

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-Q

(Mark One)



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

For the quarterly period ended June 3, 2021

OR



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

For the transition period from to

Commission file number 1-10658



**Micron Technology, Inc.**

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of incorporation or organization)

8000 S. Federal Way, Boise, Idaho

(Address of principal executive offices)

(Registrant's telephone number, including area code)

75-1618004

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

83716-9632

(Zip Code)

(208) 368-4000

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

Title of each class	Trading Symbol	Name of each exchange on which registered
Common Stock, par value \$0.10 per share	MU	Nasdaq Global Select Market

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

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

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

Large Accelerated Filer	Accelerated Filer	Non-Accelerated Filer	Smaller Reporting Company	Emerging Growth Company
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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

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

The number of outstanding shares of the registrant's common stock as of June 24, 2021 was 1,125,753,560.

# Micron Corporate Profile

Founded over 40 years ago on  
October 5, 1978

Headquartered in  
Boise, Idaho, USA

## 4th

Largest semiconductor company  
in the world\*

## 135

On the 2021 Fortune 500

## 44,000+

Patents granted and growing\*\*

## 17

Countries\*\*

## 13

Manufacturing sites and  
14 customer labs\*\*

## ~40,000

Team members\*\*

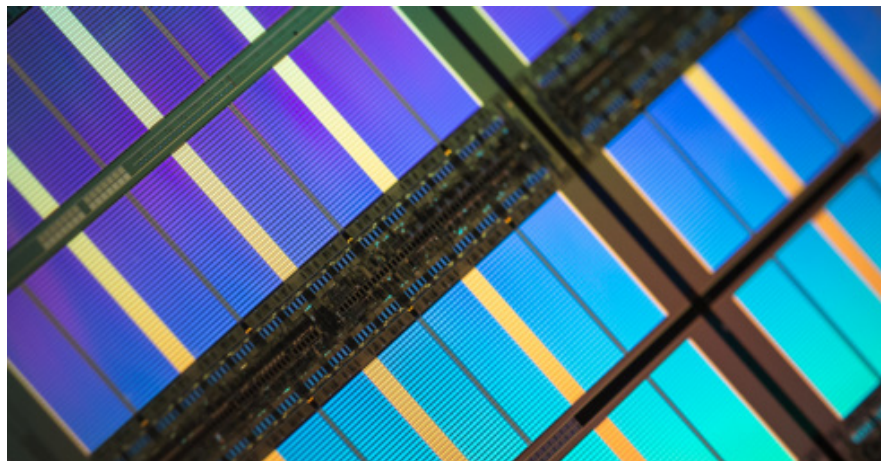
\*Based on Gartner Market Share:  
Semiconductors by End Market,  
Worldwide, 2020 (April 2021), excluding  
IP/software revenue.

\*\*Micron data as of September 3, 2020.

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## It's All About Data

**Data is today's new business currency, and memory and storage are strategic differentiators which will redefine how we extract value from data to expand the global economy and transform our society.**

### Who We Are

Micron designs, develops, and manufactures industry-leading memory and storage products. By providing foundational capability for innovations like AI and 5G across data center, the intelligent edge, and consumer devices, we unlock innovation across industries including healthcare, automotive, and communications. Our technology and expertise are central to maximizing value from cutting-edge computing applications and new business models which disrupt and advance the industry.

### Our Vision

As a global leader in memory and storage solutions, we are transforming how the world uses information to enrich life *for all*. By advancing technologies to collect, store, and manage data with unprecedented speed and efficiency, we lead the transformation of data to information intelligence. In a world of change, we remain nimble, delivering products that help inspire the world to learn, communicate, and advance faster than ever.

### Our Commitment

The world has come to expect our delivery of innovative solutions and our customers depend on our integrity. We rededicate ourselves daily to demonstrating our environmental conscience, an inclusive team culture where all voices are heard and respected, and engaging in our communities to enrich life *for all*.

### Global Product Portfolio

DRAM | NAND | NOR | Solid-State Drives | Graphics and High Bandwidth Memory (HBM) | Managed NAND and Multichip Packages

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# Definitions of Commonly Used Terms

As used herein, “we,” “our,” “us,” and similar terms include Micron Technology, Inc. and its consolidated subsidiaries, unless the context indicates otherwise. Abbreviations, terms, or acronyms are commonly used or found in multiple locations throughout this report and include the following:

Term	Definition	Term	Definition
2023 Notes	2.497% Senior Notes due 2023	IMFT	IM Flash Technologies, LLC
2024 Notes	4.640% Senior Notes due 2024	Inotera	Inotera Memories, Inc.
2024 Term Loan A	Senior Term Loan A due 2024 entered into on May 14, 2021	Intel	Intel Corporation
2025 Notes	5.500% Senior Notes due 2025	LIBOR	London Interbank Offered Rate
2026 Notes	4.975% Senior Notes due 2026	LPDRAM	Low-power DRAM
2027 Notes	4.185% Senior Notes due 2027	MCP	Multichip packaged solutions with managed NAND and LPDRAM
2029 Notes	5.327% Senior Notes due 2029	Micron	Micron Technology, Inc. (Parent Company)
2030 Notes	4.663% Senior Notes due 2030	MMJ	Micron Memory Japan, G.K.
2032D Notes	3.125% Convertible Senior Notes due 2032	Revolving Credit Facility	\$2.5 billion Revolving Credit Facility due May 2026
DDR	Double Data Rate	SOFR	Secured Overnight Financing Rate
EBITDA	Earnings before interest, taxes, depreciation, and amortization	SSD	Solid State Drive
Extinguished 2024 Term Loan A	Senior Term Loan A due 2024 repaid on May 14, 2021	TI	Texas Instruments Incorporated
GDDR	Graphics Double Data Rate		

Micron Technology, Inc., including its consolidated subsidiaries, is an industry leader in innovative memory and storage solutions transforming how the world uses information to enrich life *for all*. With a relentless focus on our customers, technology leadership, and manufacturing and operational excellence, Micron delivers a rich portfolio of high-performance DRAM, NAND, and NOR memory and storage products through our Micron® and Crucial® brands. Every day, the innovations that our people create fuel the data economy, enabling advances in artificial intelligence and 5G applications that unleash opportunities — from the data center to the intelligent edge and across the client and mobile user experience.

Micron, Crucial, any associated logos, and all other Micron trademarks are the property of Micron. Intel and 3D XPoint are trademarks of Intel Corporation or its subsidiaries. Other product names or trademarks that are not owned by Micron are for identification purposes only and may be the trademarks of their respective owners.

## Available Information

Investors and others should note that we announce material financial information about our business and products through a variety of means, including our investor relations website ([investors.micron.com](https://investors.micron.com)), filings with the U.S. Securities and Exchange Commission (the “SEC”), press releases, public conference calls, and webcasts. We use these channels to achieve broad, non-exclusionary distribution of information to the public and for complying with our disclosure obligations under Regulation FD. Therefore, we encourage investors, the media, and others interested in our company to review the information we post on such channels.

# Forward-Looking Statements

This Form 10-Q contains trend information and other forward-looking statements that involve a number of risks and uncertainties. Such forward-looking statements may be identified by words such as "anticipate," "expect," "intend," "pledge," "committed," "plans," "opportunities," "future," "believe," "target," "on track," "estimate," "continue," "likely," "may," "will," "would," "should," "could," and variations of such words and similar expressions. Specific forward-looking statements include, but are not limited to, statements such as those made regarding the impact of coronavirus disease 2019 ("COVID-19") to our business; the completion of and timing for closing the pending sale of our Lehi facility; the sufficiency of our cash and investments; and capital spending in 2021. Our actual results could differ materially from our historical results and those discussed in the forward-looking statements. Factors that could cause actual results to differ materially include, but are not limited to, those identified in "Part II. Other Information – Item 1A. Risk Factors."

# PART I. FINANCIAL INFORMATION

## ITEM 1. FINANCIAL STATEMENTS

# Micron Technology, Inc.

## Consolidated Statements of Operations

(In millions, except per share amounts)

(Unaudited)

	Quarter ended		Nine months ended	
	June 3, 2021	May 28, 2020	June 3, 2021	May 28, 2020
Revenue	\$ 7,422	\$ 5,438	\$ 19,431	\$ 15,379
Cost of goods sold	4,296	3,675	12,920	10,895
Gross margin	3,126	1,763	6,511	4,484
Research and development	670	649	1,958	1,970
Selling, general, and administrative	230	216	658	650
Restructure and asset impairments	453	4	466	10
Other operating (income) expense, net	(26)	6	101	8
Operating income	1,799	888	3,328	1,846
Interest income	8	23	28	101
Interest expense	(46)	(51)	(136)	(144)
Other non-operating income (expense), net	45	10	62	55
	1,806	870	3,282	1,858
Income tax (provision) benefit	(65)	(68)	(164)	(144)
Equity in net income (loss) of equity method investees	(6)	3	23	6
Net income	1,735	805	3,141	1,720
Net income attributable to noncontrolling interests	—	(2)	—	(21)
Net income attributable to Micron	\$ 1,735	\$ 803	\$ 3,141	\$ 1,699
Earnings per share				
Basic	\$ 1.55	\$ 0.72	\$ 2.81	\$ 1.53
Diluted	1.52	0.71	2.75	1.50
Number of shares used in per share calculations				
Basic	1,121	1,111	1,119	1,110
Diluted	1,145	1,129	1,141	1,131

See accompanying notes to consolidated financial statements.

# Micron Technology, Inc.

## Consolidated Statements of Comprehensive Income

(In millions)

(Unaudited)

	Quarter ended		Nine months ended	
	June 3, 2021	May 28, 2020	June 3, 2021	May 28, 2020
Net income	\$ 1,735	\$ 805	\$ 3,141	\$ 1,720
Other comprehensive income (loss), net of tax				
Gains (losses) on derivative instruments	(32)	(3)	(20)	(18)
Gains (losses) on investments	(2)	2	(6)	—
Pension liability adjustments	—	(1)	1	(2)
Cumulative translation adjustments	—	—	1	—
Other comprehensive income (loss)	(34)	(2)	(24)	(20)
Total comprehensive income	1,701	803	3,117	1,700
Comprehensive income attributable to noncontrolling interests	—	(2)	—	(21)
Comprehensive income attributable to Micron	\$ 1,701	\$ 801	\$ 3,117	\$ 1,679

See accompanying notes to consolidated financial statements.

# Micron Technology, Inc.

## Consolidated Balance Sheets

(In millions, except par value amounts)

(Unaudited)

As of	June 3, 2021	September 3, 2020
<b>Assets</b>		
Cash and equivalents	\$ 7,759	\$ 7,624
Short-term investments	590	518
Receivables	4,231	3,912
Inventories	4,537	5,373
Assets held for sale	966	—
Other current assets	478	538
Total current assets	18,561	17,965
Long-term marketable investments	1,399	1,048
Property, plant, and equipment	32,209	31,031
Operating lease right-of-use assets	558	584
Intangible assets	350	334
Deferred tax assets	822	707
Goodwill	1,228	1,228
Other noncurrent assets	816	781
Total assets	\$ 55,943	\$ 53,678
<b>Liabilities and equity</b>		
Accounts payable and accrued expenses	\$ 4,427	\$ 5,817
Current debt	297	270
Other current liabilities	738	548
Total current liabilities	5,462	6,635
Long-term debt	6,418	6,373
Noncurrent operating lease liabilities	513	533
Noncurrent unearned government incentives	722	643
Other noncurrent liabilities	569	498
Total liabilities	13,684	14,682
<b>Commitments and contingencies</b>		
<b>Shareholders' equity</b>		
Common stock, \$0.10 par value, 3,000 shares authorized, 1,203 shares issued and 1,120 outstanding (1,194 shares issued and 1,113 outstanding as of September 3, 2020)	120	119
Additional capital	9,285	8,917
Retained earnings	36,452	33,384
Treasury stock, 83 shares held (81 shares held as of September 3, 2020)	(3,645)	(3,495)
Accumulated other comprehensive income (loss)	47	71
Total equity	42,259	38,996
Total liabilities and equity	\$ 55,943	\$ 53,678

See accompanying notes to consolidated financial statements.



# Micron Technology, Inc.

## Consolidated Statements of Changes in Equity

(In millions)  
(Unaudited)

	Common Stock		Additional Capital	Retained Earnings	Treasury Stock	Accumulated Other Comprehensive Income (Loss)	Total Shareholders' Equity
	Number of Shares	Amount					
<b>Balance at September 3, 2020</b>	1,194	\$ 119	\$ 8,917	\$ 33,384	\$ (3,495)	\$ 71	\$ 38,996
Net income	—	—	—	803	—	—	803
Other comprehensive income (loss), net	—	—	—	—	—	39	39
Stock issued under stock plans	5	1	33	—	—	—	34
Stock-based compensation expense	—	—	92	—	—	—	92
Repurchase of stock	(1)	—	(8)	(49)	—	—	(57)
<b>Balance at December 3, 2020</b>	1,198	\$ 120	\$ 9,034	\$ 34,138	\$ (3,495)	\$ 110	\$ 39,907
Net income	—	—	—	603	—	—	603
Other comprehensive income (loss), net	—	—	—	—	—	(29)	(29)
Stock issued under stock plans	4	—	105	—	—	—	105
Stock-based compensation expense	—	—	97	—	—	—	97
Repurchase of stock	—	—	(2)	(18)	—	—	(20)
<b>Balance at March 4, 2021</b>	1,202	\$ 120	\$ 9,234	\$ 34,723	\$ (3,495)	\$ 81	\$ 40,663
Net income	—	—	—	1,735	—	—	1,735
Other comprehensive income (loss), net	—	—	—	—	—	(34)	(34)
Stock issued under stock plans	1	—	8	—	—	—	8
Stock-based compensation expense	—	—	96	—	—	—	96
Repurchase of stock	—	—	(1)	(6)	(150)	—	(157)
Cash settlement of convertible notes	—	—	(52)	—	—	—	(52)
<b>Balance at June 3, 2021</b>	1,203	\$ 120	\$ 9,285	\$ 36,452	\$ (3,645)	\$ 47	\$ 42,259

See accompanying notes to consolidated financial statements.

# Micron Technology, Inc.

## Consolidated Statements of Changes in Equity

(In millions)  
(Unaudited)

	Micron Shareholders									
	Common Stock			Retained Earnings	Treasury Stock	Accumulated Other Comprehensive Income (Loss)	Total Micron Shareholders' Equity	Noncontrolling Interest in Subsidiary	Total Equity	
	Number of Shares	Amount	Additional Capital							
Balance at August 29, 2019	1,182	\$ 118	\$ 8,214	\$ 30,761	\$ (3,221)	\$ 9	\$ 35,881	\$ 889	\$36,770	
Net income	—	—	—	491	—	—	491	15	506	
Other comprehensive income (loss), net	—	—	—	—	—	(3)	(3)	—	(3)	
Stock issued under stock plans	3	1	31	—	—	—	32	—	32	
Stock-based compensation expense	—	—	72	—	—	—	72	—	72	
Repurchase of stock	—	—	(6)	(34)	(50)	—	(90)	—	(90)	
Acquisition of noncontrolling interest	—	—	123	—	—	—	123	(904)	(781)	
Cash settlement of convertible notes	—	—	(6)	—	—	—	(6)	—	(6)	
Balance at November 28, 2019	1,185	\$ 119	\$ 8,428	\$ 31,218	\$ (3,271)	\$ 6	\$ 36,500	\$ —	\$36,500	
Net income	—	—	—	405	—	—	405	—	405	
Other comprehensive income (loss), net	—	—	—	—	—	(15)	(15)	—	(15)	
Stock issued under stock plans	7	—	121	—	—	—	121	—	121	
Stock-based compensation expense	—	—	85	—	—	—	85	—	85	
Repurchase of stock	(1)	—	(4)	(21)	(45)	—	(70)	—	(70)	
Settlement of capped calls	—	—	98	—	(98)	—	—	—	—	
Cash settlement of convertible notes	—	—	(3)	—	—	—	(3)	—	(3)	
Balance at February 27, 2020	1,191	\$ 119	\$ 8,725	\$ 31,602	\$ (3,414)	\$ (9)	\$ 37,023	\$ —	\$37,023	
Net income	—	—	—	803	—	—	803	—	803	
Other comprehensive income (loss), net	—	—	—	—	—	(2)	(2)	—	(2)	
Stock issued under stock plans	1	—	4	—	—	—	4	—	4	
Stock-based compensation expense	—	—	82	—	—	—	82	—	82	
Repurchase of stock	—	—	—	(3)	(40)	—	(43)	—	(43)	
Cash settlement of convertible notes	—	—	(47)	—	—	—	(47)	—	(47)	
Balance at May 28, 2020	1,192	\$ 119	\$ 8,764	\$ 32,402	\$ (3,454)	\$ (11)	\$ 37,820	\$ —	\$37,820	

See accompanying notes to consolidated financial statements.

# Micron Technology, Inc.

## Consolidated Statements of Cash Flows

(In millions)

(Unaudited)

Nine months ended	June 3, 2021	May 28, 2020
<b>Cash flows from operating activities</b>		
Net income	\$ 3,141	\$ 1,720
Adjustments to reconcile net income to net cash provided by operating activities		
Depreciation expense and amortization of intangible assets	4,593	4,083
Amortization of debt discount and other costs	22	20
Restructure and asset impairments	446	(7)
Stock-based compensation	285	239
(Gain) loss on debt prepayments, repurchases, and conversions	1	(40)
Change in operating assets and liabilities		
Receivables	(340)	(461)
Inventories	814	(248)
Accounts payable and accrued expenses	(309)	700
Deferred income taxes, net	(94)	26
Other	25	3
Net cash provided by operating activities	8,584	6,035
<b>Cash flows from investing activities</b>		
Expenditures for property, plant, and equipment	(8,015)	(5,943)
Purchases of available-for-sale securities	(1,919)	(793)
Proceeds from maturities of available-for-sale securities	1,024	636
Proceeds from sales of available-for-sale securities	473	1,157
Proceeds from government incentives	335	140
Other	47	(48)
Net cash provided by (used for) investing activities	(8,055)	(4,851)
<b>Cash flows from financing activities</b>		
Repayments of debt	(1,344)	(4,286)
Payments on equipment purchase contracts	(139)	(49)
Acquisition of noncontrolling interest in IMFT	—	(744)
Proceeds from issuance of debt	1,188	5,000
Other	(142)	(56)
Net cash provided by (used for) financing activities	(437)	(135)
Effect of changes in currency exchange rates on cash, cash equivalents, and restricted cash	44	(8)
Net increase (decrease) in cash, cash equivalents, and restricted cash	136	1,041
Cash, cash equivalents, and restricted cash at beginning of period	7,690	7,279
Cash, cash equivalents, and restricted cash at end of period	\$ 7,826	\$ 8,320

See accompanying notes to consolidated financial statements.

# Micron Technology, Inc.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

(All tabular amounts in millions, except per share amounts)

(Unaudited)

## Significant Accounting Policies

For a discussion of our significant accounting policies, see “Part II – Item 8. Financial Statements and Supplementary Data – Notes to Consolidated Financial Statements – Significant Accounting Policies” of our Annual Report on Form 10-K for the year ended September 3, 2020. Except for the significant accounting policy associated with inventories as discussed below, there have been no changes to our significant accounting policies since our Annual Report on Form 10-K for the year ended September 3, 2020.

### Basis of Presentation

The accompanying consolidated financial statements include the accounts of Micron and our consolidated subsidiaries and have been prepared in accordance with accounting principles generally accepted in the United States of America (“U.S. GAAP”) consistent in all material respects with those applied in our Annual Report on Form 10-K for the year ended September 3, 2020, except for changes in accounting and presentation of inventories. See “Inventories” below for changes to our significant accounting policies, and the “Inventories” note for additional information.

In the opinion of our management, the accompanying unaudited consolidated financial statements contain all necessary adjustments, consisting of a normal recurring nature, to fairly state the financial information set forth herein. Certain reclassifications have been made to prior period amounts to conform to current period presentation.

Our fiscal year is the 52 or 53-week period ending on the Thursday closest to August 31. Fiscal 2021 contains 52 weeks and our fiscal 2020 contained 53 weeks. The first three quarters of fiscal 2021 and 2020 each contained 13 weeks. All period references are to our fiscal periods unless otherwise indicated. These interim financial statements should be read in conjunction with the consolidated financial statements and accompanying notes included in our Annual Report on Form 10-K for the year ended September 3, 2020.

Through October 31, 2019, IMFT was a consolidated variable interest entity. We acquired Intel's noncontrolling interest in IMFT on October 31, 2019, at which time IMFT became a wholly-owned subsidiary.

### Inventories

Effective as of the beginning of the second quarter of 2021, we changed the method of inventory costing from average cost to first-in, first-out (“FIFO”). The difference between average cost and FIFO was not material to any previously reported financial statements. Therefore, we have recognized the cumulative effect of the change as a reduction of inventories and a charge to cost of goods sold of \$133 million as of the beginning of the second quarter of 2021.

Inventories are stated at the lower of cost or net realizable value, with cost being determined on a FIFO basis. Cost includes depreciation, labor, material, and overhead costs, including product and process technology costs. When net realizable value (which requires projecting future average selling prices, sales volumes, and costs to complete products in work in process inventories) is below cost, we record a charge to cost of goods sold to write down inventories to their estimated net realizable value in advance of when inventories are actually sold. We review the major characteristics of product type and markets in determining the unit of account for which we perform the lower of cost or net realizable value analysis and categorize all inventories (including DRAM, NAND, and other memory) as a single group. We remove amounts from inventory and charge such amounts to cost of goods sold on a FIFO basis.

# Recently Adopted Accounting Standards

In November 2018, the Financial Accounting Standards Board ("FASB") issued ASU 2018-18 – *Collaborative Arrangements*, which clarifies that certain transactions between collaborative arrangement participants should be accounted for as revenue when the collaborative arrangement participant is a customer in the context of a unit of account and precludes recognizing as revenue consideration received from a collaborative arrangement participant if the participant is not a customer. We adopted ASU 2018-18 in the first quarter of 2021 under the retrospective adoption method to the date we adopted ASC 606, which was August 31, 2018. The adoption of this ASU did not have a significant impact on our financial statements.

In June 2016, the FASB issued ASU 2016-13 – *Measurement of Credit Losses on Financial Instruments*, which requires a financial asset (or a group of financial assets) measured on the basis of amortized cost to be presented at the net amount expected to be collected. This ASU requires that the income statement reflect the measurement of credit losses for newly recognized financial assets as well as the increases or decreases of expected credit losses that have taken place during the period. This ASU requires that credit losses of debt securities designated as available-for-sale be recorded through an allowance for credit losses and limits the credit loss to the amount by which fair value is below amortized cost. We adopted ASU 2016-13 in the first quarter of 2021 under the modified retrospective adoption method. The adoption of this ASU did not have a significant impact on our financial statements.

# Recently Issued Accounting Standards

In August 2020, the FASB issued ASU 2020-06 – *Debt – Debt with Conversion and Other Options and Derivatives and Hedging – Contracts in Entity's Own Equity*, which simplifies the accounting for convertible debt instruments by reducing the number of accounting models and the number of embedded conversion features that could be recognized separately from the primary contract. This ASU requires a convertible debt instrument to be accounted for as a single liability measured at its amortized cost, as long as no other features require bifurcation and recognition as derivatives. This ASU requires an entity to use the if-converted method in the diluted earnings per share calculation for convertible instruments. This ASU will be effective for us in the first quarter of 2023, with early adoption permitted beginning in the first quarter of 2022, and permits the use of either the modified retrospective or fully retrospective method of transition. We are evaluating the timing and effects of our adoption of this ASU on our financial statements.

# Lehi, Utah Fab and 3D XPoint

In the second quarter of 2021, we updated our portfolio strategy to further strengthen our focus on memory and storage innovations for the data center market. In connection therewith, we determined that there was insufficient market validation to justify the ongoing investments required to commercialize 3D XPoint™ at scale. Accordingly, we ceased development of 3D XPoint technology and engaged in discussions with potential buyers for the sale of our facility located in Lehi that was dedicated to 3D XPoint production. As a result, we classified the property, plant, and equipment as held for sale and ceased depreciating the assets. On June 30, 2021, we announced that we have entered into a definitive agreement to sell our Lehi facility to Texas Instruments for cash consideration of \$900 million. The sale is anticipated to close later this calendar year.

In the third quarter of 2021, we recognized a charge of \$435 million included in restructure and asset impairments (and a tax benefit of \$104 million included in income tax (provision) benefit) to write down the assets held for sale to the expected consideration, net of estimated selling costs, to be realized from the sale of these assets and liabilities. The impairment charge was based on Level 3 inputs including expected consideration and the composition of assets included in the sale, which were derived from the agreement with TI. In the second quarter of 2021, we also recognized a charge of \$49 million to cost of goods sold to write down 3D XPoint inventory due to our decision to cease further development of this technology.

