per share of common stock. The initial conversion price represents a premium of approximately 37.5% over the last reported sale price of \$16.85 per share of ProPetro’s common stock on May 4, 2026. The conversion rate and conversion price will be subject to adjustment upon the occurrence of certain events.

The notes will be redeemable, in whole or in part (subject to certain limitations), for cash at ProPetro’s option at any time, and from time to time, on or after May 15, 2029 and on or before the 45th scheduled trading day immediately before the maturity date, but only if the last reported sale price per share of ProPetro’s common stock exceeds 130% of the conversion price then in effect for a specified period of time and certain other conditions are satisfied. The redemption price will be equal to the principal amount of the notes to be redeemed, plus accrued and unpaid special interest and additional interest, if any, to, but excluding, the redemption date.

If a “fundamental change” (as defined in the indenture for the notes) occurs, then, subject to a limited exception, noteholders may require ProPetro to repurchase their notes for cash. The repurchase price will be equal to the principal amount of the notes to be repurchased, plus accrued and unpaid special interest and additional interest, if any, to, but excluding, the applicable repurchase date.

In connection with the pricing of the notes, ProPetro entered into privately negotiated capped call transactions with one or more of the initial purchasers or their affiliates and/or one or more other financial institutions (the “option counterparties”). The capped call transactions will cover, subject to anti-dilution adjustments substantially similar to those applicable to the notes, the number of shares of ProPetro’s common stock initially underlying the notes. If the initial purchasers exercise their option to purchase additional notes, then ProPetro expects to enter into additional capped call transactions with the option counterparties.

The cap price of the capped call transactions will initially be approximately \$29.49 per share, which represents a premium of approximately 75.0% over the last reported sale price of ProPetro’s common stock of \$16.85 per share on May 4, 2026, and is subject to certain adjustments under the terms of the capped call transactions.

The capped call transactions are expected generally to reduce the potential dilution to ProPetro’s common stock upon any conversion of the notes and/or offset any potential cash payments ProPetro is required to make in excess of the principal amount of converted notes, as the case may be, in the event that the market price per share of ProPetro’s common stock, as measured under the terms of the capped call transactions, is greater than the strike price of the capped call transactions, which initially corresponds to the conversion price of the notes and is subject to anti-dilution adjustments substantially similar to those applicable to the notes. If, however, the market price per share of ProPetro’s common stock, as measured under the terms of the capped call transactions, exceeds the cap price of the capped call transactions, there would nevertheless be dilution and/or there would not be an offset of such potential cash payments, in each case, to the extent that such market price exceeds the cap price of the capped call transactions.

In connection with establishing their initial hedges of the capped call transactions, the option counterparties or their respective affiliates expect to enter into various derivative transactions with respect to ProPetro’s common stock and/or purchase shares of ProPetro’s common stock concurrently with or shortly after the pricing of the notes. This activity could increase (or reduce the size of any decrease in) the market price of ProPetro’s common stock or the notes at that time.

In addition, the option counterparties or their respective affiliates may modify their hedge positions by entering into or unwinding various derivatives with respect to ProPetro’s common stock and/or purchasing or selling ProPetro’s common stock or other securities of ProPetro in secondary market transactions following the pricing of the notes and from time to time prior to the maturity of the notes (and (x) are likely to do so during any observation period related to a conversion of notes or following any repurchase of the notes by ProPetro in connection with any fundamental change or following any redemption of the notes and (y) are likely to do so following any other repurchase of notes by ProPetro, if ProPetro elects to unwind a corresponding portion of the capped call transactions in connection with such repurchase). This activity could also cause or avoid an increase or decrease in the market price of ProPetro’s common stock or the notes, which could affect a noteholder’s ability to convert its notes, and, to the extent the activity occurs during any observation period related to a conversion of notes, it could affect the amount and value of the consideration that noteholders will receive upon conversion of the notes.

The offer and sale of the notes and any shares of ProPetro's common stock issuable upon conversion of the notes have not been, and will not be, registered under the Securities Act or any other securities laws, and the notes and any such shares cannot be offered or sold except pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act and any other applicable securities laws. This communication does not constitute an offer to sell, or the solicitation of an offer to buy, the securities described herein, nor will there be any sale of these securities, in any state or other jurisdiction in which such offer, sale or solicitation would be unlawful.

About ProPetro

ProPetro Holding Corp. is a Midland, Texas-based provider of premium completion services to leading upstream oil and gas companies engaged in the exploration and production of North American unconventional oil and natural gas resources.

Forward-Looking Statements

This communication includes "forward-looking statements" within the meaning of Section 27A of the Securities Act and Section 21E of the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder. These forward-looking statements include statements regarding the anticipated terms of the notes being offered, the completion, timing and size of the proposed offering, the intended use of the proceeds and the anticipated terms of, and the effects of entering into, the capped call transactions described above. These forward-looking statements are identified by their use of terms and phrases such as "may," "expect," "estimate," "project," "plan," "believe," "intend," "achievable," "anticipate," "will," "continue," "potential," "should," "could," and similar terms and phrases. Forward-looking statements represent ProPetro's current expectations regarding future events and are subject to known and unknown risks and uncertainties that could cause actual results to differ materially from those implied by the forward-looking statements. Among those risks and uncertainties are market conditions, including market interest rates, the trading price and volatility of ProPetro's common stock and risks relating to ProPetro's business, including, but not limited to, those described in periodic reports that ProPetro files from time to time with the SEC, including its Annual Report on Form 10-K for the fiscal year ended December 31, 2025 and its subsequent Quarterly Reports on Form 10-Q. ProPetro may not consummate the proposed offering described in this communication and, if the proposed offering is consummated, cannot provide any assurances regarding the final terms of the offering or the notes or its ability to effectively apply the net proceeds as described above. The forward-looking statements included in this communication speak only as of the date of this communication, and ProPetro does not undertake to update the statements included in this communication for subsequent developments, except as may be required by law.

Investor Contact:

Matt Augustine
Vice President, Finance and Investor Relations
matt.augustine@propetroservices.com
432-219-7620