As of June 3, 2021, the significant balances of assets held for sale in connection with our Lehi facility were as follows:

As of	June 3, 2021
Property, plant, and equipment	\$ 1,343
Other current assets	52
Impairment	(435)
Lehi assets held for sale	<u>\$ 960</u>

As of June 3, 2021, we also had a \$51 million finance lease obligation included in the current portion of long-term debt and \$12 million of other liabilities that we expect to transfer with the sale. The expected cash consideration, net of estimated selling expenses, approximates the carrying value of the net assets and liabilities expected to transfer in the sale, after giving effect to the impairment charge discussed above.

## Cash and Investments

Substantially all of our marketable debt and equity investments were classified as available-for-sale as of the dates noted below. Cash and equivalents and the fair values of our available-for-sale investments, which approximated amortized costs, were as follows:

As of	June 3, 2021				September 3, 2020			
	Cash and Equivalents	Short-term Investments	Long-term Marketable Investments <sup>(1)</sup>	Total Fair Value	Cash and Equivalents	Short-term Investments	Long-term Marketable Investments <sup>(1)</sup>	Total Fair Value
Cash	\$ 5,153	\$ —	\$ —	\$ 5,153	\$ 3,996	\$ —	\$ —	\$ 3,996
Level 1 <sup>(2)</sup>								
Money market funds	822	—	—	822	1,828	—	—	1,828
Level 2 <sup>(3)</sup>								
Certificates of deposit	1,763	44	—	1,807	1,740	10	2	1,752
Corporate bonds	—	285	893	1,178	3	266	592	861
Government securities	—	113	124	237	6	115	243	364
Asset-backed securities	—	73	382	455	1	31	211	243
Commercial paper	21	75	—	96	50	96	—	146
	7,759	\$ 590	\$ 1,399	\$ 9,748	7,624	\$ 518	\$ 1,048	\$ 9,190
Restricted cash <sup>(4)</sup>	67				66			
Cash, cash equivalents, and restricted cash	<u>\$ 7,826</u>				<u>\$ 7,690</u>			

<sup>(1)</sup> The maturities of long-term marketable securities range from one to four years.

<sup>(2)</sup> The fair value of Level 1 securities is measured based on quoted prices in active markets for identical assets.

<sup>(3)</sup> The fair value of Level 2 securities is measured using information obtained from pricing services, which obtain quoted market prices for similar instruments, non-binding market consensus prices that are corroborated by observable market data, or various other methodologies, to determine the appropriate value at the measurement date. We perform supplemental analysis to validate information obtained from these pricing services. No adjustments were made to the fair values indicated by such pricing information as of June 3, 2021 or September 3, 2020.

<sup>(4)</sup> Restricted cash is included in other noncurrent assets and primarily relates to certain government incentives received prior to being earned and for which restrictions lapse upon achieving certain performance conditions.

Gross realized gains and losses from sales of available-for-sale securities were not significant for any period presented.

In addition to the amounts included in the table above, we had \$142 million and \$92 million of nonmarketable equity investments without a readily determinable fair value that were included in other noncurrent assets as of June 3, 2021 and September 3, 2020, respectively. We recognized gains in other non-operating income on these nonmarketable investments of \$42 million and \$52 million in the third quarter and first nine months of 2021, respectively, and \$14 million and \$13 million in the third quarter and first nine months of 2020, respectively. These gains primarily resulted from adjustments of these investments to the value indicated by transactions in the same or similar investments.

## Receivables

As of	June 3, 2021	September 3, 2020
Trade receivables	\$ 3,827	\$ 3,494
Income and other taxes	213	232
Other	191	186
	<u>\$ 4,231</u>	<u>\$ 3,912</u>

## Inventories

As of	June 3, 2021	September 3, 2020
Finished goods	\$ 604	\$ 1,001
Work in process	3,479	3,854
Raw materials and supplies	454	518
	<u>\$ 4,537</u>	<u>\$ 5,373</u>

Effective as of the beginning of the second quarter of 2021, we changed our method of inventory costing from average cost to FIFO. This change in accounting principle is preferable because in an environment with continuously changing production costs FIFO more closely matches the actual cost of goods sold with the revenues from sales of those specific units, better represents the actual cost of inventories remaining on hand at any period-end, and improves comparability with our semiconductor industry peers. The change to FIFO was not material to any prior periods, nor was the cumulative effect of \$133 million material to the second quarter of 2021. As such, prior periods were not retrospectively adjusted, and the cumulative effect was reported as an increase to cost of goods sold for the second quarter of 2021 of \$133 million, with an offsetting reduction to beginning inventories. This charge resulted in a corresponding reduction to operating income, a \$128 million reduction to net income, and an \$0.11 reduction to diluted earnings per share for both the second quarter and first nine months of 2021.

Beginning in the second quarter of 2021, we changed the classification of spare parts for equipment to better align with the manner in which they are used in operations. As a result, we now present spare parts as other current assets and no longer as a component of raw materials inventories. This reclassification was applied on a retrospective basis. As a result, \$256 million of spare parts were presented in other current assets as of June 3, 2021, and we reclassified \$234 million of spare parts from inventories to other current assets in the accompanying balance sheet as of September 3, 2020.

# Property, Plant, and Equipment

As of	June 3, 2021	September 3, 2020
Land	\$ 280	\$ 352
Buildings	13,893	13,981
Equipment <sup>(1)</sup>	49,969	48,525
Construction in progress <sup>(2)</sup>	1,553	1,600
Software	955	873
	66,650	65,331
Accumulated depreciation	(34,441)	(34,300)
	<u>\$ 32,209</u>	<u>\$ 31,031</u>

<sup>(1)</sup> Includes costs related to equipment not placed into service of \$1.32 billion as of June 3, 2021 and \$1.63 billion as of September 3, 2020.

<sup>(2)</sup> Includes building-related construction, tool installation, and software costs for assets not placed into service.

# Intangible Assets and Goodwill

As of	June 3, 2021		September 3, 2020	
	Gross Amount	Accumulated Amortization	Gross Amount	Accumulated Amortization
Product and process technology	\$ 663	\$ (313)	\$ 616	\$ (282)
Goodwill	1,228		1,228	

In the first nine months of 2021 and 2020, we capitalized \$82 million and \$50 million, respectively, for product and process technology with weighted-average useful lives of 9 years and 10 years, respectively. Expected amortization expense is \$21 million for the remainder of 2021, \$69 million for 2022, \$59 million for 2023, \$53 million for 2024, and \$32 million for 2025.

# Leases

The components of lease expense are presented below:

	Quarter ended		Nine months ended	
	June 3, 2021	May 28, 2020	June 3, 2021	May 28, 2020
Finance lease cost				
Amortization of right-of-use assets	\$ 16	\$ 29	\$ 49	\$ 108
Interest on lease liabilities	5	6	15	17
Operating lease cost	28	27	82	75
	<u>\$ 49</u>	<u>\$ 62</u>	<u>\$ 146</u>	<u>\$ 200</u>

Short-term and variable lease expenses were not significant and are presented within operating lease costs in the table above. Sublease income was not significant for any period presented.



Other information related to our leases was as follows:

<b>Nine months ended</b>	<b>June 3, 2021</b>	<b>May 28, 2020</b>
Cash flows used for operating activities		
Finance leases	\$ 16	\$ 18
Operating leases <sup>(1)</sup>	80	15
Cash flows used for financing activities from financing leases	61	171
Noncash acquisitions of right-of-use assets		
Finance leases	164	81
Operating leases	19	32

<sup>(1)</sup> Includes \$48 million of reimbursements received for tenant improvements for the nine months ended May 28, 2020.

<b>As of</b>	<b>June 3, 2021</b>	<b>September 3, 2020</b>
Finance lease right-of-use assets (included in property, plant, and equipment and assets held for sale)	\$ 541	\$ 426
Weighted-average remaining lease term (in years)		
Finance leases	5	5
Operating leases	7	7
Weighted-average discount rate		
Finance leases	3.62 %	4.51 %
Operating leases	2.64 %	2.67 %

Maturities of lease liabilities existing as of June 3, 2021 were as follows:

<b>For the year ending</b>	<b>Finance Leases</b>	<b>Operating Leases</b>
Remainder of 2021	\$ 27	\$ 14
2022	110	72
2023	97	68
2024	71	61
2025	56	50
2026 and thereafter	340	413
Less imputed interest	(103)	(111)
	<u>\$ 598</u>	<u>\$ 567</u>

The table above excludes any lease liabilities for leases that have been executed but have not yet commenced. As of June 3, 2021, we had such lease liabilities relating to 1) operating lease payment obligations of \$147 million for the initial 10-year lease term for a building, which may, at our election, be terminated after 3 years or extended for an additional 10 years, and 2) finance lease obligations of \$807 million over a weighted-average period of 15 years for leases embedded in gas supply arrangements. We will recognize right-of-use assets and associated lease liabilities at the time such assets become available for our use.

# Accounts Payable and Accrued Expenses

As of	June 3, 2021	September 3, 2020
Accounts payable	\$ 1,640	\$ 2,191
Property, plant, and equipment	1,422	2,374
Salaries, wages, and benefits	873	849
Income and other taxes	220	237
Other	272	166
	<u>\$ 4,427</u>	<u>\$ 5,817</u>

## Debt

As of	June 3, 2021					September 3, 2020		
	Stated Rate	Effective Rate	Net Carrying Amount			Net Carrying Amount		
			Current	Long-Term	Total	Current	Long-Term	Total
Finance lease obligations	N/A	3.62 %	\$ 144	\$ 454	\$ 598	\$ 76	\$ 410	\$ 486
2023 Notes	2.497 %	2.64 %	—	1,247	1,247	—	1,245	1,245
2024 Notes	4.640 %	4.76 %	—	598	598	—	598	598
2024 Term Loan A	0.975 %	1.01 %	—	1,186	1,186	—	—	—
2026 Notes	4.975 %	5.07 %	—	498	498	—	498	498
2027 Notes <sup>(1)</sup>	4.185 %	4.27 %	—	894	894	—	895	895
2029 Notes	5.327 %	5.40 %	—	696	696	—	696	696
2030 Notes	4.663 %	4.73 %	—	845	845	—	845	845
2032D Notes	3.125 %	6.33 %	152	—	152	131	—	131
MMJ Creditor Payments	N/A	N/A	1	—	1	1	—	1
Extinguished 2024 Term Loan A	N/A	N/A	—	—	—	62	1,186	1,248
			<u>\$ 297</u>	<u>\$ 6,418</u>	<u>\$ 6,715</u>	<u>\$ 270</u>	<u>\$ 6,373</u>	<u>\$ 6,643</u>

<sup>(1)</sup> On April 21, 2021, we entered into fixed-to-floating interest rate swaps on the 2027 Notes with an aggregate \$900 million notional amount equal to the principal amount of the 2027 Notes. The resulting variable interest paid is at a rate equal to SOFR plus approximately 3.33%.

## Revolving Credit Facility

On May 14, 2021, we terminated our existing undrawn credit facility and entered into a new five-year unsecured Revolving Credit Facility. Under the Revolving Credit Facility, we can draw up to \$2.50 billion which would generally bear interest at a rate equal to LIBOR plus 1.00% to 1.75%, depending on our corporate credit ratings. Any amounts outstanding under the Revolving Credit Facility would mature in May 2026 and amounts borrowed may be prepaid without penalty. As of June 3, 2021, no amounts were outstanding under the Revolving Credit Facility and \$2.50 billion was available to us.

Under the terms of the Revolving Credit Facility, we must maintain a leverage ratio, calculated as of the last day of each fiscal quarter, of total indebtedness to adjusted EBITDA not to exceed 3.25 to 1.00. The Revolving Credit Facility contains other covenants that, among other things, limit, in certain circumstances, our ability and/or the ability of our restricted subsidiaries to (1) create or incur certain liens and enter into sale and lease-back transactions, (2) create, assume, incur, or guarantee certain additional secured indebtedness and unsecured indebtedness of our restricted subsidiaries, and (3) consolidate with or merge with or into, or convey, transfer, lease, or otherwise dispose of all or substantially all of our assets, to another entity. These covenants are subject to a number of limitations, exceptions, and qualifications.

## 2024 Term Loans

On May 14, 2021, we drew \$1.19 billion under an unsecured 2024 Term Loan A and used the proceeds to repay the \$1.19 billion Extinguished 2024 Term Loan A. The 2024 Term Loan A bears interest at a rate equal to LIBOR plus 0.625% to 1.375% based on our current corporate credit ratings. The principal amount is due October 2024 and may be prepaid without penalty. The 2024 Term Loan A contains the same leverage ratio and substantially the same other covenants as the Revolving Credit Facility.

## 2032D Convertible Senior Notes

In the third quarter of 2021, holders of our 2032D Notes with an aggregate principal amount of \$75 million converted their notes. We elected to settle notes with an aggregate principal amount of \$68 million with a combination of cash for the principal amount and shares of our common stock for the remainder of the settlement amount. In the fourth quarter of 2021, we settled these conversions and issued 5.9 million shares of our stock.

For the remaining converted notes with an aggregate principal amount of \$7 million, we elected to settle the conversion obligation in excess of the principal amount in cash. As a result of our election to settle all amounts due upon conversion in cash for these notes, such settlement obligations became derivative debt liabilities subject to mark-to-market accounting treatment based on the volume-weighted-average price of our common stock over a period of 20 consecutive trading days. Accordingly, at the dates of our elections to settle the conversions in cash, we reclassified the fair values of the equity components of each of the converted notes from additional capital to derivative debt liabilities within current debt in our consolidated balance sheet. Notes with a principal amount of \$3 million were not settled as of the end of the third quarter of 2021 and the net carrying amount of convertible notes included \$22 million for the fair values of the derivative debt liabilities.

On May 28, 2021, we notified holders of our 2032D Notes that we would redeem the remaining \$59 million of principal amount of our 2032D Notes on June 29, 2021. In connection with our notice, we made an irrevocable election to settle the conversion amount with a combination of cash for the principal amount and shares of our common stock for the remainder of the settlement amount. In the fourth quarter of 2021, holders converted substantially all of the 2032D Notes.

As of June 3, 2021, based on the \$82.03 trading price of our common stock and the \$9.98 conversion price, the aggregate conversion value of \$1.07 billion for the 2032D Notes exceeded the aggregate principal amount of \$130 million by \$938 million.

# Contingencies

## Patent Matters

As is typical in the semiconductor and other high-tech industries, from time to time, others have asserted, and may in the future assert, that our products or manufacturing processes infringe upon their intellectual property rights.

On August 12, 2014, MLC Intellectual Property, LLC filed a patent infringement action against Micron in the U.S. District Court for the Northern District of California. The complaint alleges that Micron infringes a single U.S. patent and seeks damages, attorneys' fees, and costs.

On November 21, 2014, Elm 3DS Innovations, LLC ("Elm") filed a patent infringement action against Micron; Micron Semiconductor Products, Inc.; and Micron Consumer Products Group, Inc. in the U.S. District Court for the District of Delaware. On March 27, 2015, Elm filed an amended complaint against the same entities. The amended complaint alleges that unspecified semiconductor products of ours that incorporate multiple stacked die infringe 13 U.S. patents and seeks damages, attorneys' fees, and costs.

On December 15, 2014, Innovative Memory Solutions, Inc. filed a patent infringement action against Micron in the U.S. District Court for the District of Delaware. The complaint alleges that a variety of our NAND products infringe

eight U.S. patents and seeks damages, attorneys' fees, and costs. Subsequently, six patents were invalidated or withdrawn, leaving two asserted patents in the District Court.

On March 19, 2018, Micron Semiconductor (Xi'an) Co., Ltd. ("MXA") was served with a patent infringement complaint filed by Fujian Jinhua Integrated Circuit Co., Ltd. ("Jinhua") in the Fuzhou Intermediate People's Court in Fujian Province, China (the "Fuzhou Court"). On April 3, 2018, Micron Semiconductor (Shanghai) Co. Ltd. ("MSS") was served with the same complaint. The complaint alleges that MXA and MSS infringe a Chinese patent by manufacturing and selling certain Crucial DDR4 DRAM modules. The complaint seeks an order requiring MXA and MSS to destroy inventory of the accused products and equipment for manufacturing the accused products in China; to stop manufacturing, using, selling, and offering for sale the accused products in China; and to pay damages of 98 million Chinese yuan plus court fees incurred.

On March 21, 2018, MXA was served with a patent infringement complaint filed by United Microelectronics Corporation ("UMC") in the Fuzhou Court. On April 3, 2018, MSS was served with the same complaint. The complaint alleges that MXA and MSS infringe a Chinese patent by manufacturing and selling certain Crucial DDR4 DRAM modules. The complaint seeks an order requiring MXA and MSS to destroy inventory of the accused products and equipment for manufacturing the accused products in China; to stop manufacturing, using, selling, and offering for sale the accused products in China; and to pay damages of 90 million Chinese yuan plus court fees incurred.

On April 3, 2018, MSS was served with another patent infringement complaint filed by Jinhua and two additional complaints filed by UMC in the Fuzhou Court. The three additional complaints allege that MSS infringes three Chinese patents by manufacturing and selling certain Crucial MX300 SSDs and certain GDDR5 memory chips. The two complaints filed by UMC each seek an order requiring MSS to destroy inventory of the accused products and equipment for manufacturing the accused products in China; to stop manufacturing, using, selling, and offering for sale the accused products in China; and to pay damages for each complaint of 90 million Chinese yuan plus court fees incurred. The complaint filed by Jinhua seeks an order requiring MSS to destroy inventory of the accused products and equipment for manufacturing the accused products in China; to stop manufacturing, using, selling, and offering for sale the accused products in China; and to pay damages of 98 million Chinese yuan plus court fees incurred. On October 9, 2018, UMC withdrew its complaint that alleged MSS infringed a Chinese patent by manufacturing and selling certain GDDR5 memory chips.

On July 5, 2018, MXA and MSS were notified that the Fuzhou Court granted a preliminary injunction against those entities that enjoins them from manufacturing, selling, or importing certain Crucial and Ballistix-branded DRAM modules and solid-state drives in China. The affected products made up slightly more than 1% of our annualized revenue in 2018. We are complying with the ruling and have requested the Fuzhou Court to reconsider or stay its decision.

On May 4, 2020, Flash-Control, LLC filed a patent infringement action against Micron in the U.S. District Court for the Western District of Texas. The complaint alleges that four U.S. patents are infringed by unspecified DDR4 SDRAM, NVRDIMM, NVDIMM, 3D XPoint, and/or SSD products that incorporate memory controllers and flash memory. The complaint seeks damages, attorneys' fees, and costs.

On April 28, 2021, Netlist, Inc. filed two patent infringement actions against Micron, Micron Semiconductor Products, Inc. and Micron Technology Texas, LLC in the U.S. District Court for the Western District of Texas. The first complaint alleges that a single U.S. patent is infringed by certain of our non-volatile dual in-line memory modules. The second complaint alleges that three U.S. patents are infringed by certain of our load-reduced dual in-line memory modules. Each complaint seeks injunctive relief, damages, attorneys' fees, and costs.

On May 10, 2021, Vervain, LLC filed a patent infringement action against Micron, Micron Semiconductor Products, Inc., and Micron Technology Texas, LLC in the U.S. District Court for the Western District of Texas. The complaint alleges that four U.S. patents are infringed by certain SSD products. The complaint seeks injunctive relief, damages, attorneys' fees, and costs.

Among other things, the above lawsuits pertain to substantially all of our DRAM, NAND, and other memory and storage products we manufacture, which account for substantially all of our revenue.

## Qimonda

On January 20, 2011, Dr. Michael Jaffé, administrator for Qimonda's insolvency proceedings, filed suit against Micron and Micron Semiconductor B.V. ("Micron B.V."), in the District Court of Munich, Civil Chamber. The complaint seeks to void, under Section 133 of the German Insolvency Act, a share purchase agreement between Micron B.V. and Qimonda signed in fall 2008, pursuant to which Micron B.V. purchased substantially all of Qimonda's shares of Inotera (the "Inotera Shares"), representing approximately 18% of Inotera's outstanding shares at that time, and seeks an order requiring us to re-transfer those shares to the Qimonda estate. The complaint also seeks, among other things, to recover damages for the alleged value of the joint venture relationship with Inotera and to terminate, under Sections 103 or 133 of the German Insolvency Code, a patent cross-license between us and Qimonda entered into at the same time as the share purchase agreement.

Following a series of hearings with pleadings, arguments, and witnesses on behalf of the Qimonda estate, on March 13, 2014, the court issued judgments: (1) ordering Micron B.V. to pay approximately \$1 million in respect of certain Inotera Shares sold in connection with the original share purchase; (2) ordering Micron B.V. to disclose certain information with respect to any Inotera Shares sold by it to third parties; (3) ordering Micron B.V. to disclose the benefits derived by it from ownership of the Inotera Shares, including in particular, any profits distributed on the Inotera Shares and all other benefits; (4) denying Qimonda's claims against Micron for any damages relating to the joint venture relationship with Inotera; and (5) determining that Qimonda's obligations under the patent cross-license agreement are canceled. In addition, the court issued interlocutory judgments ordering, among other things: (1) that Micron B.V. transfer to the Qimonda estate the Inotera Shares still owned by Micron B.V. and pay to the Qimonda estate compensation in an amount to be specified for any Inotera Shares sold to third parties; and (2) that Micron B.V. pay the Qimonda estate as compensation an amount to be specified for benefits derived by Micron B.V. from ownership of the Inotera Shares. The interlocutory judgments had no immediate, enforceable effect and Micron, accordingly, has been able to continue to operate with full control of the Inotera Shares subject to further developments in the case. On April 17, 2014, Micron and Micron B.V. filed a notice of appeal with the German Appeals Court challenging the District Court's decision. After opening briefs, the Appeals Court held a hearing on the matter on July 9, 2015, and thereafter appointed an independent expert to perform an evaluation of Dr. Jaffé's claims that the amount Micron paid for Qimonda was less than fair market value. On January 25, 2018, the court-appointed expert issued a report concluding that the amount paid by Micron was within an acceptable fair-value range. The Appeals Court held a subsequent hearing on April 30, 2019, and on May 28, 2019, the Appeals Court remanded the case to the expert for supplemental expert opinion. On March 31, 2020, the expert presented a revised opinion to the Appeals Court which reaffirmed the earlier view that the amount paid by Micron was still within an acceptable range of fair value. On March 4, 2021, the Appeals Court issued an order setting forth a new legal view that whether the 2008 sale of Inotera Shares is voidable depends on the question whether, in October 2008, Qimonda had a restructuring plan in place, and whether Micron was aware of and reasonably relied on that restructuring plan sufficient to form a belief that Qimonda was not imminently illiquid.

## Antitrust Matters

On April 27, 2018, a complaint was filed against Micron and other DRAM suppliers in the U.S. District Court for the Northern District of California. Subsequently, two substantially identical cases were filed in the same court. The lawsuits purported to be on behalf of a nationwide class of indirect purchasers of DRAM products. On September 3, 2019, the District Court granted Micron's motion to dismiss and allowed the plaintiffs the opportunity to file a consolidated, amended complaint. On October 28, 2019, the plaintiffs filed a consolidated, amended complaint that purported to be on behalf of a nationwide class of indirect purchasers of DRAM products. The amended complaint asserted claims based on alleged price-fixing of DRAM products under federal and state law during the period from June 1, 2016 to at least February 1, 2018, and sought treble monetary damages, costs, interest, attorneys' fees, and other injunctive and equitable relief. On December 21, 2020, the District Court dismissed the plaintiffs' claims and entered judgment against them. On January 19, 2021, the plaintiffs filed a notice of appeal to the U.S. Court of Appeals for the Ninth Circuit. On May 3, 2021, several plaintiffs filed a substantially identical complaint in the U.S. District Court for the Northern District of California purportedly on behalf of a nationwide class of indirect purchasers of DRAM products.

On June 26, 2018, a complaint was filed against Micron and other DRAM suppliers in the U.S. District Court for the Northern District of California. Subsequently, four substantially identical cases were filed in the same court. On October 28, 2019, the plaintiffs filed a consolidated, amended complaint. The consolidated complaint purported to be on behalf of a nationwide class of direct purchasers of DRAM products. The consolidated complaint asserted claims based on alleged price-fixing of DRAM products under federal and state law during the period from June 1, 2016 through at least February 1, 2018, and sought treble monetary damages, costs, interest, attorneys' fees, and other injunctive and equitable relief. On December 21, 2020, the District Court granted Micron's motion to dismiss and granted the plaintiffs permission to file a further amended complaint. On January 11, 2021, the plaintiffs filed a further amended complaint asserting substantially the same claims and seeking the same relief.

Additionally, six cases have been filed in the following Canadian courts: Superior Court of Quebec, the Federal Court of Canada, the Ontario Superior Court of Justice, and the Supreme Court of British Columbia. The substantive allegations in these cases are similar to those asserted in the cases filed in the United States.

On May 15, 2018, the Chinese State Administration for Market Regulation ("SAMR") notified Micron that it was investigating potential collusion and other anticompetitive conduct by DRAM suppliers in China. On May 31, 2018, SAMR made unannounced visits to our sales offices in Beijing, Shanghai, and Shenzhen to seek certain information as part of its investigation. We are cooperating with SAMR in its investigation.

## Securities Matters

On March 5, 2019, a derivative complaint was filed by a shareholder against certain current and former officers and directors of Micron, allegedly on behalf of and for the benefit of Micron, in the U.S. District Court for the District of Delaware alleging securities fraud, breaches of fiduciary duties, and other violations of law involving misrepresentations about purported anticompetitive behavior in the DRAM industry. The complaint seeks damages, fees, interest, costs, and other appropriate relief.

On February 9, 2021, a derivative complaint was filed by a shareholder against Sanjay Mehrotra and other current and former directors of Micron, allegedly on behalf of and for the benefit of Micron, in the U.S. District Court for the District of Delaware alleging violations of securities laws, breaches of fiduciary duties, and other violations of law involving allegedly false and misleading statements about Micron's commitment to diversity and progress in diversifying its workforce, executive leadership, and Board of Directors. The complaint seeks damages, fees, interest, costs, and an order requiring Micron to take various actions to allegedly improve its corporate governance and internal procedures.

## Other

On December 5, 2017, Micron filed a complaint against UMC and Jinhua in the U.S. District Court for the Northern District of California. The complaint alleges that UMC and Jinhua violated the Defend Trade Secrets Act, the civil provisions of the Racketeer Influenced and Corrupt Organizations Act, and California's Uniform Trade Secrets Act by misappropriating Micron's trade secrets and other misconduct. Micron's complaint seeks damages, restitution, disgorgement of profits, injunctive relief, and other appropriate relief.

On June 13, 2019, current Micron employee, Chris Manning, filed a putative class action lawsuit on behalf of Micron employees subject to the Idaho Wage Claim Act who earned a performance-based bonus after the conclusion of 2018 whose performance rating was calculated based upon a mandatory percentage distribution range of performance ratings. On July 12, 2019, Manning and three other Company employees filed an amended complaint as putative class action representatives. On behalf of themselves and the putative class, Manning and the three other plaintiffs assert claims for violation of the Idaho Wage Claim Act, breach of contract, breach of the covenant of good faith and fair dealing, and fraud. On June 24, 2020, the court entered judgment in favor of Micron based on the statute of limitations, and the plaintiffs filed a notice of appeal on July 23, 2020.

On July 31, 2020, Micron and Intel entered into a binding arbitration agreement under which the parties agreed to present to an arbitral panel various financial disputes related to the IMFT joint venture between Micron and Intel, which ended October 31, 2019, and to other agreements relating to the joint development, production, and sale of non-volatile memory products. Each party alleges that the other owes damages relating to allegations of breach of one or more agreements.

On July 13, 2015, Allied Telesis, Inc. and Allied Telesis International (Asia) Pte Ltd. filed a complaint against Micron in the Superior Court of California in Santa Clara alleging breach of implied and express warranties and fraudulent inducement to contract arising from plaintiffs' purchase of certain allegedly defective DDR1 products between 2008 and 2010. Through subsequent amendments to the complaint, the plaintiffs substituted Allied Telesis K.K. as plaintiff, withdrew the warranty claims, and added claims of fraudulent concealment, negligent misrepresentation, negligence, and strict products liability. The plaintiff's amended complaint seeks an unspecified award of damages, including punitive damages and lost profits. On September 3, 2020, the Superior Court granted summary judgment dismissing the claims for negligence and strict products liability and denied summary judgment as to the claims for negligent misrepresentation, fraudulent concealment, and fraudulent inducement to contract. A trial is scheduled to begin on September 13, 2021.

In the normal course of business, we are a party to a variety of agreements pursuant to which we may be obligated to indemnify another party. It is not possible to predict the maximum potential amount of future payments under these types of agreements due to the conditional nature of our obligations and the unique facts and circumstances involved in each particular agreement. Historically, our payments under these types of agreements have not had a material adverse effect on our business, results of operations, or financial condition.

We are unable to predict the outcome of the patent matters, Qimonda matter, antitrust matters, securities matters, binding arbitration with Intel, or any other matters noted above, and cannot make a reasonable estimate of the potential loss or range of possible losses. A determination that our products or manufacturing processes infringe the intellectual property rights of others or entering into a license agreement covering such intellectual property could result in significant liability and/or require us to make material changes to our products and/or manufacturing processes. Any of the foregoing, as well as the resolution of any other legal matter noted above, could have a material adverse effect on our business, results of operations, or financial condition.

We are currently a party to legal actions other than those described in this note arising from the normal course of business, none of which are expected to have a material adverse effect on our business, results of operations, or financial condition.

## Equity

### Micron Shareholders' Equity

**Common Stock Repurchases:** Our Board of Directors has authorized the discretionary repurchase of up to \$10 billion of our outstanding common stock through open-market purchases, block trades, privately-negotiated transactions, derivative transactions, and/or pursuant to Rule 10b5-1 trading plans. The repurchase authorization has no expiration date, does not obligate us to acquire any common stock, and is subject to market conditions and our ongoing determination of the best use of available cash. In the third quarter and first nine months of 2021, we repurchased 1.7 million shares of our common stock for \$150 million. In the third quarter and first nine months of 2020, we repurchased 0.9 million shares of our common stock for \$40 million, and 2.8 million shares of our common stock for \$134 million, respectively. Through June 3, 2021, we had repurchased an aggregate of \$2.99 billion under the authorization. The shares were recorded as treasury stock.



**Accumulated Other Comprehensive Income:** Changes in accumulated other comprehensive income by component for the nine months ended June 3, 2021 were as follows:

	Gains (Losses) on Derivative Instruments	Pension Liability Adjustments	Unrealized Gains (Losses) on Investments	Cumulative Foreign Currency Translation Adjustment	Total
As of September 3, 2020	\$ 45	\$ 19	\$ 8	\$ (1)	\$ 71
Other comprehensive income before reclassifications	(8)	—	(5)	1	(12)
Amount reclassified out of accumulated other comprehensive income	(30)	1	(3)	—	(32)
Tax effects	18	—	2	—	20
Other comprehensive income (loss)	(20)	1	(6)	1	(24)
As of June 3, 2021	\$ 25	\$ 20	\$ 2	\$ —	\$ 47

## Fair Value Measurements

The estimated fair values and carrying values of our outstanding debt instruments (excluding the carrying value of equity components of our convertible notes) were as follows:

As of	June 3, 2021		September 3, 2020	
	Fair Value	Carrying Value	Fair Value	Carrying Value
Notes	\$ 6,545	\$ 5,965	\$ 6,710	\$ 6,026
Convertible notes	1,097	152	634	131

The fair values of our convertible notes were determined based on Level 2 inputs, including the trading price of our convertible notes when available, our stock price, and interest rates based on similar debt issued by parties with credit ratings similar to ours. The fair values of our other debt instruments were estimated based on Level 2 inputs, including discounted cash flows, the trading price of our notes when available, and interest rates based on similar debt issued by parties with credit ratings similar to ours.

Assets classified as held for sale are carried at the lower of fair value less cost to sell or carrying value. Significant judgments and assumptions are required to estimate their fair values. Actual selling prices could vary significantly from our estimated fair value and we could recognize additional losses in the event that the sales prices of assets classified as held for sale are lower than their carrying values.



# Derivative Instruments

	Notional or Contractual Amount	Fair Value of	
		Assets <sup>(1)</sup>	Liabilities <sup>(2)</sup>
As of June 3, 2021			
Derivative instruments with hedge accounting designation			
Cash flow currency hedges	\$ 3,842	\$ 30	\$ (65)
Cash flow commodity hedges	41	3	—
Fair value interest rate hedges	900	—	(2)
Derivative instruments without hedge accounting designation			
Non-designated currency hedges	877	1	(1)
Convertible notes settlement obligation	3	—	(25)
		\$ 34	\$ (93)
As of September 3, 2020			
Derivative instruments with hedge accounting designation			
Cash flow currency hedges	\$ 1,845	\$ 41	\$ (2)
Derivative instruments without hedge accounting designation			
Non-designated currency hedges	1,587	4	(1)
		\$ 45	\$ (3)

<sup>(1)</sup> Included in receivables – other and other noncurrent assets.

<sup>(2)</sup> Included in accounts payable and accrued expenses – other and other noncurrent liabilities.

## Derivative Instruments with Hedge Accounting Designation

**Cash Flow Hedges:** We utilize forward and swap contracts that generally mature within two years designated as cash flow hedges for our exposure to changes in currency exchange rates or commodity prices for certain capital expenditures and manufacturing costs. Forward and swap contracts are measured at fair value based on market-based observable inputs including market spot and forward rates, interest rates, and credit-risk spreads (Level 2). We do not use derivative instruments for speculative purposes. We recognized losses of \$25 million and \$8 million for the third quarter and first nine months of 2021, respectively, and losses of \$6 million and \$20 million for the third quarter and first nine months of 2020, respectively, in accumulated other comprehensive income from cash flow hedges. We recognized losses of \$11 million and \$10 million for the first nine months of 2021 and 2020, respectively, in cost of goods sold related to the amounts excluded from hedge effectiveness testing. The amounts for the third quarters of 2021 and 2020 were not significant. We reclassified \$20 million and \$30 million of gains for the third quarter and first nine months of 2021, respectively, from accumulated other comprehensive income to earnings, primarily to cost of goods sold. The amounts for the third quarter and first nine months of 2020 were not significant. As of June 3, 2021, we expect to reclassify \$18 million of pre-tax gains related to cash flow hedges from accumulated other comprehensive income into earnings in the next 12 months. Substantially all of the cash flow hedging relates to foreign currency contracts for all periods presented, the commodity hedges had an immaterial impact.

**Fair Value Hedges:** We utilize fixed-to-floating interest rate swaps designated as fair value hedges to minimize certain exposures to changes in the fair value of fixed-rate debt that result from fluctuations in benchmark interest rates. Interest rate swaps are measured at fair value based on market-based observable inputs including interest rates and credit-risk spreads (Level 2). The changes in the fair values of derivatives designated as fair value hedges and the offsetting changes in the fair values of the hedged items are recognized in earnings. Any difference is reflected in earnings. When a derivative is no longer designated as a fair value hedge for any reason, including termination and maturity, the remaining unamortized difference between the carrying value of the hedged item at that time and the face value of the hedged item is amortized to earnings over the remaining life of the hedged item, or immediately if the hedged item has matured or been extinguished. The effects of fair value hedges on our

consolidated statements of operations, recognized in interest expense, were not significant for the periods presented.

## Derivative Instruments without Hedge Accounting Designation

**Currency Derivatives:** We generally utilize a rolling hedge strategy with currency forward contracts that mature within three months to hedge our exposures of monetary assets and liabilities from changes in currency exchange rates. At the end of each reporting period, monetary assets and liabilities denominated in currencies other than the U.S. dollar are remeasured into U.S. dollars and the associated outstanding forward contracts are marked to market. Currency forward contracts are valued at fair values based on the middle of bid and ask prices of dealers or exchange quotations (Level 2). Realized and unrealized gains and losses on derivative instruments without hedge accounting designation as well as the changes in the underlying monetary assets and liabilities from changes in currency exchange rates are included in other non-operating income (expense), net. Gains and losses for derivative instruments without hedge accounting designation were not significant for the periods presented.

## Equity Plans

As of June 3, 2021, 105 million shares of our common stock were available for future awards under our equity plans.

### Restricted Stock and Restricted Stock Units (“Restricted Stock Awards”)

Restricted Stock Awards activity is summarized as follows:

	Quarter ended		Nine months ended	
	June 3, 2021	May 28, 2020	June 3, 2021	May 28, 2020
Restricted stock award shares granted	1	—	11	8
Weighted-average grant-date fair value per share	\$ 84.73	\$ 45.78	\$ 53.00	\$ 46.37

### Employee Stock Purchase Plan (“ESPP”)

ESPP activity is summarized as follows:

Nine months ended	June 3, 2021	May 28, 2020
Shares purchased	2	2
Purchase price per share	\$ 42.55	\$ 38.16

### Stock-based Compensation Expense

Stock based compensation expense recognized in our statements of operations is presented below. Stock-based compensation expense of \$31 million and \$42 million was capitalized and remained in inventory as of June 3, 2021 and September 3, 2020, respectively.

	Quarter ended		Nine months ended	
	June 3, 2021	May 28, 2020	June 3, 2021	May 28, 2020
Stock-based compensation expense by caption				
Cost of goods sold	\$ 45	\$ 34	\$ 143	\$ 102
Research and development	29	22	82	63
Selling, general, and administrative	24	26	77	74
	<u>\$ 98</u>	<u>\$ 82</u>	<u>\$ 302</u>	<u>\$ 239</u>
Stock-based compensation expense by type of award				
Restricted stock awards	\$ 84	\$ 70	\$ 255	\$ 197
Employee stock purchase plan	12	9	39	28
Stock options	2	3	8	14
	<u>\$ 98</u>	<u>\$ 82</u>	<u>\$ 302</u>	<u>\$ 239</u>

As of June 3, 2021, \$754 million of total unrecognized compensation costs for unvested awards, before the effect of any future forfeitures, was expected to be recognized through the third quarter of 2025, resulting in a weighted-average period of 1.3 years.

## Revenue and Customer Contract Liabilities

### Revenue by Technology

	Quarter ended		Nine months ended	
	June 3, 2021	May 28, 2020	June 3, 2021	May 28, 2020
DRAM	\$ 5,448	\$ 3,587	\$ 13,948	\$ 10,139
NAND	1,812	1,665	5,036	4,601
Other (primarily 3D XPoint memory and NOR)	162	186	447	639
	<u>\$ 7,422</u>	<u>\$ 5,438</u>	<u>\$ 19,431</u>	<u>\$ 15,379</u>

See "Segment and Other Information" for disclosure of disaggregated revenue by market segments.

### Contract Liabilities

Our contract liabilities from customer advances are for advance payments received from customers to secure product in future periods. Other contract liabilities consist of amounts received in advance of satisfying performance obligations. These balances are reported within other current liabilities and other noncurrent liabilities. The following table presents contract liabilities:

As of	June 3, 2021	September 3, 2020
Contract liabilities from customer advances	\$ 73	\$ 40
Other contract liabilities	20	25
	<u>\$ 93</u>	<u>\$ 65</u>

Revenue recognized during the first nine months of 2021 from the ending balance of 2020 included \$43 million from meeting performance obligations of other contract liabilities and shipments against customer advances.

Revenue is primarily recognized at a point in time when control of the promised goods is transferred to our customers in an amount that reflects the consideration we expect to be entitled to in exchange for those goods. Substantially all contracts with our customers are short-term in duration at fixed, negotiated prices with payment

generally due shortly after delivery. From time to time, we have contracts with initial terms that include performance obligations that extend, in some cases, beyond one year. As of June 3, 2021, we expect future revenue related to these longer-term contracts of approximately \$229 million, of which approximately 91% relates to performance obligations and product shipments we expect to satisfy within the next 12 months and 9% beyond 12 months.

As of June 3, 2021 and September 3, 2020, other current liabilities included \$635 million and \$466 million, respectively, for estimates of consideration payable to customers, including estimates for pricing adjustments and returns.

## Other Operating (Income) Expense, Net

	Quarter ended		Nine months ended	
	June 3, 2021	May 28, 2020	June 3, 2021	May 28, 2020
Patent license charges	\$ —	\$ —	\$ 128	\$ —
Other	(26)	6	(27)	8
	<u>\$ (26)</u>	<u>\$ 6</u>	<u>\$ 101</u>	<u>\$ 8</u>

## Other Non-Operating Income (Expense), Net

	Quarter ended		Nine months ended	
	June 3, 2021	May 28, 2020	June 3, 2021	May 28, 2020
Gain (loss) on investments	\$ 45	\$ 14	\$ 61	\$ 18
Gain (loss) on debt prepayments, repurchases, and conversions	—	(2)	—	40
Other	—	(2)	1	(3)
	<u>\$ 45</u>	<u>\$ 10</u>	<u>\$ 62</u>	<u>\$ 55</u>

## Income Taxes

Our income tax (provision) benefit consisted of the following:

	Quarter ended		Nine months ended	
	June 3, 2021	May 28, 2020	June 3, 2021	May 28, 2020
Income before taxes	\$ 1,806	\$ 870	\$ 3,282	\$ 1,858
Income tax (provision) benefit	(65)	(68)	(164)	(144)
Effective tax rate	3.6 %	7.8 %	5.0 %	7.8 %

In the third quarter of 2021, we recorded a \$104 million tax benefit on the discrete \$435 million charge to adjust our Lehi assets held for sale to their estimated net realizable value.

We operate in a number of jurisdictions outside the United States, including Singapore, where we have tax incentive arrangements. These incentives expire, in whole or in part, at various dates through 2034 and are conditional, in part, upon meeting certain business operations and employment thresholds. The effect of tax incentive arrangements reduced our tax provision by \$276 million (benefiting our diluted earnings per share by \$0.24) and \$377 million (\$0.33 per diluted share) for the third quarter and first nine months of 2021, respectively, and by \$70 million (\$0.06 per diluted share) and \$78 million (\$0.07 per diluted share) for the third quarter and first nine months of 2020, respectively.

As of June 3, 2021, gross unrecognized tax benefits were \$632 million, substantially all of which would affect our effective tax rate in the future, if recognized. Increases to unrecognized tax benefits were primarily due to tax return positions taken during 2021. Amounts accrued for interest and penalties related to uncertain tax positions were not significant for any period presented. We are currently under audit by the Internal Revenue Service for our 2018 and 2019 tax years. We believe that adequate amounts of taxes and related interest and penalties have been provided.

## Earnings Per Share

	Quarter ended		Nine months ended	
	June 3, 2021	May 28, 2020	June 3, 2021	May 28, 2020
Net income attributable to Micron – Basic	\$ 1,735	\$ 803	\$ 3,141	\$ 1,699
Assumed conversion of debt	—	—	—	(4)
Net income attributable to Micron – Diluted	\$ 1,735	\$ 803	\$ 3,141	\$ 1,695
Weighted-average common shares outstanding – Basic	1,121	1,111	1,119	1,110
Dilutive effect of equity plans and convertible notes	24	18	22	21
Weighted-average common shares outstanding – Diluted	1,145	1,129	1,141	1,131
Earnings per share				
Basic	\$ 1.55	\$ 0.72	\$ 2.81	\$ 1.53
Diluted	1.52	0.71	2.75	1.50

Antidilutive potential common stock shares that could dilute basic earnings per share in the future were 1 million for the third quarter and first nine months of 2021, and were 9 million and 5 million for the third quarter and first nine months of 2020, respectively.

## Segment and Other Information

Segment information reported herein is consistent with how it is reviewed and evaluated by our chief operating decision maker. We have the following four business units, which are our reportable segments:

**Compute and Networking Business Unit (“CNBU”):** Includes memory products sold into client, cloud server, enterprise, graphics, and networking markets.

**Mobile Business Unit (“MBU”):** Includes memory and storage products sold into smartphone and other mobile-device markets.

**Storage Business Unit (“SBU”):** Includes SSDs and component-level solutions sold into enterprise and cloud, client, and consumer storage markets, and other discrete storage products sold in component and wafer form.

**Embedded Business Unit (“EBU”):** Includes memory and storage products sold into automotive, industrial, and consumer markets.

Certain operating expenses directly associated with the activities of a specific segment are charged to that segment. Other indirect operating income and expenses are generally allocated to segments based on their respective percentage of cost of goods sold or forecasted wafer production. We do not identify or report internally our assets (other than goodwill) or capital expenditures by segment, nor do we allocate gains and losses from equity method investments, interest, other non-operating income or expense items, or taxes to segments.

	Quarter ended		Nine months ended	
	June 3, 2021	May 28, 2020	June 3, 2021	May 28, 2020
Revenue				
CNBU	\$ 3,304	\$ 2,218	\$ 8,486	\$ 6,164
MBU	1,999	1,525	5,311	4,240
SBU	1,009	1,014	2,770	2,852
EBU	1,105	675	2,849	2,105
All Other	5	6	15	18
	<u>\$ 7,422</u>	<u>\$ 5,438</u>	<u>\$ 19,431</u>	<u>\$ 15,379</u>
Operating income (loss)				
CNBU	\$ 1,342	\$ 448	\$ 2,534	\$ 1,132
MBU	683	295	1,517	773
SBU	53	177	(2)	(42)
EBU	282	64	539	256
All Other	4	(3)	6	(2)
	<u>2,364</u>	<u>981</u>	<u>4,594</u>	<u>2,117</u>
Unallocated				
Inventory accounting policy change to FIFO	—	—	(133)	—
Change in inventory cost absorption	—	—	(160)	—
3D XPoint inventory write-down	—	—	(49)	—
Stock-based compensation	(98)	(82)	(302)	(239)
Patent license charges	—	—	(128)	—
Restructure and asset impairments	(453)	(4)	(466)	(10)
Other	(14)	(7)	(28)	(22)
	<u>(565)</u>	<u>(93)</u>	<u>(1,266)</u>	<u>(271)</u>
Operating income	<u>\$ 1,799</u>	<u>\$ 888</u>	<u>\$ 3,328</u>	<u>\$ 1,846</u>

## Certain Concentrations

Revenue from WPG Holdings Limited was 13% of total revenue for the first nine months of 2021.

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

*This discussion should be read in conjunction with the consolidated financial statements and accompanying notes included in our Annual report on Form 10-K for the year ended September 3, 2020. All period references are to our fiscal periods unless otherwise indicated. Our fiscal year is the 52 or 53-week period ending on the Thursday closest to August 31. Fiscal 2021 contains 52 weeks and our fiscal 2020 contained 53 weeks. Our third quarters and first nine months of 2020 and 2021 each contained 13 and 39 weeks, respectively. All tabular dollar amounts are in millions, except per share amounts.*

## Overview

Micron Technology, Inc., including its consolidated subsidiaries, is an industry leader in innovative memory and storage solutions transforming how the world uses information to enrich life *for all*. With a relentless focus on our

customers, technology leadership, and manufacturing and operational excellence, Micron delivers a rich portfolio of high-performance DRAM, NAND, and NOR memory and storage products through our Micron® and Crucial® brands. Every day, the innovations that our people create fuel the data economy, enabling advances in artificial intelligence and 5G applications that unleash opportunities — from the data center to the intelligent edge and across the client and mobile user experience.

We manufacture our products at wholly-owned facilities and also utilize subcontractors to perform certain manufacturing processes. In recent years, we have increased our manufacturing scale and product diversity through strategic acquisitions, expansion, and various partnering arrangements.

We make significant investments to develop proprietary product and process technology, which are implemented in our manufacturing facilities. Advancements in product and process technology, such as our leading-edge process technology and 3D NAND architecture, generally increase the density per wafer and reduce manufacturing costs of each generation of product. We continue to introduce new generations of products that offer improved performance characteristics, including higher data transfer rates, advanced packaging solutions, lower power consumption, improved read/write reliability, and increased memory density. A significant portion of our revenues are from sales of managed NAND and SSD products, which incorporate NAND, a controller, firmware, and in some cases, DRAM. An increasing portion of our SSDs incorporate proprietary controllers and firmware that we have developed. Development of advanced technologies enables us to diversify our product portfolio toward a richer mix of differentiated, high-value solutions and to target high-growth markets.

We face intense competition in the semiconductor memory and storage markets and to remain competitive we must continuously develop and implement new products and technologies and decrease manufacturing costs. Our success is largely dependent on obtaining returns on our research and development (“R&D”) investments, efficient utilization of our manufacturing infrastructure, development and integration of advanced product and process technologies, market acceptance of our diversified portfolio of semiconductor-based memory and storage solutions, and return-driven capital spending.

### Lehi, Utah Fab and 3D XPoint

In the second quarter of 2021, we updated our portfolio strategy to further strengthen our focus on memory and storage innovations for the data center market. In connection therewith, we determined that there was insufficient market validation to justify the ongoing investments required to commercialize 3D XPoint at scale. Accordingly, we ceased development of 3D XPoint technology and engaged in discussions with potential buyers for the sale of our facility located in Lehi that was dedicated to 3D XPoint production. As a result, we classified the property, plant, and equipment as held for sale and ceased depreciating the assets. On June 30, 2021, we announced that we have entered into a definitive agreement to sell our Lehi facility to TI for cash consideration of \$900 million. The sale is anticipated to close later this calendar year.

In the third quarter of 2021, we recognized a charge of \$435 million included in restructure and asset impairments (and a tax benefit of \$104 million included in income tax (provision) benefit) to write down the assets held for sale to the expected consideration, net of estimated selling costs, to be realized from the sale of these assets and liabilities. In the second quarter of 2021, we also recognized a charge of \$49 million to cost of goods sold to write down 3D XPoint inventory due to our decision to cease further development of this technology. Our 3D XPoint technology development and Lehi facility operations are primarily included in our CNBU business unit.

Assets classified as held for sale are carried at the lower of fair value less cost to sell or carrying value. We could recognize additional losses as a result of changes in the assets and liabilities prior to the closing date of the transaction.

### Impact of COVID-19 on Our Business

Events surrounding the ongoing COVID-19 pandemic initially resulted in a reduction in economic activity across the globe, and the timing and extent of the ongoing economic recovery remains uncertain. As a result, we have experienced volatility in the markets that our products are sold into, driven by the move to a stay-at-home economy and fluctuations in consumer and business spending, which has affected demand for certain of our products. The ultimate extent to which COVID-19 will impact our business depends on future developments, which are highly uncertain and very difficult to predict, including the effectiveness and utilization of vaccines for COVID-19 and its

variants, new information that may emerge concerning the severity of COVID-19 and its variants, and actions to contain or limit their spread.

From the start of the COVID-19 pandemic, we proactively implemented preventative protocols, which we continuously assess and update for changes in conditions and emerging trends, such as recent increases in COVID-19 infections in Malaysia, India, and Taiwan, where we have facilities and a significant number of employees, and increasing levels of vaccinations in the United States and other countries. These preventative protocols are intended to safeguard our team members, contractors, suppliers, customers, distributors, and communities, and to ensure business continuity in the event government restrictions or severe outbreaks impact our operations at certain sites. While nearly all our global manufacturing sites are currently operating with close to full staff and at normal capacity levels, our Muar, Malaysia facility has recently been operating at reduced staffing and capacity levels. In addition, we have experienced constraints on our engineering and other activities at our India facilities. Our other facilities could also be required to temporarily curtail production levels or temporarily cease operations based on government mandates or our health and safety protocols. We may be required, or deem it to be in the best interest of our employees, customers, partners, suppliers, and stakeholders, to alter our business operations in order to maintain a healthy and safe environment. It is not clear what potential effects any such alterations or modifications may have on our business, including effects on our customers, employees, and prospects, or on our financial results. We are following government policies and recommendations designed to slow the spread of COVID-19 and remain committed to the health and safety of our team members, contractors, suppliers, customers, distributors, and communities.

We continuously assess our efforts to respond to the COVID-19 pandemic, which have included the following:

- In locations experiencing continued community COVID-19 infections, we prohibit onsite visitors and are generally requiring team members to work from home where possible. Where work from home is not possible, all on-site team members must complete health questionnaires, pass through thermal scanning equipment to ensure they do not have an elevated body temperature, and adhere to physical distancing requirements, mask protocols, and team member separation protocols. We have also enhanced our contact tracing, significantly decreased business travel, and where possible, made ventilation and other health and safety enhancements at our facilities and provided COVID-19 testing and vaccinations for our team members.
- To respond to changing market conditions, we continue to work closely with our customer base to best match our supply with the evolving market demand.
- We evaluate our supply chain and communicate with our suppliers to identify supply gaps and have taken steps to ensure continuity. In some cases, we have added alternative suppliers and increased our on-hand inventory of raw materials needed in our operations.
- We have added assembly and test capacity to provide redundant manufacturing capability through our network of captive operations and external partners.
- We have evaluated all our construction projects across our global manufacturing operations and enacted protocols to enhance the safety of our team members, suppliers, and contractors.
- We have developed strategies and implemented measures to respond to a variety of potential economic scenarios, such as limitations on new hiring and business travel and reductions of discretionary spending.
- We are working with government authorities in the jurisdictions where we operate, and continuing to monitor our operations in an effort to ensure we follow government requirements, relevant regulations, industry standards, and best practices to help safeguard our team members, while safely continuing operations at our sites across the globe.

We believe these actions are appropriate and prudent to safeguard our team members, contractors, suppliers, customers, and communities, while allowing us to safely continue operations. We cannot predict how the steps we, our team members, government entities, suppliers, or customers take in response to the COVID-19 pandemic will ultimately impact our business, outlook, or results of operations.

## Product Technologies

Our product portfolio of memory and storage solutions, advanced solutions, and storage platforms is based on our high-performance semiconductor memory and storage technologies, including DRAM, NAND, NOR, and other technologies. We sell our products into various markets through our business units in numerous forms, including wafers, components, modules, SSDs, managed NAND, and MCP products. Our system-level solutions, including



SSDs, managed NAND, and MCPs, typically include a controller and firmware and in some cases combine DRAM, NAND, and/or NOR.

**DRAM:** DRAM products are dynamic random access memory semiconductor devices with low latency that provide high-speed data retrieval with a variety of performance characteristics. DRAM products lose content when power is turned off (“volatile”) and are most commonly used in client, cloud server, enterprise, networking, graphics, industrial, and automotive markets. Low-power DRAM (“LPDRAM”) products, which are engineered to meet standards for performance and power consumption, are sold into smartphone and other mobile-device markets (including client markets for Chromebooks and notebook PCs), as well as into the automotive, industrial, and consumer markets.

**NAND:** NAND products are non-volatile, re-writeable semiconductor storage devices that provide high-capacity, low-cost storage with a variety of performance characteristics. NAND is used in SSDs for the enterprise and cloud, client, and consumer markets and in removable storage markets. Managed NAND is used in smartphones and other mobile devices, and in consumer, automotive, and embedded markets. Low-density NAND is ideal for applications like automotive, surveillance, machine-to-machine, automation, printer, and home networking.

**NOR:** NOR products are non-volatile re-writable semiconductor memory devices that provide fast read speeds. NOR is most commonly used for reliable code storage (e.g., boot, application, operating system, and execute-in-place code in an embedded system) and for frequently changing small data storage and is ideal for automotive, industrial, networking, and consumer applications.

**3D XPoint:** 3D XPoint is a class of non-volatile technology between DRAM and NAND in the memory and storage hierarchy. We have ceased development of our 3D XPoint technology and products.

## Results of Operations

### Consolidated Results

	Third Quarter 2021		Second Quarter 2021		Third Quarter 2020		Nine Months					
							2021		2020			
Revenue	\$	7,422	100%	\$	6,236	100%	\$	19,431	100%	\$	15,379	100%
Cost of goods sold		4,296	58%		4,587	74%		12,920	66%		10,895	71%
Gross margin		3,126	42%		1,649	26%		6,511	34%		4,484	29%
Research and development		670	9%		641	10%		1,958	10%		1,970	13%
Selling, general, and administrative		230	3%		214	3%		658	3%		650	4%
Restructure and asset impairments		453	6%		5	—%		466	2%		10	—%
Other operating (income) expense, net		(26)	—%		126	2%		101	1%		8	—%
Operating income		1,799	24%		663	11%		3,328	17%		1,846	12%
Interest income (expense), net		(38)	(1)%		(32)	(1)%		(108)	(1)%		(43)	—%
Other non-operating income (expense), net		45	1%		4	—%		62	—%		55	—%
Income tax (provision) benefit		(65)	(1)%		(48)	(1)%		(164)	(1)%		(144)	(1)%
Equity in net income (loss) of equity method investees		(6)	—%		16	—%		23	—%		6	—%
Net income attributable to noncontrolling interests		—	—%		—	—%		—	—%		(21)	—%
Net income attributable to Micron	\$	1,735	23%	\$	603	10%	\$	3,141	16%	\$	1,699	11%

**Total Revenue:** Total revenue for the third quarter of 2021 increased 19% as compared to the second quarter of 2021 primarily due to increases in sales of DRAM and NAND products. Sales of DRAM products for the third quarter of 2021 increased 23% as compared to the second quarter of 2021 primarily due to an approximate 20% increase in average selling prices and a low-single-digit percent increase in bit shipments driven by strong demand across key markets. Sales of NAND products for the third quarter of 2021 increased 10% as compared to the second quarter of 2021 primarily due to a high-single-digit percent increase in average selling prices and a low-single-digit percent increase in bit shipments driven by SSDs and mobile MCPs.

Total revenue for the third quarter and first nine months of 2021 increased 36% and 26%, respectively, as compared to the corresponding periods of 2020 primarily due to increases in DRAM and NAND sales. Sales of DRAM products for the third quarter of 2021 increased 52% as compared to the third quarter of 2020 primarily due to growth in bit shipments in the high-30% range and increases in average selling prices in the low-double-digit percent range, driven by client, mobile, server, and graphics markets. Sales of DRAM products for the first nine months of 2021 increased 38% as compared to the first nine months of 2020 primarily due to growth in bit shipments in the mid-30% range. Sales of NAND products for the third quarter of 2021 increased 9% as compared to the third quarter of 2020 primarily due to increases in bit shipments in the low-30% range driven by consumer and mobile markets, partially offset by an upper-teens percent range decline in average selling prices. Sales of NAND products for the first nine months of 2021 increased 9% as compared to the first nine months of 2020 primarily due to increases in bit shipments in the high-20% range, partially offset by a mid-10% range decline in average selling prices.

**Overall Gross Margin:** Our overall gross margin percentage increased to 42% for the third quarter of 2021 from 26% for the second quarter of 2021, primarily due to higher average selling prices for both DRAM and NAND; one-time impacts of changes in our inventory costing method to FIFO and cost absorption processes in the second quarter of 2021 (as detailed below); and lower Lehi facility and 3D XPoint costs. Our gross margins included the impact of underutilization costs at our Lehi facility of \$54 million for the third quarter of 2021, \$111 million for the second quarter of 2021, and \$155 million for the third quarter of 2020. In the second quarter of 2021, we ceased development of 3D XPoint technology and engaged in discussions with potential buyers for the sale of our Lehi facility that was dedicated to 3D XPoint production. As a result, we classified the property, plant, and equipment as held for sale and ceased depreciating the assets, which reduced our costs by approximately \$75 million in the third quarter of 2021. In the second quarter of 2021, we also recognized a charge of \$49 million to cost of goods sold to write down 3D XPoint inventory. On June 30, 2021, we announced that we have entered into a definitive agreement to sell our Lehi facility to TI. The sale is anticipated to close later this calendar year. When the sale of the Lehi facility is completed our underutilization costs from the facility will be entirely eliminated.

Our overall gross margin percentage increased to 42% for the third quarter of 2021 from 32% for the third quarter of 2020 primarily due to higher DRAM margins resulting from increases in average selling prices and manufacturing cost reductions, which were partially offset by lower NAND margins as declines in average selling prices outpaced manufacturing cost reductions. Our overall gross margin percentage increased to 34% for the first nine months of 2021 from 29% for the first nine months of 2020 primarily due to higher DRAM margins resulting from manufacturing cost reductions and increases in average selling prices, which were partially offset by lower NAND margins as declines in average selling prices outpaced cost reductions. We reduced manufacturing costs for both DRAM and NAND for the third quarter and first nine months of 2021 as compared to the corresponding periods of 2020 through strong execution in delivering products featuring advanced technologies and from continuous improvement initiatives to reduce production costs.

Effective as of the beginning of the second quarter of 2021, we changed our method of inventory costing from average cost to FIFO. Concurrently, as of the beginning of the second quarter of 2021, we modified our inventory cost absorption processes used to estimate inventory values, which affects the timing of when costs are recognized. These changes resulted in a one-time increase to cost of goods sold of approximately \$293 million in the second quarter of 2021.

## Revenue by Business Unit

	Third Quarter 2021		Second Quarter 2021		Third Quarter 2020		Nine Months								
							2021		2020						
CNBU	\$	3,304	45%	\$	2,636	42%	\$	2,218	41%	\$	8,486	44%	\$	6,164	40%
MBU		1,999	27%		1,811	29%		1,525	28%		5,311	27%		4,240	28%
SBU		1,009	14%		850	14%		1,014	19%		2,770	14%		2,852	19%
EBU		1,105	15%		935	15%		675	12%		2,849	15%		2,105	14%
All Other		5	—%		4	—%		6	—%		15	—%		18	—%
	\$	7,422		\$	6,236		\$	5,438		\$	19,431		\$	15,379	

Percentages of total revenue may not total 100% due to rounding.

Changes in revenue for each business unit for the third quarter of 2021 as compared to the second quarter of 2021 were as follows:

- CNBU revenue increased 25% primarily due to broad-based increases in average selling prices.
- MBU revenue increased 10% primarily due to increases in average selling prices driven by demand growth, particularly for MCP products in smartphone markets as 5G momentum increases.
- SBU revenue increased 19% primarily due to bit shipment increases of QLC and other SSD products and increases in average selling prices.
- EBU revenue increased 18% primarily due to strength in the industrial market and increases in average selling prices.

Changes in revenue for each business unit for the third quarter and first nine months of 2021 as compared to the corresponding periods of 2020 were as follows:

- CNBU revenue increased 49% and 38%, respectively, primarily due to broad-based increases in bit shipments across markets and higher average selling prices.
- MBU revenue increased 31% and 25%, respectively, primarily due to increases in bit shipments for high-value mobile MCP products and for the third quarter of 2021, increases in DRAM average selling prices.
- SBU revenue was relatively unchanged as increases in bit shipments for NAND products were offset by declines in average selling prices.
- EBU revenue increased 64% and 35%, respectively, primarily due to increases in bit shipments driven by strong demand growth in automotive and industrial markets.

## Operating Income (Loss) by Business Unit

	Third Quarter 2021		Second Quarter 2021		Third Quarter 2020		Nine Months								
							2021		2020						
CNBU	\$	1,342	41%	\$	709	27%	\$	448	20%	\$	2,534	30%	\$	1,132	18%
MBU		683	34%		464	26%		295	19%		1,517	29%		773	18%
SBU		53	5%		(59)	(7)%		177	17%		(2)	—%		(42)	(1)%
EBU		282	26%		141	15%		64	9%		539	19%		256	12%
All Other		4	80%		2	50%		(3)	(50)%		6	40%		(2)	(11)%
	\$	2,364		\$	1,257		\$	981		\$	4,594		\$	2,117	

Percentages reflect operating income (loss) as a percentage of revenue for each business unit.

Changes in operating income or loss for each business unit for the third quarter of 2021 as compared to the second quarter of 2021 were as follows:

- CNBU operating income increased primarily due to increases in DRAM average selling prices.
- MBU operating income increased primarily due to increases in average selling prices.

- SBU operating margin improved primarily due to increases in NAND average selling prices, cost reductions, and increases in bit shipments.
- EBU operating income increased primarily due to increases in average selling prices and DRAM bit shipments.

Changes in operating income or loss for each business unit for the third quarter and first nine months of 2021 as compared to the corresponding periods of 2020 were as follows:

- CNBU operating income increased primarily due to increases in bit shipments, higher average selling prices, and manufacturing cost reductions.
- MBU operating income increased primarily due to increases in sales of high-value MCP products, manufacturing cost reductions for low-power DRAM, and increases in DRAM bit shipments.
- SBU operating margin for the third quarter of 2021 declined from the third quarter of 2020 primarily due to decreases in selling prices, partially offset by manufacturing cost reductions, and increases in bit shipments. SBU operating margin for the first nine months of 2021 improved from the first nine months of 2020 primarily due to lower manufacturing costs and increases in bit shipments, partially offset by decreases in selling prices.
- EBU operating income increased primarily due to higher bit shipments and reductions in manufacturing costs.

## Operating Expenses and Other

**Research and Development:** R&D expenses vary primarily with the number of development and pre-qualification wafers processed, the cost of advanced equipment dedicated to new product and process development, and personnel costs. Because of the lead times necessary to manufacture our products, we typically begin to process wafers before completion of performance and reliability testing. Development of a product is deemed complete when it is qualified through reviews and tests for performance and reliability. R&D expenses can vary significantly depending on the timing of product qualification.

R&D expenses for the third quarter of 2021 were 5% higher as compared to the second quarter of 2021 primarily due to increases in volumes of development and pre-qualification wafers and employee compensation. R&D expenses for the third quarter and first nine months of 2021 were relatively unchanged as compared to the corresponding periods of 2020.

**Selling, General, and Administrative:** SG&A expenses for the third quarter of 2021 were 7% higher as compared to the second quarter of 2021 and 6% higher as compared to the third quarter of 2020 primarily due to increases in employee compensation, legal fees, and advertising. SG&A expenses for the first nine months of 2021 were relatively unchanged as compared to the corresponding period of 2020.

**Income Taxes:** Our income tax (provision) benefit consisted of the following:

	Third Quarter 2021	Second Quarter 2021	Third Quarter 2020	Nine Months	
				2021	2020
Income before taxes	\$ 1,806	\$ 635	\$ 870	\$ 3,282	\$ 1,858
Income tax (provision) benefit	(65)	(48)	(68)	(164)	(144)
Effective tax rate	3.6 %	7.6 %	7.8 %	5.0 %	7.8 %

Our effective tax rate for the third quarter and first nine months of 2021 decreased as compared to the periods presented as a result of a \$104 million tax benefit on the discrete \$435 million charge to adjust our Lehi assets held for sale to their estimated net realizable value. Other changes to our effective tax rate in the periods presented were primarily due to the geographic mix of our earnings.

We operate in a number of jurisdictions outside the United States, including Singapore, where we have tax incentive arrangements. These incentives expire, in whole or in part, at various dates through 2034 and are conditional, in part, upon meeting certain business operations and employment thresholds. The effect of tax incentive arrangements reduced our tax provision by \$276 million (benefiting our diluted earnings per share by \$0.24) for the third quarter of 2021, \$45 million (\$0.04 per diluted share) for the second quarter of 2021, \$377 million (\$0.33 per

diluted share) for the first nine months of 2021, \$70 million (\$0.06 per diluted share) for the third quarter of 2020, and \$78 million (\$0.07 per diluted share) for the first nine months of 2020.

**Other:** Interest expense for the third quarter of 2021 increased 10% as compared to the second quarter of 2021 primarily due to a decrease in capitalized interest from lower levels of capital projects in process. Interest income for the third quarter of 2021 was relatively unchanged as compared to the second quarter of 2021.

Interest expense for the third quarter and first nine months of 2021 decreased 10% and 6%, respectively, as compared to the corresponding periods of 2020 primarily due to a decrease in interest rates, partially offset by an increase in debt obligations. Interest income for the third quarter and first nine months of 2021 decreased 65% and 72%, respectively, as compared to the corresponding periods of 2020 as a result of decreases in interest rates, partially offset by higher cash and investment balances.

Further discussion of other operating and non-operating income and expenses can be found in “Item 1. Financial Statements – Notes to Consolidated Financial Statements – Equity Plans,” “– Other Operating (Income) Expense, Net” and “– Other Non-Operating Income (Expense), Net.”

## Liquidity and Capital Resources

Our primary sources of liquidity are cash generated from operations and financing obtained from capital markets and financial institutions. Cash generated from operations is highly dependent on selling prices for our products, which can vary significantly from period to period. We are continuously evaluating alternatives for efficiently funding our capital expenditures and ongoing operations. We expect, from time to time, to engage in a variety of financing transactions for such purposes, including the issuance of securities. As of June 3, 2021, \$2.50 billion was available to draw under our Revolving Credit Facility. We expect that our cash and investments, cash flows from operations, and available financing will be sufficient to meet our requirements at least through the next 12 months and thereafter for the foreseeable future.

To develop new product and process technology, support future growth, achieve operating efficiencies, and maintain product quality, we must continue to invest in manufacturing technologies, facilities and equipment, and R&D. We estimate capital expenditures in 2021 for property, plant, and equipment, net of partner contributions, to be somewhat above \$9.5 billion, focused on technology transitions and product enablement. Actual amounts for 2021 will vary depending on market conditions. As of June 3, 2021, we had purchase obligations of approximately \$2.02 billion for the acquisition of property, plant, and equipment, of which approximately \$1.86 billion is expected to be paid within one year.

In May 2018, our Board of Directors authorized the discretionary repurchase of up to \$10 billion of our outstanding common stock through open-market purchases, block trades, privately-negotiated transactions, derivative transactions, and/or pursuant to a Rule 10b5-1 trading plan. The repurchase authorization has no expiration date, does not obligate us to acquire any common stock, and is subject to market conditions and our ongoing determination of the best use of available cash. Since the authorization in May 2018, through June 3, 2021, we had repurchased an aggregate of \$2.99 billion of the authorized amount. See “Item 1. Financial Statements – Notes to Consolidated Financial Statements – Equity.”

Cash and marketable investments totaled \$9.75 billion as of June 3, 2021 and \$9.19 billion as of September 3, 2020. Our investments consist primarily of bank deposits, money market funds, and liquid investment-grade, fixed-income securities, which are diversified among industries and individual issuers. To mitigate credit risk, we invest through high-credit-quality financial institutions and by policy generally limit the concentration of credit exposure by restricting the amount of investments with any single obligor. As of June 3, 2021, \$3.38 billion of our cash and marketable investments was held by our foreign subsidiaries.

## Cash Flows:

	Nine Months	
	2021	2020
Net cash provided by operating activities	\$ 8,584	\$ 6,035
Net cash provided by (used for) investing activities	(8,055)	(4,851)
Net cash provided by (used for) financing activities	(437)	(135)
Effect of changes in currency exchange rates on cash, cash equivalents, and restricted cash	44	(8)
Net increase (decrease) in cash, cash equivalents, and restricted cash	\$ 136	\$ 1,041

**Operating Activities:** Cash provided by operating activities reflects net income adjusted for certain non-cash items, including depreciation expense, amortization of intangible assets, asset impairments, and stock-based compensation, and the effects of changes in operating assets and liabilities. The increase in cash provided by operating activities for the first nine months of 2021 as compared to the first nine months of 2020 was primarily due to higher net income compared with the prior period and changes in working capital.

**Investing Activities:** For the first nine months of 2021, net cash used for investing activities consisted primarily of \$7.67 billion of expenditures for property, plant, and equipment (net of partner contributions) and \$422 million of net outflows from purchases, sales, and maturities of available-for-sale securities.

For the first nine months of 2020, net cash used for investing activities consisted primarily of \$5.77 billion of expenditures for property, plant, and equipment (net of partner contributions) partially offset by \$1.00 billion of net inflows from sales, maturities, and purchases of available-for-sale securities.

**Financing Activities:** For the first nine months of 2021, net cash used for financing activities consisted primarily of \$150 million for the acquisition of 1.7 million shares of our common stock under our \$10 billion share repurchase authorization, \$139 million of payments on equipment purchase contracts, and \$156 million of repayments of debt, net of proceeds from new borrowings, partially offset by \$148 million of proceeds from common stock issued in connection with employee equity plans. In the third quarter of 2021, we received proceeds of \$1.19 billion from the new 2024 Term Loan A and used the proceeds to repay the \$1.19 billion outstanding under the Extinguished 2024 Term Loan A.

For the first nine months of 2020, net cash used for financing activities consisted primarily of \$4.29 billion of cash payments to reduce our debt, including \$2.50 billion to pay down borrowings under our Revolving Credit Facility, \$621 million for IMFT Member Debt repayments, \$534 million to prepay our 2025 Notes, \$266 million to settle conversions of notes, and \$171 million for scheduled repayment of finance leases; \$744 million for the acquisition of Intel's noncontrolling interest in IMFT; and \$134 million for the acquisition of 2.8 million shares of our common stock under our \$10 billion share repurchase authorization. Cash used for financing activities was partially offset by proceeds of \$2.50 billion from our Revolving Credit Facility, \$1.25 billion from the 2023 Notes, and \$1.25 billion from the Extinguished 2024 Term Loan A.

See "Item 1. Financial Statements – Notes to Consolidated Financial Statements – Debt."

**Settlement Obligations of Convertible Notes:** See "Item 1. Financial Statements – Notes to Consolidated Financial Statements – Debt – 2032D Convertible Senior Notes."

**Contractual Obligations:** See "Item 1. Financial Statements – Notes to Consolidated Financial Statements – Leases" and – Debt."

## Critical Accounting Estimates

For a discussion of our significant accounting estimates, see "Part II – Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations – Significant Accounting Estimates" of our Annual Report on Form 10-K for the year ended September 3, 2020. Except for the significant accounting estimate associated with inventories as discussed below, there have been no changes to our significant accounting estimates since our Annual Report on Form 10-K for the year ended September 3, 2020.

**Inventories:** Inventories are stated at the lower of cost or net realizable value, with cost being determined on a FIFO basis. Effective as of the beginning of the second quarter of 2021, we changed our method of inventory costing from average cost to FIFO. Cost includes depreciation, labor, material, and overhead costs, including product and process technology costs. Determining net realizable value of inventories involves significant judgments, including projecting future average selling prices and future sales volumes. To project average selling prices and sales volumes, we review recent sales volumes, existing customer orders, current contract prices, industry analyses of supply and demand, seasonal factors, general economic trends, and other information. Actual selling prices and volumes may vary significantly from projected prices and volumes due to the volatile nature of the semiconductor memory and storage markets. When these analyses reflect estimated net realizable values below our manufacturing costs, we record a charge to cost of goods sold in advance of when inventories are actually sold. As a result, the timing of when product costs are charged to costs of goods sold can vary significantly. Differences in forecasted average selling prices used in calculating lower of cost or net realizable value adjustments can result in significant changes in the estimated net realizable value of product inventories and accordingly the amount of write-down recorded. For example, a 5% variance in the estimated selling prices would have changed the estimated net realizable value of our inventory by approximately \$400 million as of June 3, 2021. Due to the volatile nature of the semiconductor memory and storage markets, actual selling prices and volumes often vary significantly from projected prices and volumes, which could significantly impact cost of goods sold.

U.S. GAAP provides for products to be grouped into categories in order to compare costs to net realizable values. The amount of any inventory write-down can vary significantly depending on the determination of inventory categories. We review the major characteristics of product type and markets in determining the unit of account for which we perform the lower of cost or net realizable value analysis and categorize all inventories (including DRAM, NAND, and other memory) as a single group.

### Recently Adopted Accounting Standards

See “Item 1. Financial Statements – Notes to Consolidated Financial Statements – Recently Adopted Accounting Standards.”

### Recently Issued Accounting Standards

See “Item 1. Financial Statements – Notes to Consolidated Financial Statements – Recently Issued Accounting Standards.”

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

We are affected by changes in currency exchange and interest rates. For further discussion about market risk and sensitivity analysis related to changes in currency exchange rates, see “Part II – Item 7A. Quantitative and Qualitative Disclosures About Market Risk” in our Annual Report on Form 10-K for the year ended September 3, 2020.



## ITEM 4. CONTROLS AND PROCEDURES

An evaluation was carried out under the supervision and with the participation of our management, including our principal executive officer and principal financial officer, of the effectiveness of the design and operation of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended (the “Exchange Act”)) as of the end of the period covered by this report. Based upon that evaluation, the principal executive officer and principal financial officer concluded that those disclosure controls and procedures were effective to ensure that information required to be disclosed by us in the reports that we file or submit under the Exchange Act are recorded, processed, summarized, and reported within the time periods specified in the SEC’s rules and forms and that such information is accumulated and communicated to our management, including the principal executive officer and principal financial officer, to allow timely decision regarding disclosure.

During the third quarter of 2021, there were no changes in our internal control over financial reporting that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

## PART II. OTHER INFORMATION

### ITEM 1. LEGAL PROCEEDINGS

For a discussion of legal proceedings, see “Part I – Item 3. Legal Proceedings” of our Annual Report on Form 10-K for the year ended September 3, 2020 and the sections titled “Part I. Financial Information – Item 1. Financial Statements – Notes to Consolidated Financial Statements – Contingencies” and “Item 1A. Risk Factors” in this Quarterly Report on Form 10-Q, as well as in our Quarterly Reports on Form 10-Q for the first and second quarters of 2021.

SEC regulations require disclosure of certain proceedings related to environmental matters unless we reasonably believe that the related monetary sanctions, if any, will be less than a specified threshold. We use a threshold of \$1 million for this purpose.

### ITEM 1A. RISK FACTORS

In addition to the factors discussed elsewhere in this Form 10-Q, this section discusses important factors which could cause actual results or events to differ materially from those contained in any forward-looking statements made by us. The order of presentation is not necessarily indicative of the level of risk that each factor poses to us. Any of these factors could have a material adverse effect on our business, results of operations, financial condition, or stock price. Our operations could also be affected by other factors that are presently unknown to us or not considered significant.

## Risk Factor Summary

### *Risks Related to Our Business, Operations, and Industry*

- the effects of the COVID-19 pandemic;
- volatility in average selling prices of our products;
- our ability to maintain or improve gross margins;
- the highly competitive nature of our industry;
- our ability to develop and produce new memory and storage technologies, products, and markets;
- dependency on specific customers, concentration of revenue with a select number of customers, and customers who are located internationally;
- our international operations, including geopolitical risks;
- limited availability and quality of materials, supplies, and capital equipment and dependency on third-party service providers for ourselves and our customers;
- products that fail to meet specifications, are defective, or incompatible with end uses;



- disruptions to our manufacturing processes;
- breaches of our security systems or those of our customers, suppliers, or business partners;
- attracting, retaining, and motivating highly skilled employees;
- achieving or maintaining certain performance obligations associated with incentives from various governments;
- future acquisitions and/or alliances;
- restructure charges;
- customer responsible sourcing requirements and related regulations; and
- a downturn in the worldwide economy.

#### ***Risks Related to Intellectual Property and Litigation***

- protecting our intellectual property and retaining key employees who are knowledgeable of and develop our intellectual property;
- legal proceedings and claims;
- allegations of anticompetitive conduct;
- risks associated with our former IMFT joint venture with Intel;
- claims that our products or manufacturing processes infringe or otherwise violate the intellectual property rights of others or failure to obtain or renew license agreements covering such intellectual property; and
- alleged patent infringement complaints in Chinese courts.

#### ***Risks Related to Laws and Regulations***

- tariffs, trade restrictions, and/or trade regulations;
- tax expense and tax laws in key jurisdictions; and
- laws, regulations, or industry standards.

#### ***Risks Related to Capitalization and Financial Markets***

- our ability to generate sufficient cash flows or obtain access to external financing;
- our debt obligations;
- changes in foreign currency exchange rates;
- counterparty default risk;
- volatility in the trading price of our common stock; and
- fluctuations in the amount and timing of our common stock repurchases and resulting impacts.

## **Risks Related to Our Business, Operations, and Industry**

### **The effects of the COVID-19 pandemic could adversely affect our business, results of operations, and financial condition.**

The effects of the public health crisis caused by the COVID-19 pandemic and the measures being taken to limit COVID-19's spread are uncertain and difficult to predict, but may include, and in some cases, have included and may continue to include:

- A decrease in short-term and/or long-term demand and/or pricing for our products and a global economic downturn that could further reduce demand and/or pricing for our products, resulting from actions taken by governments, businesses, and/or the general public in an effort to limit exposure to and the spread of COVID-19, such as travel restrictions, quarantines, and business shutdowns or slowdowns;
- Negative impacts to our operations, including:
  - reductions in production levels, R&D activities, product development, technology transitions, yield enhancement activities, and qualification activities with our customers, resulting from our efforts to mitigate the impact of COVID-19 through measures we have enacted at our locations around the world in an effort to protect our employees' and contractors' health and well-being, including working from home, limiting the number of meeting attendees, reducing the number of people in certain of our sites at any one time, quarantines of team members, contractors, or vendors who are at risk of contracting, or have contracted, COVID-19, and limiting employee travel;
  - increased costs resulting from our efforts to mitigate the impact of COVID-19 through physical-distancing measures, working from home, upgrades to our sites, COVID-19 testing and vaccination, enhanced cleaning measures, and the increased use of personal protective equipment at our sites;

- increased costs for, or unavailability of, transportation, raw materials, or other inputs necessary for the operation of our business;
- reductions in, or cessation of operations at any site or in any jurisdiction resulting from government restrictions on movement and/or business operations or our measures to prevent and/or mitigate the spread of COVID-19 at one or more of our sites, such as our currently reduced workforce and output levels at our Muar, Malaysia facility and constraints on our engineering and other activities at our India facilities;
- our inability to continue, or increased costs of, construction projects due to delays in obtaining materials, equipment, labor, engineering services, government permits, or any other essential aspect of projects, which could impact our ability to introduce new technologies, reduce costs, or meet customer demand;
- disruptions to our supply chain in connection with the sourcing and transportation of materials, equipment and engineering support, and services from or in geographic areas that have been impacted by COVID-19 and by efforts to contain the spread of COVID-19; and
- Deterioration of worldwide credit and financial markets that could: limit our ability to obtain external financing to fund our operations and capital expenditures; result in losses on our holdings of cash and investments due to failures of financial institutions and other parties; or result in a higher rate of losses on our accounts receivables due to credit defaults.

While several COVID-19 vaccines have been approved and become available for use in the United States and certain other countries in recent months, we are unable to predict how widely utilized the vaccines ultimately will be, whether they will be effective in preventing the spread of COVID-19 (including its variant strains), and when or if normal economic activity and business operations will resume.

These effects, alone or taken together, could have a material adverse effect on our business, results of operations, legal exposure, or financial condition. A sustained, prolonged, or recurring outbreak could exacerbate the adverse impact of such measures.

#### Volatility in average selling prices for our semiconductor memory and storage products may adversely affect our business.

We have experienced significant volatility in our average selling prices, including dramatic declines as noted in the table below, and may continue to experience such volatility in the future. In some prior periods, average selling prices for our products have been below our manufacturing costs and we may experience such circumstances in the future. Average selling prices for our products that decline faster than our costs could have a material adverse effect on our business, results of operations, or financial condition.

	DRAM	NAND
	(percentage change in average selling prices)	
2020 from 2019	(34)%	(9)%
2019 from 2018	(30)%	(47)%
2018 from 2017	36 %	(13)%
2017 from 2016	18 %	(10)%
2016 from 2015	(34)%	(16)%

#### We may be unable to maintain or improve gross margins.

Our gross margins are dependent, in part, upon continuing decreases in per gigabit manufacturing costs achieved through improvements in our manufacturing processes and product designs, including, but not limited to, process line-width, additional 3D memory layers, additional bits per cell (i.e., cell levels), architecture, number of mask layers, number of fabrication steps, and yield. In future periods, we may be unable to reduce our per gigabit manufacturing costs at sufficient levels to maintain or improve gross margins. Factors that may limit our ability to maintain or reduce costs include, but are not limited to, strategic product diversification decisions affecting product mix, the increasing complexity of manufacturing processes, difficulties in transitioning to smaller line-width process technologies, 3D memory layers, NAND cell levels, process complexity including number of mask layers and

fabrication steps, manufacturing yield, technological barriers, changes in process technologies, and new products that may require relatively larger die sizes.

Many factors may result in a reduction of our output or a delay in ramping production, which could lead to underutilization of our production assets. These factors may include, among others, a weak demand environment, industry oversupply, inventory surpluses, difficulties in ramping emerging technologies, declining selling prices, and changes in supply agreements. A significant portion of our manufacturing costs are fixed and do not vary proportionally with changes in production output. As a result, lower utilization and corresponding increases in our per gigabit manufacturing costs may adversely affect our gross margins, business, results of operations, or financial condition.

In addition, per gigabit manufacturing costs may also be affected by a broader product portfolio, which may have smaller production quantities and shorter product lifecycles. Our business and the markets we serve are subject to rapid technological changes and material fluctuations in demand based on end-user preferences. As a result, we may have work in process or finished goods inventories that could become obsolete or in amounts that are in excess of our customers' demand. Consequently, we may incur charges in connection with obsolete or excess inventories. In addition, due to the customized nature of certain of the products we manufacture, we may be unable to sell certain finished goods inventories to alternative customers or manufacture in-process inventory to different specifications, which may result in excess and obsolescence charges in future periods. Our inability to maintain or improve gross margins could have a material adverse effect on our business, results of operations, or financial condition.

### **The semiconductor memory and storage markets are highly competitive.**

We face intense competition in the semiconductor memory and storage markets from a number of companies, including Intel; Samsung Electronics Co., Ltd.; SK hynix Inc.; Kioxia Holdings Corporation; and Western Digital Corporation. Some of our competitors are large corporations or conglomerates that may have greater resources to invest in technology, capitalize on growth opportunities, and withstand downturns in the semiconductor markets in which we compete. Consolidation of industry competitors could put us at a competitive disadvantage as our competitors may benefit from increased manufacturing scale and a stronger product portfolio. In addition, some governments may provide, or have provided and may continue to provide, significant assistance, financial or otherwise, to some of our competitors or to new entrants and may intervene in support of national industries and/or competitors. In particular, we face the threat of increasing competition as a result of significant investment in the semiconductor industry by the Chinese government and various state-owned or affiliated entities that is intended to advance China's stated national policy objectives. In addition, the Chinese government may restrict us from participating in the China market or may prevent us from competing effectively with Chinese companies. Some of our competitors may use aggressive pricing to obtain market share or take business of our key customers.

Our competitors generally seek to increase wafer capacity, improve yields, and reduce die size in their product designs which may result in significant increases in worldwide supply and downward pressure on prices. Increases in worldwide supply of semiconductor memory and storage also result from fabrication capacity expansions, either by way of new facilities, increased capacity utilization, or reallocation of other semiconductor production to semiconductor memory and storage production. Our competitors may increase capital expenditures resulting in future increases in worldwide supply. We, and some of our competitors, have plans to ramp, or are constructing or ramping, production at new fabrication facilities. Increases in worldwide supply of semiconductor memory and storage, if not accompanied by commensurate increases in demand, could lead to declines in average selling prices for our products and could materially adversely affect our business, results of operations, or financial condition. If competitors are more successful at developing or implementing new product or process technology, their products could have cost or performance advantages.

The competitive nature of our industry could have a material adverse effect on our business, results of operations, or financial condition.

### **Our future success depends on our ability to develop and produce competitive new memory and storage technologies.**

Our key semiconductor memory and storage products and technologies face technological barriers to continue to meet long-term customer needs. These barriers include potential limitations on stacking additional 3D memory layers, increasing bits per cell (i.e., cell levels), meeting higher density requirements, and improving power consumption and reliability. We may face technological barriers to continue to shrink our products at our current or historical rate, which has generally reduced per-unit cost. We have invested and expect to continue to invest in R&D for new and existing products, which involves significant risk and uncertainties. We may be unable to recover our investment in R&D or otherwise realize the economic benefits of reducing die size or increasing memory and storage densities. Our competitors are working to develop new memory and storage technologies that may offer performance and/or cost advantages to existing technologies and render existing technologies obsolete. Accordingly, our future success may depend on our ability to develop and produce viable and competitive new memory and storage technologies. There can be no assurance of the following:

- that we will be successful in developing competitive new semiconductor memory and storage technologies;
- that we will be able to cost-effectively manufacture new products;
- that we will be able to successfully market these technologies; and
- that margins generated from sales of these products will allow us to recover costs of development efforts.

We develop and produce advanced memory and storage technologies and there can be no assurance that our efforts to develop and market new product technologies will be successful. Unsuccessful efforts to develop new memory and storage technologies could have a material adverse effect on our business, results of operations, or financial condition.

### **A significant portion of our revenue is concentrated with a select number of customers.**

In each of the last three years, approximately one-half of our total revenue was from our top ten customers. A disruption in our relationship with any of these customers could adversely affect our business. We could experience fluctuations in our customer base or the mix of revenue by customer as markets and strategies evolve. Our customers' demand for our products may fluctuate due to factors beyond our control. In addition, any consolidation of our customers could reduce the number of customers to whom our products may be sold. Our inability to meet our customers' requirements or to qualify our products with them could adversely impact our revenue. Meaningful change in the inventory strategy of our customers, particularly those in China, could impact our industry bit demand growth outlook. The loss of, or restrictions on our ability to sell to, one or more of our major customers, such as those relating to Huawei described herein, or any significant reduction in orders from, or a shift in product mix by, customers could have a material adverse effect on our business, results of operations, or financial condition.

### **We face geopolitical and other risks associated with our international sales and operations that could materially adversely affect our business, results of operations, or financial condition.**

In 2020, 52% of our revenue was from sales to customers who have headquarters located outside the United States. We ship our products to the locations specified by our customers. Customers with global supply chains and operations may request we deliver products to countries where they own or operate production facilities or to countries where they utilize third-party subcontractors or warehouses. As a result, 88% of our revenue in 2020 was from products shipped to customer locations outside the United States.

A substantial portion of our operations are conducted in Taiwan, Singapore, Japan, China, Malaysia, and India, and many of our customers, suppliers, and vendors also operate internationally. Our operations, and the global supply chain of the technology industry, are subject to a number of risks, including the effects of actions and policies of various governments across our global operations and supply chain. For example, political, economic, or other actions from China could impact Taiwan and its economy, and may adversely affect our operations in Taiwan, our customers, and the technology industry supply chain. In addition, the U.S. government has in the past restricted American firms from selling products and software to certain of our customers and may in the future impose similar bans or other restrictions on sales to one or more of our significant customers. These restrictions may not prohibit our competitors from selling similar products to our customers, which may result in our loss of sales and market share. Even when such restrictions are lifted, financial or other penalties or continuing export restrictions imposed with respect to our customers could have a continuing negative impact on our future revenue and results of

operations, and we may not be able to recover any customers or market share we lose while complying with such restrictions.

Our international sales and operations are subject to a variety of risks, including:

- export and import duties, changes to import and export regulations, customs regulations and processes, and restrictions on the transfer of funds, including currency controls in China, which could negatively affect the amount and timing of payments from certain of our customers and, as a result, our cash flows;
- imposition of bans on sales of goods or services to one or more of our significant foreign customers;
- public health issues (for example, an outbreak of a contagious disease such as COVID-19, Severe Acute Respiratory Syndrome ("SARS-CoV"), avian and swine influenza, measles, or Ebola);
- compliance with U.S. and international laws involving international operations, including the Foreign Corrupt Practices Act of 1977, as amended, export and import laws, and similar rules and regulations;
- theft of intellectual property;
- political and economic instability, including the effects of disputes between China and Taiwan;
- government actions or civil unrest preventing the flow of products, including delays in shipping and obtaining products, cancellation of orders, or loss or damage of products;
- problems with the transportation or delivery of products;
- issues arising from cultural or language differences and labor unrest;
- longer payment cycles and greater difficulty in collecting accounts receivable;
- compliance with trade, technical standards, and other laws in a variety of jurisdictions;
- contractual and regulatory limitations on the ability to maintain flexibility with staffing levels;
- disruptions to manufacturing or R&D activities as a result of actions imposed by foreign governments;
- changes in economic policies of foreign governments; and
- difficulties in staffing and managing international operations.

If we or our customers, suppliers, or vendors are impacted by any of these risks, it could have a material adverse effect on our business, results of operations, or financial condition.

**Our business, results of operations, or financial condition could be adversely affected by the limited availability and quality of materials, supplies, and capital equipment, or the dependency on third-party service providers for ourselves and our customers.**

Our supply chain and operations are dependent on the availability of materials that meet exacting standards and the use of third parties to provide us with components and services. We generally have multiple sources of supply for our materials and services. However, only a limited number of suppliers are capable of delivering certain materials and services that meet our standards and, in some cases, materials, components, or services are provided by a single supplier. Various factors could reduce the availability of materials or components such as chemicals, silicon wafers, gases, photoresist, controllers, substrates, lead frames, printed circuit boards, targets, and reticle glass blanks. Shortages or increases in lead times have occurred in the past and may occur from time to time in the future. Our manufacturing processes are also dependent on our relationships with third-party manufacturers of controllers, analog integrated circuits, and other components used in a number of our products and with outsourced semiconductor assembly and test providers, contract manufacturers, logistic carriers, and other service providers. Although we have certain long-term contracts with some of our third-party service providers, most of these contracts do not provide for long-term capacity commitments. To the extent we do not have firm commitments from our third-party service providers over a specific time period or for any specific quantity, our service providers may allocate capacity to their other customers and capacity for our materials may not be available when we need it or at reasonable prices. Inflationary pressures and shortages may increase costs for materials, supplies, and services. Regardless of contract structure, large swings in demand may exceed our contracted supply and/or our suppliers' capacity to meet those demand changes resulting in a shortage of parts or materials needed to manufacture our products.

Certain materials are primarily available in a limited number of countries, including rare earth elements, minerals, and metals available primarily from China. Trade disputes or other political conditions, economic conditions, or public health issues, such as COVID-19, may limit our ability to obtain such materials. Although these rare earth and other materials are generally available from multiple suppliers, China is the predominant producer of certain of these materials. If China were to restrict or stop exporting these materials, our suppliers' ability to obtain such supply may be constrained and we may be unable to obtain sufficient quantities, or obtain supply in a timely manner, or at a

commercially reasonable cost. Constrained supply of rare earth elements, minerals, and metals may restrict our ability to manufacture certain of our products and make it difficult or impossible to compete with other semiconductor memory manufacturers who are able to obtain sufficient quantities of these materials from China.

We and/or our suppliers and service providers could be affected by tariffs, embargoes, or other trade restrictions, as well as laws and regulations enacted in response to concerns regarding climate change, conflict minerals, responsible sourcing practices, public health crises, contagious disease outbreaks, or other matters, which could limit the supply of our materials and/or increase the cost. Environmental regulations could limit our ability to procure or use certain chemicals or materials in our operations or products. In addition, disruptions in transportation lines could delay our receipt of materials. Lead times for the supply of materials have been extended in the past. Our ability to procure components to repair equipment essential for our manufacturing processes could also be negatively impacted by various restrictions or disruptions in supply chains, among other items. The disruption of our supply of materials, components, or services, or the extension of our lead times could have a material adverse effect on our business, results of operations, or financial condition. Similarly, if our customers experience disruptions to their supplies, materials, components, or services, or the extension of their lead times, they may reduce, cancel, or alter the timing of their purchases with us, which could have a material adverse effect on our business, results of operations, or financial condition.

Our operations are dependent on our ability to procure advanced semiconductor manufacturing equipment that enables the transition to lower cost manufacturing processes. For certain key types of equipment, including photolithography tools, we are sometimes dependent on a single supplier. From time to time, we have experienced difficulties in obtaining some equipment on a timely basis due to suppliers' limited capacity. Our inability to obtain equipment on a timely basis could adversely affect our ability to transition to next generation manufacturing processes and reduce our costs. Delays in obtaining equipment could also impede our ability to ramp production at new facilities and could increase our overall costs of a ramp. Our inability to obtain advanced semiconductor manufacturing equipment in a timely manner could have a material adverse effect on our business, results of operations, or financial condition.

Our construction projects to expand production and R&D capacity are highly dependent on available sources of labor, materials, equipment, and services. Increasing demand, supply constraints, inflation, and other market conditions could result in increasing shortages and higher costs for these items. Difficulties in obtaining these resources could result in significant delays in completion of our construction projects and cost increases, which could have a material adverse effect on our business, results of operations, or financial condition.

Our inability to source materials, supplies, capital equipment, or third-party services could affect our overall production output and our ability to fulfill customer demand. Significant or prolonged shortages of our products could halt customer manufacturing and damage our relationships with these customers. For example, certain automotive manufacturers have experienced shortages of non-memory components from other suppliers, forcing a curtailment of production lines. Any such damage to our customer relationships could have a material adverse effect on our business, results of operations, or financial condition.

#### **New product and market development may be unsuccessful.**

We are developing new products, including system-level memory and storage products and solutions, which complement our traditional products or leverage their underlying design or process technology. We have made significant investments in product and process technology and anticipate expending significant resources for new semiconductor product and system-level solution development over the next several years. Additionally, we are increasingly differentiating our products and solutions to meet the specific demands of our customers, which increases our reliance on our customers' ability to accurately forecast the needs and preferences of their customers. As a result, our product demand forecasts may be impacted significantly by the strategic actions of our customers.

For certain of our markets, it is important that we deliver products in a timely manner with increasingly advanced performance characteristics at the time our customers are designing and evaluating samples for their products. If we do not meet their product design schedules, our customers may exclude us from further consideration as a supplier for those products. The process to develop new products requires us to demonstrate advanced functionality and performance, often well in advance of a planned ramp of production, in order to secure design wins with our customers. The effects of the public health crisis caused by the COVID-19 pandemic and the measures being taken to limit COVID-19's spread could negatively impact our ability to meet anticipated timelines and/or expected or



required quality standards with respect to the development of certain of our products. In addition, some of our components have long lead-times, requiring us to place orders several months in advance of anticipated demand. Such long lead-times increase the risk of excess inventory or loss of sales in the event our forecasts vary substantially from actual demand. There can be no assurance that:

- our product development efforts will be successful;
- we will be able to cost-effectively manufacture new products;
- we will be able to successfully market these products;
- we will be able to establish or maintain key relationships with customers, or that we will not be prohibited from working with certain customers, for specific chip set or design requirements;
- we will be able to introduce new products into the market and qualify them with our customers on a timely basis; or
- margins generated from sales of these products will allow us to recover costs of development efforts.

Our unsuccessful efforts to develop new products and solutions could have a material adverse effect on our business, results of operations, or financial condition.

**Increases in sales of system solutions may increase our dependency upon specific customers and our costs to develop and qualify our system solutions.**

Our development of system-level memory and storage products is dependent, in part, upon successfully identifying and meeting our customers' specifications for those products. Developing and manufacturing system-level products with specifications unique to a customer increases our reliance upon that customer for purchasing our products at sufficient volumes and prices in a timely manner. If we fail to identify or develop products on a timely basis, or at all, that comply with our customers' specifications or achieve design wins with our customers, we may experience a significant adverse impact on our revenue and margins. Even if our products meet customer specifications, our sales of system-level solutions are dependent upon our customers choosing our products over those of our competitors and purchasing our products at sufficient volumes and prices. Our competitors' products may be less costly, provide better performance, or include additional features when compared to our products. Our long-term ability to sell system-level memory and storage products is reliant upon our customers' ability to create, market, and sell their products containing our system-level solutions at sufficient volumes and prices in a timely manner. If we fail to successfully develop and market system-level products, our business, results of operations, or financial condition may be materially adversely affected.

Even if we are successful in selling system-level solutions to our customers in sufficient volume, we may be unable to generate sufficient profit if our per-unit manufacturing costs exceed our per-unit selling prices. Manufacturing system-level solutions to customer specifications requires a longer development cycle, as compared to discrete products, to design, test, and qualify, which may increase our costs. Additionally, some of our system solutions are increasingly dependent on sophisticated firmware that may require significant customization to meet customer specifications, which increases our costs and time to market. Additionally, we may need to update our firmware or develop new firmware as a result of new product introductions or changes in customer specifications and/or industry standards, which increases our costs. System complexities and extended warranties for system-level products could also increase our warranty costs. Our failure to cost-effectively manufacture system-level solutions and/or firmware in a timely manner may result in reduced demand for our system-level products and could have a material adverse effect on our business, results of operations, or financial condition.

**Products that fail to meet specifications, are defective, or that are otherwise incompatible with end uses could impose significant costs on us.**

Products that do not meet specifications or that contain, or are perceived by our customers to contain, defects or that are otherwise incompatible with end uses could impose significant costs on us or otherwise materially adversely affect our business, results of operations, or financial condition. From time to time, we experience problems with nonconforming, defective, or incompatible products after we have shipped such products. In recent periods, we have further diversified and expanded our product offerings, which could potentially increase the chance that one or more of our products could fail to meet specifications in a particular application. Our products and solutions may be deemed fully or partially responsible for functionality in our customers' products and may result in sharing or shifting of product or financial liability from our customers to us for costs incurred by the end user as a result of our customers' products failing to perform as specified. In addition, if our products and solutions perform critical

functions in our customers' products or are used in high-risk consumer end products, such as autonomous driver assistance programs, home and enterprise security, smoke and noxious gas detectors, medical monitoring equipment, or wearables for child and elderly safety, our potential liability may increase. We could be adversely affected in several ways, including the following:

- we may be required or agree to compensate customers for costs incurred or damages caused by defective or incompatible products and to replace products;
- we could incur a decrease in revenue or adjustment to pricing commensurate with the reimbursement of such costs or alleged damages; and
- we may encounter adverse publicity, which could cause a decrease in sales of our products or harm our reputation or relationships with existing or potential customers.

Any of the foregoing items could have a material adverse effect on our business, results of operations, or financial condition.

**If our manufacturing process is disrupted by operational issues, natural disasters, or other events, our business, results of operations, or financial condition could be materially adversely affected.**

We and our subcontractors manufacture products using highly complex processes that require technologically advanced equipment and continuous modification to improve yields and performance. Difficulties in the manufacturing process or the effects from a shift in product mix can reduce yields or disrupt production and may increase our per gigabit manufacturing costs. We and our subcontractors maintain operations and continuously implement new product and process technology at manufacturing facilities, which are widely dispersed in multiple locations in several countries including the United States, Singapore, Taiwan, Japan, Malaysia, and China. As a result of the necessary interdependence within our network of manufacturing facilities, an operational disruption at one of our or a subcontractor's facilities may have a disproportionate impact on our ability to produce many of our products.

From time to time, there have been disruptions in the manufacturing process as a result of power outages, improperly functioning equipment, disruptions in supply of raw materials or components, or equipment failures. We have manufacturing and other operations in locations subject to natural occurrences such as severe weather and geological events, including earthquakes, tsunamis or other occurrences, such as the recent Taiwan drought, that could disrupt operations, resulting in increased costs, or disruptions to our or our suppliers' or customers' manufacturing operations. In addition, our suppliers and customers also have operations in such locations. Additionally, other events including political or public health crises, such as an outbreak of contagious diseases like COVID-19, SARS-CoV, avian and swine influenza, measles, or Ebola, may affect our production capabilities or that of our suppliers, including as a result of quarantines, closures of production facilities, lack of supplies, or delays caused by restrictions on travel or shipping. For example, recently in response to increasing positive cases of COVID-19 in Johor State, Malaysia, we have reduced our workforce on-site at our Muar facility, which has reduced output levels from that facility. The events noted above have occurred from time to time and may occur in the future. As a result, in addition to disruptions to operations, our insurance premiums may increase or we may not be able to fully recover any sustained losses through insurance.

If production is disrupted for any reason, manufacturing yields may be adversely affected, or we may be unable to meet our customers' requirements and they may purchase products from other suppliers. This could result in a significant increase in manufacturing costs, loss of revenue, or damage to customer relationships, any of which could have a material adverse effect on our business, results of operations, or financial condition.

**Breaches of our security systems, or those of our customers, suppliers, or business partners, could expose us to losses.**

We maintain a system of controls over the physical security of our facilities. We also manage and store various proprietary information and sensitive or confidential data relating to our operations. In addition, we process, store, and transmit large amounts of data relating to our customers and employees, including sensitive personal information. Unauthorized persons or employees may gain access to our facilities or network systems to steal trade secrets or other proprietary information, compromise confidential information, create system disruptions, or cause shutdowns, including through cyberattacks. These parties may also be able to develop and deploy viruses, worms, and other malicious software programs that disrupt our operations and create security vulnerabilities. Breaches of



our physical security, attacks on our network systems, or breaches or attacks on our customers, suppliers, or business partners who have confidential or sensitive information regarding us and our customers and suppliers, could result in significant losses and damage our reputation with customers and suppliers and may expose us to litigation if the confidential information of our customers, suppliers, or employees is compromised. The foregoing could have a material adverse effect on our business, results of operations, or financial condition.

#### **We must attract, retain, and motivate highly skilled employees.**

To remain competitive, we must attract, retain, and motivate executives, and other highly skilled, diverse employees, as well as effectively manage or plan for succession for key employees. Competition for experienced employees in our industry continues to be intense. Hiring and retaining qualified executives, engineers, technical staff, and sales representatives is critical to our business. Our inability to attract, retain, or effectively manage or plan for succession of key employees may inhibit our ability to maintain or expand our business operations. Additionally, changes to immigration policies in the numerous countries in which we operate, including the United States, as well as restrictions on global travel as a result of local or global public health crises requiring quarantines or other precautions to limit exposure to infectious diseases, may limit our ability to hire and/or retain talent in, or transfer talent to, specific locations. If our total compensation programs and workplace culture cease to be viewed as competitive and inclusive, our ability to attract, retain, and motivate employees could be weakened, which could have a material adverse effect on our business, results of operations, or financial condition.

#### **Our incentives from various governments are conditional upon achieving or maintaining certain performance obligations and are subject to reduction, termination, or clawback.**

We have received, and may in the future continue to receive, benefits and incentives from national, state, and local governments in various regions of the world designed to encourage us to establish, maintain, or increase investment, workforce, or production in those regions. These incentives may take various forms, including grants, loan subsidies, and tax arrangements, and typically require us to perform or maintain certain levels of investment, capital spending, employment, technology deployment, or research and development activities to qualify for such incentives. We cannot guarantee that we will successfully achieve performance obligations required to qualify for these incentives or that the granting agencies will provide such funding. These incentive arrangements typically provide the granting agencies with rights to audit our performance with their terms and obligations. Such audits could result in modifications to, or termination of, the applicable incentive program. The incentives we receive could be subject to reduction, termination, or clawback, and any decrease or clawback of government incentives could have a material adverse effect on our business, results of operations, or financial condition.

#### **We may make future acquisitions and/or alliances, which involve numerous risks.**

Acquisitions and the formation or operation of alliances, such as joint ventures and other partnering arrangements, involve numerous risks, including the following:

- integrating the operations, technologies, and products of acquired or newly formed entities into our operations;
- increasing capital expenditures to upgrade and maintain facilities;
- increased debt levels;
- the assumption of unknown or underestimated liabilities;
- the use of cash to finance a transaction, which may reduce the availability of cash to fund working capital, capital expenditures, R&D expenditures, and other business activities;
- diverting management's attention from daily operations;
- managing larger or more complex operations and facilities and employees in separate and diverse geographic areas;
- hiring and retaining key employees;
- requirements imposed by government authorities in connection with the regulatory review of a transaction, which may include, among other things, divestitures or restrictions on the conduct of our business or the acquired business;
- inability to realize synergies or other expected benefits;
- failure to maintain customer, vendor, and other relationships;

- inadequacy or ineffectiveness of an acquired company's internal financial controls, disclosure controls and procedures, compliance programs, and/or environmental, health and safety, anti-corruption, human resource, or other policies or practices; and
- impairment of acquired intangible assets, goodwill, or other assets as a result of changing business conditions, technological advancements, or worse-than-expected performance of the acquired business.

The global memory and storage industry has experienced consolidation and may continue to consolidate. We engage, from time to time, in discussions regarding potential acquisitions and similar opportunities. To the extent we are successful in completing any such transactions, we could be subject to some or all of the risks described above, including the risks pertaining to funding, assumption of liabilities, integration challenges, and increases in debt that may accompany such transactions. Acquisitions of, or alliances with, technology companies are inherently risky and may not be successful and could have a material adverse effect on our business, results of operations, or financial condition.

#### **We may incur restructure charges in future periods.**

From time to time, we have, and in the future we may, enter into restructure initiatives in order to, among other items, streamline our operations; respond to changes in business conditions, our markets, or product offerings; or to centralize certain key functions. We may not realize expected savings or other benefits from our restructure activities and may incur additional restructure charges or other losses in future periods associated with other initiatives.

We have ceased development of 3D XPoint technology and on June 30, 2021, we announced that we have entered into a definitive agreement to sell our Lehi facility that was dedicated to 3D XPoint production to Texas Instruments for cash consideration of \$900 million. There is no assurance that we will be able to close the sale to TI in a timely manner or at all. The net assets and liabilities of the Lehi facility were classified as held for sale and are carried at the net consideration expected to be realized from the sale. We recognized a \$435 million impairment charge in the third quarter of 2021 and could recognize additional losses as a result of changes in the assets and liabilities prior to the closing date of the transaction. Our inability to close the transaction in a timely manner or additional impairment losses could adversely affect our business, results of operations, or financial condition.

In connection with any restructure initiatives, we could incur restructure charges, loss of production output, loss of key personnel, disruptions in our operations, and difficulties in the timely delivery of products, which could have a material adverse effect on our business, results of operations, or financial condition.

#### **Compliance with customer responsible sourcing requirements and related regulations could limit the supply and increase the cost of certain materials, supplies, and services used in manufacturing our products.**

Many of our customers have adopted responsible sourcing programs that require us to periodically report on our supply chain and responsible sourcing efforts to ensure we source the materials, supplies, and services we use and incorporate into the products we sell in a manner that is consistent with their programs. Some of our customers may elect to disqualify us as a supplier or reduce purchases from us if we are unable to verify that our products meet the specifications of their responsible sourcing programs. Meeting customer requirements may limit the sourcing and availability of some of the materials, supplies, and services we use, particularly when the availability of such materials, supplies, and services is concentrated to a limited number of suppliers. This may affect our ability and/or the cost to obtain sufficient quantities of materials, supplies, and services necessary for the manufacture of our products.

Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 and its implementing SEC regulations impose supply chain due diligence and disclosure requirements for certain manufacturers of products containing specific minerals that may originate in or near the Democratic Republic of the Congo and finance or benefit local armed groups. These conflict minerals are commonly found in materials used in the manufacture of semiconductors.

Our inability to comply with customers' requirements for responsible sourcing or with related regulations could have a material adverse effect on our business, results of operations, or financial condition.

### **A downturn in the worldwide economy may harm our business.**

The health crisis caused by COVID-19 has adversely affected economic conditions and caused a downturn in the worldwide economy. Downturns in the worldwide economy, including the downturn driven by the COVID-19 pandemic, have adversely affected our business in the past. Adverse economic conditions affect demand for devices that incorporate our products, such as personal computers, smartphones, automobiles, SSDs, and servers. Reduced demand for these or other products could result in significant decreases in our average selling prices and product sales. Future downturns could also adversely affect our business. In addition, to the extent our customers or distributors have elevated inventory levels, we may experience a decrease in short-term and/or long-term demand and/or pricing for our products.

A deterioration of conditions in worldwide credit markets could limit our ability to obtain external financing to fund our operations and capital expenditures. In addition, we may experience losses on our holdings of cash and investments due to failures of financial institutions and other parties. Difficult economic conditions may also result in a higher rate of losses on our accounts receivable due to credit defaults. As a result, downturns in the worldwide economy could have a material adverse effect on our business, results of operations, or financial condition.

## **Risks Related to Intellectual Property and Litigation**

### **We may be unable to protect our intellectual property or retain key employees who are knowledgeable of and develop our intellectual property.**

We maintain a system of controls over our intellectual property, including U.S. and foreign patents, trademarks, copyrights, trade secrets, licensing arrangements, confidentiality procedures, non-disclosure agreements with employees, consultants, and vendors, and a general system of internal controls. Despite our system of controls over our intellectual property, it may be possible for our current or future competitors to obtain, copy, use, or disclose, illegally or otherwise, our product and process technology or other proprietary information. The laws of some foreign countries may not protect our intellectual property to the same degree as do U.S. laws, and our confidentiality, non-disclosure, and non-compete agreements may be unenforceable or difficult and costly to enforce.

Additionally, our ability to maintain and develop intellectual property is dependent upon our ability to attract, develop, and retain highly skilled employees. Global competition for such skilled employees in our industry is intense. A decline in our operating results and/or stock price may adversely affect our ability to retain key employees whose compensation is dependent, in part, upon the market price of our common stock, achieving certain performance metrics, levels of company profitability, or other financial or company-wide performance. If our competitors or future entrants into our industry are successful in hiring our employees, they may directly benefit from the knowledge these employees gained while they were under our employment.

Our inability to protect our intellectual property or retain key employees who are knowledgeable of and develop our intellectual property could have a material adverse effect on our business, results of operations, or financial condition.

### **Legal proceedings and claims could have a material adverse effect on our business, results of operations, or financial condition.**

From time to time we are subject to various legal proceedings and claims that arise out of the ordinary conduct of our business or otherwise, both domestically and internationally. See “Part II. Other Information – Item 1. Legal Proceedings.” Any claim, with or without merit, could result in significant legal fees that could negatively impact our financial results, disrupt our operations, and require significant attention from our management. We could be subject to litigation, claims, or arbitration disputes arising from our relationships with vendors or customers, supply agreements, or contractual obligations with our subcontractors or business partners. We may also be associated with and subject to litigation arising from the actions of our vendors, subcontractors, or business partners. We may also be subject to litigation or claims as a result of our indemnification obligations, including obligations to defend our customers against third-party claims asserting infringement of certain intellectual property rights, which may include patents, trademarks, copyrights, or trade secrets. We may also be subject to claims or litigation arising from the terms of our product warranties or from product liability claims. As we continue to focus on developing system solutions with manufacturers of consumer products, including autonomous driving, augmented reality, and others,

we may be exposed to greater potential for personal liability claims against us as a result of consumers' use of those products. We, our officers, or our directors could also be subject to claims of alleged violations of securities laws. There can be no assurance that we are adequately insured to protect against all claims and potential liabilities, and we may elect to self-insure with respect to certain matters. Exposures to various legal proceedings and claims could lead to significant costs and expenses as we defend claims, are required to pay damage awards, or enter into settlement agreements, any of which could have a material adverse effect on our business, results of operations, or financial condition.

#### **We are subject to allegations of anticompetitive conduct.**

On April 27, 2018, a complaint was filed against Micron and other DRAM suppliers in the U.S. District Court for the Northern District of California. Subsequently, two substantially identical cases were filed in the same court. The lawsuits purported to be on behalf of a nationwide class of indirect purchasers of DRAM products. On September 3, 2019, the District Court granted Micron's motion to dismiss and allowed the plaintiffs the opportunity to file a consolidated, amended complaint. On October 28, 2019, the plaintiffs filed a consolidated, amended complaint that purported to be on behalf of a nationwide class of indirect purchasers of DRAM products. The amended complaint asserted claims based on alleged price-fixing of DRAM products under federal and state law during the period from June 1, 2016 to at least February 1, 2018, and sought treble monetary damages, costs, interest, attorneys' fees, and other injunctive and equitable relief. On December 21, 2020, the District Court dismissed the plaintiffs' claims and entered judgment against them. On January 19, 2021, the plaintiffs filed a notice of appeal to the U.S. Court of Appeals for the Ninth Circuit. On May 3, 2021, several plaintiffs filed a substantially identical complaint in the U.S. District Court for the Northern District of California purportedly on behalf of a nationwide class of indirect purchasers of DRAM products.

On June 26, 2018, a complaint was filed against Micron and other DRAM suppliers in the U.S. District Court for the Northern District of California. Subsequently, four substantially identical cases were filed in the same court. On October 28, 2019, the plaintiffs filed a consolidated, amended complaint. The consolidated complaint purported to be on behalf of a nationwide class of direct purchasers of DRAM products. The consolidated complaint asserted claims based on alleged price-fixing of DRAM products under federal and state law during the period from June 1, 2016 through at least February 1, 2018, and sought treble monetary damages, costs, interest, attorneys' fees, and other injunctive and equitable relief. On December 21, 2020, the District Court granted Micron's motion to dismiss and granted the plaintiffs permission to file a further amended complaint. On January 11, 2021, the plaintiffs filed a further amended complaint asserting substantially the same claims and seeking the same relief.

Additionally, six cases have been filed in the following Canadian courts: Superior Court of Quebec, the Federal Court of Canada, the Ontario Superior Court of Justice, and the Supreme Court of British Columbia. The substantive allegations in these cases are similar to those asserted in the cases filed in the United States.

On May 15, 2018, the Chinese State Administration for Market Regulation ("SAMR") notified Micron that it was investigating potential collusion and other anticompetitive conduct by DRAM suppliers in China. On May 31, 2018, SAMR made unannounced visits to our sales offices in Beijing, Shanghai, and Shenzhen to seek certain information as part of its investigation. We are cooperating with SAMR in its investigation.

We are unable to predict the outcome of these matters and cannot make a reasonable estimate of the potential loss or range of possible losses. The final resolution of these matters could result in significant liability and could have a material adverse effect on our business, results of operations, or financial condition. See "Part I. Financial Information – Item 1. Financial Statements – Notes to Consolidated Financial Statements – Contingencies."

#### **We face risks associated with our former IMFT joint venture with Intel.**

We face risks from our arbitration proceeding with Intel in connection with our former IMFT joint venture, in which we and Intel have made claims against each other for damages relating to the joint venture. For information regarding the arbitration proceeding, see "Part I. Financial Information – Item 1. Financial Statements – Notes to Consolidated Financial Statements – Contingencies." The foregoing could have a material adverse effect on our business, results of operations, or financial condition.

**Claims that our products or manufacturing processes infringe or otherwise violate the intellectual property rights of others, or failure to obtain or renew license agreements covering such intellectual property, could materially adversely affect our business, results of operations, or financial condition.**

As is typical in the semiconductor and other high technology industries, from time to time others have asserted, and may in the future assert, that our products or manufacturing processes infringe upon, misappropriate, misuse, or otherwise violate their intellectual property rights. We are unable to predict the outcome of these assertions made against us. Any of these types of claims, regardless of the merits, could subject us to significant costs to defend or resolve such claims and may consume a substantial portion of management's time and attention. As a result of these claims, we may be required to:

- pay significant monetary damages, fines, royalties, or penalties;
- enter into license or settlement agreements covering such intellectual property rights;
- make material changes to or redesign our products and/or manufacturing processes; and/or
- cease manufacturing, having made, selling, offering for sale, importing, marketing, or using products and/or manufacturing processes in certain jurisdictions.

We may not be able to take any of the actions described above on commercially reasonable terms and any of the foregoing results could have a material adverse effect on our business, results of operations, or financial condition. See "Part I. Financial Information – Item 1. Financial Statements – Notes to Consolidated Financial Statements – Contingencies."

We have a number of intellectual property license agreements. Some of these license agreements require us to make one-time or periodic payments. We may need to obtain additional licenses or renew existing license agreements in the future. We are unable to predict whether these license agreements can be obtained or renewed on terms acceptable to us. The failure to obtain or renew licenses as necessary could have a material adverse effect on our business, results of operations, or financial condition.

**We have been served with complaints in Chinese courts alleging patent infringement.**

We have been served with complaints in Chinese courts alleging that we infringe certain Chinese patents by manufacturing and selling certain products in China. The complaints seek orders requiring us to destroy inventory of the accused products and equipment for manufacturing the accused products in China; to stop manufacturing, using, selling, and offering for sale the accused products in China; and to pay damages plus court fees.

We are unable to predict the outcome of these assertions of infringement made against us and cannot make a reasonable estimate of the potential loss or range of possible losses. A determination that our products or manufacturing processes infringe the intellectual property rights of others or entering into a license agreement covering such intellectual property could result in significant liability and/or require us to make material changes to our operations in China, products, and/or manufacturing processes. Any of the foregoing could have a material adverse effect on our business, results of operations, or financial condition. See "Part I. Financial Information – Item 1. Financial Statements – Notes to Consolidated Financial Statements – Contingencies."

**The acquisition of our ownership interest in Inotera from Qimonda AG ("Qimonda") has been challenged by the administrator of the insolvency proceedings for Qimonda.**

In January 2011, Dr. Michael Jaffé, administrator for Qimonda's insolvency proceedings, filed suit against Micron and Micron Semiconductor B.V. ("Micron B.V."), in the District Court of Munich, Civil Chamber. The complaint seeks to void a share purchase agreement between Micron B.V. and Qimonda signed in 2008, pursuant to which Micron B.V. purchased substantially all of Qimonda's shares of Inotera, representing approximately 18% of Inotera's outstanding shares at that time, and seeks an order requiring us to re-transfer those shares to the Qimonda estate. The complaint also seeks, among other things, to recover damages for the alleged value of the joint venture relationship with Inotera and to terminate a patent cross-license between us and Qimonda entered into at the same time as the share purchase agreement. See "Part I. Financial Information – Item 1. Financial Statements – Notes to Consolidated Financial Statements – Contingencies" for further information regarding the matter.

We are unable to predict the outcome of the matter and cannot make a reasonable estimate of the potential loss or range of possible losses. The final resolution of this lawsuit could result in the loss of the Inotera shares or monetary

damages, unspecified damages based on the benefits derived by Micron B.V. from the ownership of the Inotera shares, and/or the termination of the patent cross-license, which could have a material adverse effect on our business, results of operations, or financial condition.

## Risks Related to Laws and Regulations

**Increases in tariffs or other trade restrictions or taxes on our or our customers' products or equipment and supplies could have an adverse impact on our operations.**

In 2020, 88% of our revenue was from products shipped to customer locations outside the United States. We also purchase a significant portion of equipment and supplies from suppliers outside the United States. Additionally, a significant portion of our facilities are located outside the United States, including in Taiwan, Singapore, Japan, Malaysia, and China.

The United States and other countries have levied tariffs and taxes on certain goods. General trade tensions between the United States and China have been escalating since 2018, with U.S. tariffs on Chinese goods and retaliatory Chinese tariffs on U.S. goods. Some of our products are included in these tariffs. Higher duties on existing tariffs and further rounds of tariffs have been announced or threatened by U.S. and Chinese leaders. Additionally, the United States has threatened to impose tariffs on goods imported from other countries, which could also impact certain of our customers' or our operations. If the United States were to impose current or additional tariffs on components that we or our suppliers source, our cost for such components would increase. We may also incur increases in manufacturing costs and supply chain risks due to our efforts to mitigate the impact of tariffs on our customers and our operations. Additionally, tariffs on our customers' products could impact their sales of such end products, resulting in lower demand for our products.

We cannot predict what further actions may ultimately be taken with respect to tariffs or trade relations between the United States and other countries, what products may be subject to such actions, or what actions may be taken by other countries in retaliation. Further changes in trade policy, tariffs, additional taxes, restrictions on exports or other trade barriers, or restrictions on supplies, equipment, and raw materials including rare earth minerals, may limit our ability to produce products, increase our selling and/or manufacturing costs, decrease margins, reduce the competitiveness of our products, or inhibit our ability to sell products or purchase necessary equipment and supplies, which could have a material adverse effect on our business, results of operations, or financial condition.

**Trade regulations have restricted our ability to sell our products to several customers, could restrict our ability to sell our products to other customers or in certain markets, or could otherwise restrict our ability to conduct operations.**

International trade disputes have led, and may continue to lead, to new and increasing trade barriers and other protectionist measures that can increase our manufacturing costs, make our products less competitive, reduce demand for our products, limit our ability to sell to certain customers or markets, limit our ability to procure components or raw materials, impede or slow the movement of our goods across borders, impede our ability to perform R&D activities, or otherwise restrict our ability to conduct operations. Increasing protectionism, economic nationalism, and national security concerns may lead to further changes in trade policy, domestic sourcing initiatives, or other formal and informal measures that could make it more difficult to sell our products in, or restrict our access to, some markets and/or customers.

Escalating tensions between the United States and China have led to increased trade restrictions and have affected customer ordering patterns. For example, the U.S. Bureau of Industry and Security ("BIS") has enacted increasingly broad trade restrictions with respect to Huawei (which represented approximately 10% of our revenue in the fourth quarter of 2020 and 12% in 2019), culminating with restrictions that took effect on September 15, 2020 and that currently prevent us and many other companies from shipping products to Huawei. We cannot predict the duration these restrictions will remain in place, whether the BIS will grant us or others licenses to ship products to Huawei, or whether the BIS or other U.S. or foreign government entities will enact similar restrictions with respect to other customers, markets, or products. We may not be able to replace the lost revenue opportunities associated with such restrictions.



The United States has also imposed other restrictions on the export of U.S. regulated products and technology to certain Chinese technology companies, including certain of our customers. These restrictions have reduced our sales, and continuing or future restrictions could adversely affect our financial results, result in reputational harm to us due to our relationship with such companies, or lead such companies to develop or adopt technologies that compete with our products. It is difficult to predict what further trade-related actions governments may take, and we may be unable to quickly and effectively react to such actions. For example, U.S. legislation has expanded the power of the U.S. Department of Commerce to restrict the export of “emerging and foundational technologies” yet to be identified, which could impact our current or future products.

Trade disputes and protectionist measures, or continued uncertainty about such matters, could result in declining consumer confidence and slowing economic growth or recession, and could cause our customers to reduce, cancel, or alter the timing of their purchases with us. Sustained trade tensions could lead to long-term changes in global trade and technology supply chains, which could adversely affect our business and growth prospects. Trade restrictions that may be imposed by the United States, China, or other countries may impact our business in ways we cannot reasonably quantify, including that some of our customers’ products which incorporate our solutions may also be impacted. Restrictions on our ability to sell and ship our products to Huawei could have an adverse effect on our business. In addition, further increases in trade restrictions or barriers may negatively impact our revenue, and any licenses we have received or could receive in the future could be rendered ineffective. Any such changes may have an adverse effect on our business, results of operations, or financial condition.

The technology industry is subject to intense media, political, and regulatory scrutiny, which can increase our exposure to government investigations, legal actions, and penalties. Although we have policies, controls, and procedures designed to help ensure compliance with applicable laws, there can be no assurance that our employees, contractors, suppliers, or agents will not violate such laws or our policies. Violations of trade laws, restrictions, or regulations can result in fines; criminal sanctions against us or our officers, directors, or employees; prohibitions on the conduct of our business; and damage to our reputation.

#### **We may incur additional tax expense or become subject to additional tax exposure.**

We operate in a number of locations outside the United States, including Singapore, where we have tax incentive arrangements that are conditional, in part, upon meeting certain business operations and employment thresholds. Our domestic and international taxes are dependent upon the geographic mix of our earnings among these jurisdictions. Our provision for income taxes and cash tax liabilities in the future could be adversely affected by numerous factors, including challenges by tax authorities to our tax positions and intercompany transfer pricing arrangements, failure to meet performance obligations with respect to tax incentive agreements, expanding our operations in various countries, and changes in tax laws and regulations. Additionally, we file income tax returns with the U.S. federal government, various U.S. states, and various other jurisdictions throughout the world and certain tax returns may remain open to examination for several years. The results of audits and examinations of previously filed tax returns and continuing assessments of our tax exposures may have an adverse effect on our provision for income taxes and cash tax liability. The foregoing items could have a material adverse effect on our business, results of operations, or financial condition.

#### **A change in tax laws in key jurisdictions could materially increase our tax expense.**

We are subject to income taxes in the United States and many foreign jurisdictions. Changes to income tax laws and regulations, or the interpretation of such laws, in any of the jurisdictions in which we operate could significantly increase our effective tax rate and ultimately reduce our cash flows from operating activities and otherwise have a material adverse effect on our financial condition. For example, our effective tax rate increased from 1.2% for 2018 to 9.8% for 2019 primarily as a result of the Tax Cuts and Jobs Act enacted in December 2017 by the United States. Additionally, various levels of government are increasingly focused on tax reform and other legislative actions to increase tax revenue. The current administration has various proposals that would increase U.S. federal income taxes on corporations. Further changes in the tax laws of foreign jurisdictions could arise as a result of the base erosion and profit shifting project undertaken by the Organisation for Economic Co-operation and Development, which represents a coalition of member countries and recommended changes to numerous long-standing tax principles. If implemented by taxing authorities, such changes, as well as changes in U.S. federal and state tax laws or in taxing jurisdictions’ administrative interpretations, decisions, policies, and positions, could have a material adverse effect on our business, results of operations, or financial condition.

**We and others are subject to a variety of laws, regulations, or industry standards, including with respect to climate change, that may have a material adverse effect on our business, results of operations, or financial condition.**

The manufacturing of our products requires the use of facilities, equipment, and materials that are subject to a broad array of laws and regulations in numerous jurisdictions in which we operate. Additionally, we are subject to a variety of other laws and regulations relative to the construction, maintenance, and operations of our facilities. Any changes in laws, regulations, or industry standards could cause us to incur additional direct costs, as well as increased indirect costs related to our relationships with our customers and suppliers, and otherwise harm our operations and financial condition. Any failure to comply with laws, regulations, or industry standards could adversely impact our reputation and our financial results. Additionally, we engage various third parties as sales channel partners or to represent us or otherwise act on our behalf who are also subject to a broad array of laws, regulations, and industry standards. Our engagement with these third parties may also expose us to risks associated with their respective compliance with laws and regulations.

Climate change concerns and the potential resulting environmental impact may result in new environmental, health, and safety laws and regulations that may affect us, our suppliers, and our customers. Such laws or regulations could cause us to incur additional direct costs for compliance, as well as increased indirect costs resulting from our customers, suppliers, or both incurring additional compliance costs that are passed on to us. These costs may adversely impact our results of operations and financial condition. In addition, climate change may pose physical risks to our manufacturing facilities or our suppliers' facilities, including increased extreme weather events that could result in supply delays or disruptions.

As a result of the items detailed in this risk factor, we could experience the following:

- suspension of production or sales of our products;
- remediation costs;
- alteration of our manufacturing processes;
- regulatory penalties, fines, and legal liabilities; and
- reputational challenges.

Compliance with, or our failure, or the failure of our third-party sales channel partners or agents, to comply with, laws, regulations, or industry standards could have a material adverse effect on our business, results of operations, or financial condition.

## Risks Related to Capitalization and Financial Markets

**We may be unable to generate sufficient cash flows or obtain access to external financing necessary to fund our operations, make scheduled debt payments, and make adequate capital investments.**

Our cash flows from operations depend primarily on the volume of semiconductor memory and storage products sold, average selling prices, and manufacturing costs. To develop new product and process technology, support future growth, achieve operating efficiencies, and maintain product quality, we must make significant capital investments in manufacturing technology, capital equipment, facilities, R&D, and product and process technology.

We estimate capital expenditures in 2021 for property, plant, and equipment, net of partner contributions, will be somewhat above \$9.5 billion, focused on technology transitions and product enablement. Investments in capital expenditures may not generate expected returns or cash flows. Delays in completion and ramping of new production facilities could significantly impact our ability to realize expected returns on our capital expenditures, which could have a material adverse effect on our business, results of operations, or financial condition.

In the past we have utilized external sources of financing when needed. As a result of our debt levels, expected debt amortization, and general economic conditions, it may be difficult for us to obtain financing on terms acceptable to us or at all. We have experienced volatility in our cash flows and operating results and may continue to experience such volatility in the future, which may negatively affect our credit rating. Our credit rating may also be affected by our liquidity, financial results, economic risk, or other factors, which may increase the cost of future borrowings and make it difficult for us to obtain financing on terms acceptable to us or at all. There can be no assurance that we will



be able to generate sufficient cash flows, access capital or credit markets, or find other sources of financing to fund our operations, make debt payments, and make adequate capital investments to remain competitive in terms of technology development and cost efficiency. Our inability to do any of the foregoing could have a material adverse effect on our business, results of operations, or financial condition.

#### **Debt obligations could adversely affect our financial condition.**

We have incurred in the past, and expect to incur in the future, debt to finance our capital investments, business acquisitions, and to restructure our capital structure, including the refinancing of existing debt. As of June 3, 2021:

- we had debt with a carrying value of \$6.72 billion;
- \$2.50 billion of our Revolving Credit Facility was available to us; and
- the conversion value in excess of principal of our convertible notes was \$938 million (based on the trading price of our common stock of \$82.03 per share on June 3, 2021) and substantially all remaining notes have been converted and will be settled in the fourth quarter of 2021 with cash for the \$130 million principal amount and primarily shares for amounts above principal based on volume-weighted-average prices of our shares for a period of 20 trading days after conversion.

Our debt obligations could adversely impact us. For example, these obligations could:

- require us to use a large portion of our cash flow to pay principal and interest on debt, which will reduce the amount of cash flow available to fund working capital, capital expenditures, acquisitions, R&D expenditures, and other business activities;
- result in certain of our debt instruments being accelerated to be immediately due and payable or being deemed to be in default if certain terms of default are triggered, such as applicable cross payment default and/or cross-acceleration provisions;
- adversely impact our credit rating, which could increase future borrowing costs;
- limit our future ability to raise funds for capital expenditures, strategic acquisitions or business opportunities, R&D, and other general corporate requirements;
- restrict our ability to incur specified indebtedness, create or incur certain liens, and enter into sale-leaseback financing transactions;
- increase our vulnerability to adverse economic and semiconductor memory and storage industry conditions;
- increase our exposure to interest rate risk from variable rate indebtedness; and
- dilute our earnings per share as a result of the conversion provisions in our convertible notes.

Our ability to meet our payment obligations under our debt instruments depends on our ability to generate significant cash flows or obtain external financing in the future. This, to some extent, is subject to market, economic, financial, competitive, legislative, and regulatory factors as well as other factors that are beyond our control. There can be no assurance that our business will generate cash flow from operations, or that additional capital will be available to us, in amounts sufficient to enable us to meet our debt payment obligations and to fund other liquidity needs. Additionally, events and circumstances may occur which would cause us to not be able to satisfy applicable draw-down conditions and utilize our Revolving Credit Facility. If we are unable to generate sufficient cash flows to service our debt payment obligations, we may need to refinance or restructure our debt, sell assets, reduce or delay capital investments, or seek to raise additional capital. If we are unable to implement one or more of these alternatives, we may be unable to meet our debt payment obligations, which could have a material adverse effect on our business, results of operations, or financial condition.

#### **Changes in foreign currency exchange rates could materially adversely affect our business, results of operations, or financial condition.**

Across our global operations, significant transactions and balances are denominated in currencies other than the U.S. dollar (our reporting currency), primarily the euro, Singapore dollar, New Taiwan dollar, and yen. In addition, a significant portion of our manufacturing costs are denominated in foreign currencies. Exchange rates for some of these currencies against the U.S. dollar have been volatile and may be volatile in future periods. If these currencies strengthen against the U.S. dollar, our manufacturing costs could significantly increase. Exchange rates for the U.S. dollar that adversely change against our foreign currency exposures could have a material adverse effect on our business, results of operations, or financial condition.

### **We are subject to counterparty default risks.**

We have numerous arrangements with financial institutions that subject us to counterparty default risks, including cash deposits, investments, and derivative instruments. Additionally, we are subject to counterparty default risk from our customers for amounts receivable from them. As a result, we are subject to the risk that the counterparty will default on its performance obligations. A counterparty may not comply with its contractual commitments which could then lead to its defaulting on its obligations with little or no notice to us, which could limit our ability to mitigate our exposure. Additionally, our ability to mitigate our exposures may be constrained by the terms of our contractual arrangements or because market conditions prevent us from taking effective action. If one of our counterparties becomes insolvent or files for bankruptcy, our ability to recover any losses suffered as a result of that counterparty's default may be limited by the liquidity of the counterparty or the applicable laws governing the bankruptcy proceedings. In the event of such default, we could incur significant losses, which could have a material adverse effect on our business, results of operations, or financial condition.

### **The trading price of our common stock has been and may continue to be volatile.**

Our common stock has experienced substantial price volatility in the past and may continue to do so in the future. Additionally, we, the technology industry, and the stock market as a whole have on occasion experienced extreme stock price and volume fluctuations that have affected stock prices in ways that may have been unrelated to the specific operating performance of individual companies. The trading price of our common stock may fluctuate widely due to various factors, including, but not limited to, actual or anticipated fluctuations in our financial condition and operating results, changes in financial estimates by us or financial estimates and ratings by securities analysts, changes in our capital structure, including issuance of additional debt or equity to the public, interest rate changes, regulatory changes, news regarding our products or products of our competitors, and broad market and industry fluctuations. For these reasons, investors should not rely on recent or historical trends to predict future trading prices of our common stock, financial condition, results of operations, or cash flows. Investors in our common stock may not realize any return on their investment in us and may lose some or all of their investment. Volatility in the trading price of our common stock could also result in the filing of securities class action litigation matters, which could result in substantial costs and the diversion of management time and resources.

### **The amount and frequency of our share repurchases may fluctuate, and we cannot guarantee that we will fully consummate our share repurchase authorization, or that it will enhance long-term shareholder value. Share repurchases could also increase the volatility of the trading price of our stock and will diminish our cash reserves.**

The amount, timing, and execution of our share repurchases pursuant to our share repurchase authorization may fluctuate based on our operating results, cash flows, and priorities for the use of cash for other purposes. For example, we repurchased 66.4 million shares for \$2.66 billion in 2019, 3.6 million shares for \$176 million in 2020, and 1.7 million shares for \$150 million in the first nine months of 2021. These other purposes include, but are not limited to, operational spending, capital spending, acquisitions, and repayment of debt. Other factors, including changes in tax laws, could also impact our share repurchases. Although our Board of Directors has authorized share repurchases of up to \$10 billion of our outstanding common stock, the authorization does not obligate us to repurchase any common stock.

We cannot guarantee that our share repurchase authorization will be fully consummated or that it will enhance long-term shareholder value. The repurchase authorization could affect the trading price of our stock and increase volatility, and any announcement of a pause in, or termination of, this program may result in a decrease in the trading price of our stock. In addition, this program will diminish our cash reserves.

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

In May 2018, we announced that our Board of Directors authorized the discretionary repurchase of up to \$10 billion of our outstanding common stock through open-market purchases, block trades, privately-negotiated transactions, derivative transactions, and/or pursuant to Rule 10b5-1 trading plans. The repurchase authorization has no expiration date, does not obligate us to acquire any common stock, and is subject to market conditions and our ongoing determination of the best use of available cash.

Period		Total number of shares purchased	Average price paid per share	Total number of shares purchased as part of publicly announced plans or programs	Maximum number (or approximate dollar value) of shares that may yet be purchased under publicly announced plans or programs
March 5, 2021	– April 8, 2021	195,967	\$ 90.18	195,967	
April 9, 2021	– May 6, 2021	906,068	89.05	906,068	
May 7, 2021	– June 3, 2021	637,772	80.99	637,772	
		<u>1,739,807</u>	<u>\$ 86.23</u>	<u>1,739,807</u>	<u>\$ 7,012,266,321</u>

Shares of common stock withheld as payment of withholding taxes and exercise prices in connection with the vesting or exercise of equity awards are also treated as common stock repurchases. Those withheld shares of common stock are not required to be disclosed under Item 703 of Regulation S-K and accordingly are excluded from the amounts in the table above.

## ITEM 6. EXHIBITS

Exhibit Number	Description of Exhibit	Filed Herewith	Form	Period Ending	Exhibit/ Appendix	Filing Date
10.22	<a href="#">Credit Agreement, dated as of May 14, 2021, by and among Micron Technology, Inc., as borrower, HSBC Bank USA, National Association, as administrative agent, the other agents party thereto, and each financial institution party from time to time thereto</a>	X				
10.23	<a href="#">Term Loan Credit Agreement, dated as of May 14, 2021, by and among Micron Technology, Inc., as borrower, Wells Fargo Bank, National Association, as administrative agent, the other agents party thereto, and each financial institution party from time to time thereto</a>	X				
31.1	<a href="#">Rule 13a-14(a) Certification of Chief Executive Officer</a>	X				
31.2	<a href="#">Rule 13a-14(a) Certification of Chief Financial Officer</a>	X				
32.1	<a href="#">Certification of Chief Executive Officer Pursuant to 18 U.S.C. 1350</a>	X				
32.2	<a href="#">Certification of Chief Financial Officer Pursuant to 18 U.S.C. 1350</a>	X				
101.INS	Inline XBRL Instance Document - the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document	X				
101.SCH	Inline XBRL Taxonomy Extension Schema Document	X				
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document	X				
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document	X				
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document	X				
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document	X				
104	Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101)	X				

## SIGNATURES

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

Micron Technology, Inc.

(Registrant)

Date: July 1, 2021

By: /s/ David A. Zinsner

David A. Zinsner  
Senior Vice President and Chief Financial Officer  
(Principal Financial Officer)

/s/ Scott Allen

Scott Allen  
Corporate Vice President and Chief Accounting Officer  
(Principal Accounting Officer)

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CREDIT AGREEMENT

among

MICRON TECHNOLOGY, INC.,

as Borrower

and

THE LENDERS PARTY HERETO,

and

HSBC BANK USA, NATIONAL ASSOCIATION,  
as Administrative Agent

Dated as of May 14, 2021

HSBC SECURITIES (USA) INC.

as Sole Bookrunner

HSBC SECURITIES (USA) INC.,  
BNP PARIBAS SECURITIES CORP.,  
CREDIT AGRICOLE CORPORATE AND INVESTMENT BANK,  
DBS BANK LTD.,  
INDUSTRIAL AND COMMERCIAL BANK OF CHINA LIMITED, NEW YORK BRANCH,  
MIZUHO BANK, LTD.,  
MUFG BANK, LTD.,  
and  
WELLS FARGO SECURITIES, LLC

as Joint Lead Arrangers

CREDIT AGRICOLE CORPORATE AND INVESTMENT BANK

as Sustainability Structuring Agent

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- Exhibit A Form of Closing Certificate for the Borrower
- Exhibit B Form of Borrowing Request
- Exhibit C Form of Compliance Certificate
- Exhibit D Form of Assignment and Acceptance
- Exhibit E-1 Form of United States Tax Compliance Certificate (For Non-U.S. Lenders That Are Not Partnerships For U.S. Federal Income Tax Purposes)
- Exhibit E-2 Form of United States Tax Compliance Certificate (For Non-U.S. Lenders That Are Partnerships For U.S. Federal Income Tax Purposes)
- Exhibit E-3 Form of United States Tax Compliance Certificate (For Non-U.S. Participants That Are Not Partnerships For U.S. Federal Income Tax Purposes)
- Exhibit E-4 Form of United States Tax Compliance Certificate (For Non-U.S. Participants That Are Partnerships For U.S. Federal Income Tax Purposes)
- Exhibit F Form of Notice of Continuation/Conversion
- Exhibit G Form of Acceptance and Prepayment Notice
- Exhibit H Form of Sustainability Pricing Certificate

THIS CREDIT AGREEMENT, dated as of May 14, 2021, among MICRON TECHNOLOGY, INC., a Delaware corporation (the “Borrower”), HSBC BANK USA, NATIONAL ASSOCIATION (“HSBC”), as administrative agent (in such capacity and including any successors in such capacity, the “Administrative Agent” or the “Agent”), the other agents party hereto and each of the financial institutions from time to time party hereto (collectively, the “Lenders”).

W I T N E S S E T H:

WHEREAS, the Borrower intends to use the Loans (as defined below) for general corporate purposes.

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

SECTION 1

Definitions

1.1. Defined Terms. As used in this Agreement, the following terms shall have the meanings specified below:

“2018 GHG Emissions Intensity Baseline”: (a) the sum of the Borrower and its Subsidiaries’ (i) total Scope 1 Emissions plus (ii) Scope 2 Emissions for the calendar year ended December 31, 2018 divided by (b) production units for the calendar year ended December 31, 2018.

“Administrative Agent”: the meaning set forth in the preamble to this Agreement.

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

“Affiliate”: 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. For purposes of this definition, “control” of a Person means the power, directly or indirectly, to direct or cause the direction of the management and policies of such Person whether through the ownership of voting securities, by contract or otherwise.

“Agent”: the meaning set forth in the preamble to this Agreement.

“Agreement”: this Credit Agreement, as the same may be amended, restated, amended and restated, supplemented or otherwise modified from time to time.

“Anti-Corruption Laws”: means all laws, rules and regulations of any jurisdiction applicable to the Borrower or any of its Subsidiaries from time to time concerning or relating to bribery or corruption, including, without limitation, the Foreign Corrupt Practices Act of 1977, as amended.

“Applicable Margin”: with respect to the Revolving Loans, for any day, with respect to any Eurodollar Loan or any Base Rate Loan, as the case may be, the applicable rate per annum set forth below under the caption “Eurodollar Spread” or “Base Rate Spread”, as the case may be, corresponding to the applicable Corporate Ratings from the Rating Agencies on such date:

Level:	Pricing	Corporate	Eurodollar	Base
	Level	Ratings:	Spread	Rate Spread
1		≥ BBB+ / Baa1 / BBB+	1.00%	0.00%

Level:	Pricing	Corporate Ratings:	Eurodollar Spread	Base Rate Spread
2	Level	BBB / Baa2 / BBB	1.125%	0.125%
3	Level	BBB- / Baa3 / BBB-	1.25%	0.25%
4	Level	BB+ / Ba1 / BB+	1.50%	0.50%
5	Level	≤ BB / Ba2 / BB	1.75%	0.75%

For purposes of the foregoing, (i) if only one Corporate Rating is in effect, the Applicable Margin shall be determined by reference to such available Corporate Rating, (i) if two or three Corporate Ratings are in effect, the Applicable Margin shall be determined by reference to the highest of the two or three, as applicable, Corporate Ratings unless the other Corporate Rating(s) are more than one notch lower than the highest Corporate Rating, in which case, the Applicable Margin shall be one notch lower than such highest Corporate Rating; (iii) if no Corporate Rating is in effect, the Applicable Margin shall be Level 5; and (iv) if the Corporate Ratings established by the relevant Rating Agencies shall be changed (other than as a result of a change in the rating system of any relevant Rating Agency), such change shall be effective as of the date on which it is first announced by the applicable rating agency, irrespective of when notice of such change shall have been furnished by the Borrower to the Administrative Agent. Within five Business Days of any change in a Corporate Rating, the Borrower shall use reasonable best efforts to notify Administrative Agent in writing (which may be by facsimile or email transmission) of such new Corporate Rating and the date of such change.

Each change in the Applicable Margin shall apply during the period commencing on the effective date of such change and ending on the date immediately preceding the effective date of the next Corporate Rating change.

Subject to Section 2.25(d), the Applicable Margin shall be adjusted on each Sustainability Adjustment Date based upon the Sustainability Margin Adjustment (to be calculated and applied as set forth in the definition thereof and in Section 2.25(a)); provided that in no event shall the Applicable Margin be less than 0.00%.

“Approved Electronic Communication”: any notice, demand, communication, information, document or other material that any Loan Party provides to the Administrative Agent pursuant to any Loan Document or the transactions contemplated therein which is distributed to the Agent or to the Lenders by means of electronic communications pursuant to Section 9.2(b).

“Approved Fund”: as defined in Section 9.6(b)(ii).

“Arranger”: each of the Joint Lead Arrangers.

“Assignee”: as defined in Section 9.6(b)(i).

“Assignment and Acceptance”: an assignment and acceptance entered into by a Lender and an Assignee and accepted by the Administrative Agent to the extent required pursuant to Section 9.6, substantially in the form of Exhibit D hereto.

“Attributable Debt”: in connection with a sale and lease-back transaction the lesser of: (1) the fair value of the assets subject to such transaction, as determined in good faith by a Responsible Officer of the

Borrower; and (2) the present value of the minimum rental payments called for during the terms of the lease (including any period for which such lease has been extended), determined in accordance with GAAP, discounted at a rate that, at the inception of the lease, the lessee would have incurred to borrow over a similar term the funds necessary to purchase the leased assets.

“Availability Period”: the period from and including the Closing Date to but excluding the earlier of the Revolving Maturity Date and the date of termination of the Revolving Commitments.

“Available Tenor”: as of any date of determination and with respect to the then-current Benchmark, as applicable, any tenor for such Benchmark or payment period for interest calculated with reference to such Benchmark, as applicable, that is or may be used for determining the length of an Interest Period pursuant to this Agreement 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 2.10(e).

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

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

“Bankruptcy Code”: the United States Bankruptcy Code, codified as Title 11, U.S. Code §101-1330, as amended.

“Base Rate”: for any day, a rate per annum equal to the greatest of (a) the Prime Rate in effect on such day, (b) the NYFRB Rate in effect on such day plus ½ of 1% and (c) Eurodollar Rate for a one month Interest Period on such day (or if such day is not a Business Day, the immediately preceding Business Day) plus 1%. Any change in the Base Rate due to a change in the Prime Rate, the NYFRB Rate or the Eurodollar Rate shall be effective from and including the effective date of such change in the Prime Rate, the NYFRB Rate or the Eurodollar Rate, respectively. If the Base Rate is being used as an alternate rate of interest pursuant to Section 2.10 hereof, then the Base Rate shall be the greater of clauses (a) and (b) above and shall be determined without reference to clause (c) above. For the avoidance of doubt, if the Base Rate as so determined would be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

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

“Base Rate Revolving Borrowing”: a Borrowing of Revolving Loans that are Base Rate Loans.

“Benchmark”: initially, LIBOR; provided that if a Benchmark Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date have occurred with respect to LIBOR or the then-current Benchmark, then “Benchmark” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to Section 2.10(b).

“Benchmark Replacement”: for any Available Tenor, the first alternative set forth in the order below that can be determined by the Administrative Agent for the applicable Benchmark Replacement Date:

(1) the sum of: (a) Term SOFR and (b) the related Benchmark Replacement Adjustment;

(2) the sum of: (a) Daily Simple SOFR and (b) the related Benchmark Replacement Adjustment;

(3) the sum of: (a) the alternate benchmark rate that has been selected by the Administrative Agent and the Borrower as the replacement for the then-current Benchmark for the applicable Corresponding Tenor giving due consideration to (i) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement for the then-current Benchmark for U.S. dollar-denominated syndicated credit facilities at such time and (b) the related Benchmark Replacement Adjustment;

provided that, in the case of clause (1), the Unadjusted Benchmark Replacement is displayed on a screen or other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion. If the Benchmark Replacement as determined pursuant to clause (1), (2) or (3) above would be less than the Floor, the Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Loan Documents.

**“Benchmark Replacement Adjustment”**: with respect to any replacement of the then current Benchmark with an Unadjusted Benchmark Replacement for any applicable Interest Period and Available Tenor for any setting of such Unadjusted Benchmark Replacement:

(1) for purposes of clauses (1) and (2) of the definition of “Benchmark Replacement,” the first alternative set forth in the order below that can be determined by the Administrative Agent:

(a) the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) as of the Reference Time such Benchmark Replacement is first set for such Interest Period that has been selected or recommended by the Relevant Governmental Body for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for the applicable Corresponding Tenor;

(b) the spread adjustment (which may be a positive or negative value or zero) as of the Reference Time such Benchmark Replacement is first set for such Interest Period that would apply to the fallback rate for a derivative transaction referencing the ISDA Definitions to be effective upon an index cessation event with respect to such Benchmark for the applicable Corresponding Tenor; and

(2) for purposes of clause (3) of the definition of “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 Administrative Agent and the Borrower for the applicable Corresponding Tenor giving due consideration to (i) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body on the applicable Benchmark Replacement Date and/or (ii) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for U.S. dollar denominated syndicated credit facilities; provided that, in the case of clause (1) above, such adjustment is displayed on a screen or other information service that publishes such Benchmark Replacement Adjustment from time to time as selected by the Administrative Agent in its reasonable discretion.

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

“Benchmark Replacement Date”: the earliest to occur of the following events with respect to the then-current Benchmark:

(1) in the case of clause (1) or (2) of the definition of “Benchmark Transition Event,” the later of (a) the date of the public statement or publication of information referenced therein and (b) 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);

(2) in the case of clause (3) of the definition of “Benchmark Transition Event,” the date of the public statement or publication of information referenced therein; or

(3) in the case of an Early Opt-in Election, the sixth (6th) Business Day after the date notice of such Early Opt-in Election is provided to the Lenders, so long as the Administrative Agent has not received, by 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Early Opt-in Election is provided to the Lenders, written notice of objection to such Early Opt-in Election from Lenders comprising the Required Lenders.

For the avoidance of doubt, (i) if the event giving rise to the Benchmark Replacement Date occurs on the same day as, but earlier than, the Reference Time in respect of any determination, the Benchmark Replacement Date will be deemed to have occurred prior to the Reference Time for such determination and (ii) the “Benchmark Replacement Date” will be deemed to have occurred in the case of clause (1) or (2) 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”: with respect to any Benchmark, the occurrence of one or more of the following events with respect to the then-current Benchmark:

(1) 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);

(2) 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 thereof), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component thereof) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component thereof), which states that the administrator of such Benchmark (or such component thereof) 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

(3) 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) announcing that all Available Tenors of such Benchmark (or such component thereof) are no longer representative.

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”: the period (if any) (x) beginning at the time that a Benchmark Replacement Date pursuant to clauses (1) or (2) of that definition 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 this Section titled “Benchmark Replacement Setting” and (y) 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 2.10.

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

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

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

“Benefited Lender”: the meaning set forth in Section 9.7(a).

“Board of Directors”: the board of directors of the Borrower or any committee thereof duly authorized to act on behalf of such board.

“Board of Governors”: the Board of Governors of the Federal Reserve System of the United States or any Governmental Authority which succeeds to the powers and functions thereof.

“Borrower”: the meaning set forth in the preamble to this Agreement.

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

“Borrowing Date”: the Business Day specified in a Borrowing Request as a date on which the Borrower requests the making of Loans hereunder.

“Borrowing Request”: a request by the Borrower for a Borrowing in accordance with Section 2.3, which shall be substantially in the form of Exhibit B or any other form approved by the Administrative Agent.

“Business Day”: any day other than a Legal Holiday.

“Capital Stock”: any and all shares of stock of a corporation, partnership interests or other equivalent interests (however designated, whether voting or non-voting) in such Person’s equity, entitling the holder to receive a share of the profits and losses, and a distribution of assets, after liabilities, of such Person.

“Captive Insurance Subsidiary”: any Restricted Subsidiary of the Borrower that is subject to regulation as an insurance company (or any Restricted Subsidiary thereof).

“CFC”: any controlled foreign corporation within the meaning of Section 957 of the Code.

“Change of Control”: any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act), other than the Borrower, its Subsidiaries or any employee benefit plan of the Borrower or its Subsidiaries, has filed a Schedule 13D or Schedule TO (or any successor schedule, form or report) pursuant to the Exchange Act disclosing that such person has become the direct or indirect “beneficial owner” (as such term is used in Rules 13d-3 and 13d-5 under the Exchange Act) of more than 50% of the Voting Stock of the Borrower, unless such beneficial ownership (a) arises solely as a result of a revocable proxy delivered in response to a proxy or consent solicitation made pursuant to the applicable rules and regulations under the Exchange Act, and (b) is not also then reportable on Schedule 13D (or any successor schedule under the Exchange Act, except that a person will be deemed to have beneficial ownership of all shares that such person has the right to acquire irrespective of whether that right is exercisable immediately or only after the passage of time); provided, however, that a transaction will not be deemed to involve a Change of Control if (a) the Borrower becomes a direct or indirect wholly owned subsidiary of a holding company, and (b) (i) the direct or indirect holders of the Voting Stock of such holding company immediately following that transaction are substantially the same as the holders of the Borrower’s Voting Stock immediately prior to that transaction or (ii) immediately following that transaction no “person” or “group” (other than a holding company satisfying the requirements of this sentence) is the beneficial owner, directly or indirectly, of more than 50% of the Voting Stock of such holding company.

“Charges”: any charge, expense, cost, accrual or reserve of any kind.

“Class”: when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are Loans made pursuant to Commitments with a like maturity date, and when used in reference to Lenders refers to Lenders making the same Class of Loans.

“Closing Date”: the date on which the conditions precedent set forth in Section 4.1 shall have been satisfied or waived, which date is May 14, 2021.

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

“Commitment”: with respect to any Lender, each Revolving Commitment or Incremental Revolving Commitment, if any, of such Lender.



“Commitment Fee Percentage”: the applicable rate per annum set forth below under the caption “Commitment Fee Percentage” corresponding to the Corporate Ratings from the Rating Agencies applicable on such date:

<u>Pricing Level:</u>	<u>Corporate Ratings:</u>	<u>Commitment Fee Percentage</u>
Level 1	≥ BBB+ / Baa1 / BBB+	0.125%
Level 2	BBB / Baa2 / BBB	0.15%
Level 3	BBB- / Baa3 / BBB-	0.175%
Level 4	BB+ / Ba1 / BB+	0.225%
Level 5	≤ BB / Ba2 / BB	0.275%

For purposes of the foregoing, (i) if only one Corporate Rating is in effect, the Commitment Fee Percentage shall be determined by reference to such available Corporate Rating, (i) if two or three Corporate Ratings are in effect, the Commitment Fee Percentage shall be determined by reference to the highest of the two or three, as applicable, Corporate Ratings unless the other Corporate Rating(s) are more than one notch lower than the highest Corporate Rating, in which case, the Commitment Fee Percentage shall be one notch lower than such highest Corporate Rating; (iii) if no Corporate Rating is in effect, the Commitment Fee Percentage shall be Level 5; and (iv) if the Corporate Ratings established by the relevant Rating Agencies shall be changed (other than as a result of a change in the rating system of any relevant Rating Agency), such change shall be effective as of the date on which it is first announced by the applicable rating agency, irrespective of when notice of such change shall have been furnished by the Borrower to the Administrative Agent. Within five Business Days of any change in a Corporate Rating, the Borrower shall use reasonable best efforts to notify Administrative Agent in writing (which may be by facsimile or email transmission) of such new Corporate Rating and the date of such change.

Each change in the Commitment Fee Percentage shall apply during the period commencing on the effective date of such change and ending on the date immediately preceding the effective date of the next Corporate Rating change.

Subject to Section 2.25(d), the Commitment Fee Percentage shall be adjusted on each Sustainability Adjustment Date based upon the Sustainability Commitment Fee Adjustment (to be calculated and applied as set forth in in the definition thereof and in Section 2.25(a)); provided that in no event shall the Commitment Fee Percentage be less than 0.00%.

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

“Compliance Certificate”: a compliance certificate to be delivered pursuant to Section 5.2(a), substantially in the form of Exhibit C.

“Consolidated EBITDA”: with respect to any Person for any Measurement Period, the sum of, without duplication, the amounts for such period, taken as a single accounting period, of (1) Consolidated Net Income; excluding (to the extent deducted or otherwise excluded in calculating Consolidated Net Income in such Measurement Period), the following amounts (or, to the extent attributable to a non-wholly owned

consolidated entity, a portion of the following amounts proportionate to the Borrower's allocable interest in such entity): (2) Consolidated Non-cash Charges; (3)(A) extraordinary Charges and (B) unusual or nonrecurring Charges, in each case, to the extent not of a type described in clause (2), (4) Consolidated Interest Expense; (5) Consolidated Income Tax Expense; (6) restructuring expenses and charges; (7) any expenses or charges related to any equity offering, Investment, recapitalization or incurrence of Indebtedness not prohibited under this Agreement (whether or not successful) or related to the entry into this Agreement; and (8) any charges, expenses or costs incurred in connection or associated with mergers, acquisitions or divestitures after the Closing Date.

Consolidated EBITDA shall be calculated after giving effect on a pro forma basis for the applicable Measurement Period to any asset sales or other dispositions or acquisitions, investment, mergers, consolidations and discontinued operations (as determined in accordance with GAAP) by such Person and its Consolidated Subsidiaries (1) that have occurred during such Measurement Period or at any time subsequent to the last day of such Measurement Period and on or prior to the date of the transaction in respect of which Consolidated EBITDA is being determined and (2) that the Borrower determines in good faith are outside the ordinary course of business, in each case as if such asset sale or other disposition or acquisition, investment, merger, consolidation or disposed operation occurred on the first day of such Measurement Period. For purposes of this definition, pro forma calculations shall be made in accordance with Article 11 of Regulation S-X under the Securities Act; provided that such pro forma calculations may include operating expense reductions for such period resulting from the transaction which is being given pro forma effect that are reasonably identifiable and factually supportable and have been realized or for which the steps necessary for realization have been taken or have been identified and are reasonably expected to be taken within one year following any such transaction (which operating expense reductions are reasonably expected to be sustainable); provided that, the Borrower shall not be required to give pro forma effect to any transaction that it does not in good faith deem material. Such pro forma calculations shall be made in good faith by a responsible financial or accounting officer of the Borrower.

"Consolidated Income Tax Expense": with respect to any Person for any period, the provision for (or benefit of) federal, state, local and foreign income taxes of such Person and its Consolidated Subsidiaries for such period as determined on a consolidated basis in accordance with GAAP, including any penalties and interest related to such taxes or arising from any tax examinations, to the extent the same were deducted (or added back, in the case of income tax benefit) in computing Consolidated Net Income.

"Consolidated Interest Expense": with respect to any Person, for any period, (a) the sum of all interest expense (including imputed interest charges with respect to finance lease obligations) of such Person and its Consolidated Subsidiaries payable in cash for such period determined on a consolidated basis in accordance with GAAP but excluding (i) any non-cash interest expense attributable to the movement in the mark to market valuation of hedging obligations or other derivative instruments pursuant to GAAP, amortization of deferred financing fees, debt issuance costs, commissions, fees and expenses, (ii) any expensing of bridge, commitment and other financing fees, (iii) any annual administrative or other agency fees, (iv) any premiums, fees or other charges incurred in connection with the refinancing, incurrence, purchase or redemption of Indebtedness, (v) any amortization of debt discounts, including discounts on convertible notes, and (vi) amortization of other costs, including imputed interest charges on liabilities other than finance lease obligations and premiums and discounts on investments, minus (b) interest income of such Person and its Consolidated Subsidiaries for such period determined on a consolidated basis in accordance with GAAP.

"Consolidated Net Income": with respect to any Person, for any period, the consolidated net income (or loss) of such Person and its Consolidated Subsidiaries, after deduction of net income (or loss) attributable to non-controlling interests, for such period as determined in accordance with GAAP, adjusted, to the extent included in calculating such net income, by excluding, without duplication, the following (or, to the extent attributable to a non-wholly owned consolidated entity, a portion of the following amounts proportionate to

the Borrower's allocable interest in such entity): (1) all extraordinary, unusual or nonrecurring gains or losses (net of fees and expense relating to the transaction giving rise thereto); (2) gains or losses in respect of any asset impairments, write-offs or sales (net of fees and expenses relating to the transaction giving rise thereto); (3) any expenses, losses or charges incurred related to lower of cost or market write-downs for work in process or finished goods inventories; (4) any expenses, losses or charges incurred related to excess or obsolete inventories; (5) the net income (loss) from any disposed or discontinued operations or any net gains or losses on disposed or discontinued operations; (6) any gain or loss realized as a result of the cumulative effect of a change in accounting principles; (7) any net gains or losses attributable to the early extinguishment or conversion of Indebtedness, derivative instruments, embedded derivatives or other similar obligations; (8) equity in net income (loss) of equity method investees; (9) gains, losses, income and expenses resulting from the application of fair value accounting to derivative instruments; and (10) gains or losses resulting from currency fluctuations. In addition, to the extent not already included in Consolidated Net Income of such Person and its Consolidated Subsidiaries, the amount of proceeds received from business interruption insurance and reimbursements of any expenses or charges that are covered by indemnification or other reimbursement provisions in connection with any investment or sale, conveyance, transfer or disposition of assets not prohibited under this Agreement.

"Consolidated Net Tangible Assets": with respect to any Person, the total amount of assets of such Person and its Consolidated Subsidiaries after deducting therefrom (a) all current liabilities of such Person and its Consolidated Subsidiaries (excluding (i) the current portion of long-term debt and the portion of any convertible debt classified as "current" despite having a stated maturity more than 12 months from the date as of which the amount thereof is being computed and (ii) any liabilities which are by their terms renewable or extendible at the option of the obligor thereon to a date more than 12 months from the date as of which the amount thereof is being computed) and (b) all goodwill, trade names, trademarks, patents, unamortized debt discount and expense and any other like intangibles of such Person and its Consolidated Subsidiaries, all as set forth on the consolidated balance sheet of such Person for the most recently completed fiscal quarter for which financial statements have been filed with the SEC and computed in accordance with GAAP.

"Consolidated Non-cash Charges": with respect to any Person for any period determined on a consolidated basis in accordance with GAAP, the aggregate depreciation; amortization (including amortization of goodwill, other intangibles, deferred financing fees, debt issuance costs, commissions, fees and expenses); non-cash compensation expense incurred in connection with the issuance of Equity Interests to any director, officer, employee or consultant of such Person or any Consolidated Subsidiary; and other non-cash expenses of such Person and its Subsidiaries reducing Consolidated Net Income of such Person and its Consolidated Subsidiaries for such period (excluding any such charge which requires an accrual of or a reserve for cash charges for any future period).

"Consolidated Subsidiaries": as of any date of determination and with respect to any Person, those Subsidiaries of that Person whose financial data is, in accordance with GAAP, reflected in that Person's consolidated financial statements.

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

"Copyrights": (i) all copyrights, database rights, design rights, mask works and works of authorship arising under the laws of the United States, any other country or any political subdivision thereof, whether registered or unregistered and whether published or unpublished, all registrations and recordings thereof, and all applications in connection therewith, including, without limitation, all registrations, recordings and applications in the United States Copyright Office, and (ii) the right to obtain all renewals thereof.

“Copyright Licenses”: any written agreement naming the Borrower or any Guarantor as a party, granting any right under any Copyright, including, without limitation, the grant of rights to reproduce, prepare derivative works based upon, perform, display, manufacture, distribute, exploit and sell materials derived from any Copyright.

“Corporate Rating”: the Borrower’s “corporate rating” or “corporate family rating” from S&P or Moody’s or Fitch, respectively, including any successor term for such rating adopted by such rating agency.

“Corresponding Tenor”: with respect to any Available Tenor means, as applicable, either a tenor (including overnight) or an interest payment period having approximately the same length (disregarding business day adjustment) as such Available Tenor.

“Daily Simple SOFR”: for any day, SOFR, with the conventions for this rate (which will include a lookback) being established by the Administrative Agent in accordance with the conventions for this rate selected or recommended by the Relevant Governmental Body for determining “Daily Simple SOFR” for syndicated business loans; provided, that if the Administrative Agent decides that any such convention is not administratively feasible for the Administrative Agent, then the Administrative Agent may establish another convention in its reasonable discretion.

“DC Disbursement”: a payment made by an Issuing Bank pursuant to a Documentary Credit.

“DC Exposure”: at any time, the sum of (a) the aggregate undrawn and unexpired amount of all outstanding Documentary Credits at such time plus (b) the aggregate amount of all DC Disbursements that have not yet been reimbursed by or on behalf of the Borrower at such time. The DC Exposure of any Lender at any time shall be its Revolving Loan Percentage of the DC Exposure at such time; provided that in the case of Section 2.24 when a Defaulting Lender shall exist, the DC Exposure of any Lender shall be adjusted to give effect to any reallocation effected pursuant to Section 2.24.

“DC Obligations”: at any time, an amount equal to the sum of (a) the aggregate then undrawn and unexpired amount of the then outstanding Documentary Credits and (b) the aggregate amount of drawings under Documentary Credits that have not then been reimbursed pursuant to Section 2.4(c).

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

“Default”: any of the events specified in Section 7.1, whether or not any requirement for the giving of notice, the expiration of applicable cure or grace periods, or both, has been satisfied.

“Defaulting Lender”: means any Lender that (a) has failed to (i) fund all or any portion of its Loans within one Business Day of the date such Loans were required to be funded hereunder unless such Lender notifies the Administrative Agent and the Borrower in writing that such failure is the result of such Lender’s determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in writing) has not been satisfied, or (ii) pay to the Administrative Agent or any other Lender any other amount required to be paid by it hereunder within one Business Day of the date when due, (b) has notified the Borrower and the Administrative Agent in writing that it does not intend to comply with its funding obligations hereunder (unless such writing relates to such Lender’s obligation to fund a Loan hereunder and states that such position is based on such Lender’s determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing) cannot be satisfied), (c) has failed, within two

Business Days after written request by the Administrative Agent or the Borrower, to confirm in writing to the Administrative Agent and the Borrower that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and the Borrower), or (d) has, or has a direct or indirect parent company that has, after the Closing Date, (i) become the subject to any bankruptcy event, (ii) had appointed for it a receiver, liquidator, examiner, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity or (iii) become the subject of a Bail-In Action; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent in consultation with the Borrower that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 2.24(b)) upon delivery of written notice of such determination to the Borrower and each Lender.

“Documentary Credit”: any letter of credit or bank guarantee issued pursuant to this Agreement.

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

“Early Opt-in Election”: if the then-current Benchmark is LIBOR, the occurrence of:

(1) a notification by the Administrative Agent to (or the request by the Borrower to the Administrative Agent to notify) each of the other parties hereto that at least five currently outstanding U.S. dollar-denominated syndicated credit facilities at such time contain (as a result of amendment or as originally executed) a SOFR-based rate (including SOFR, a term SOFR or any other rate based upon SOFR) as a benchmark rate (and such syndicated credit facilities are identified in such notice and are publicly available for review), and

(2) the joint election by the Administrative Agent and the Borrower to trigger a fallback from LIBOR and the provision by the Administrative Agent of written notice of such election to the Lenders.

“EEA Financial Institution”: (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

“EEA Member Country”: any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

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

“Engagement Letter”: that certain engagement letter dated April 14, 2021 among the Borrower and HSBC Securities (USA) Inc.

“Environmental Laws”: any and all applicable foreign, federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees, legally binding requirements of any Governmental Authority or other Requirements of Law (including common law) regulating, relating to or imposing liability or standards of conduct concerning protection of the environment or of human health (to the extent related to exposure to Materials of Environmental Concern), as now or may at any time hereafter be in effect.

“Equity Interests”: all Capital Stock and all warrants or options with respect to, or other rights to purchase, Capital Stock, but excluding Indebtedness convertible into or exchangeable for equity.

“ERISA”: the Employee Retirement Income Security Act of 1974, as amended from time to time, and the regulations promulgated and rulings issued thereunder.

“ERISA Event”: (a) any Reportable Event; (b) the failure by any Plan to satisfy the minimum funding standards (within the meaning of Section 412 of the Code or Section 302 of ERISA) applicable to such Plan, whether or not waived in accordance with Section 412(c) of the Code or Section 302(c) of ERISA; (c) the filing pursuant to Section 412(d) of the Code or Section 303(d) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan; (d) the incurrence by the Borrower or any of its ERISA Affiliates of any liability under Title IV of ERISA with respect to the termination of any Plan; (e) the receipt by the Borrower or any ERISA Affiliate from the PBGC or a plan administrator of any notice relating to an intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan; (f) the incurrence by the Borrower or any of its ERISA Affiliates of any liability with respect to the withdrawal or partial withdrawal from any Plan or Multiemployer Plan; or (g) the receipt by the Borrower or any Commonly Controlled Entity of any notice, or the receipt by any Multiemployer Plan from the Borrower or any Commonly Controlled Entity of any notice, concerning the imposition of withdrawal liability under ERISA or a determination that a Multiemployer Plan is, or is expected to be, Insolvent, within the meaning of Title IV of ERISA.

“Erroneous Payment”: the meaning assigned to it in Section 8.11(a).

“Erroneous Payment Deficiency Assignment”: the meaning assigned to it in Section 8.11(d).

“Erroneous Payment Impacted Class”: the meaning assigned to it in Section 8.11(d).

“Erroneous Payment Return Deficiency”: the meaning assigned to it in Section 8.11(d).

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

“Eurocurrency Reserve Requirements”: for any day as applied to a Eurodollar Loan, the aggregate (without duplication) of the maximum rates (expressed as a decimal fraction) of reserve requirements in effect on such day (including basic, supplemental, marginal and emergency reserves) under any regulations of the Board of Governors or other Governmental Authority having jurisdiction with respect thereto dealing with reserve requirements prescribed for eurocurrency funding (currently referred to as “Eurocurrency Liabilities” in Regulation D of the Board of Governors) maintained by a member bank of the Federal Reserve System.

“Eurodollar Base Rate”: with respect to each day during each Interest Period pertaining to a Eurodollar Loan, the rate per annum equal to the London Interbank Offered Rate (“LIBOR”) (or a comparable or successor rate which rate is approved by the Administrative Agent), as published on the applicable Bloomberg screen page (or such other commercially available source providing such quotations as may be

designated by the Administrative Agent from time to time) at approximately 11:00 A.M. (London time) on the date that is two Business Days prior to the beginning of the relevant Interest Period for deposits in Dollars for a period equal to such Interest Period; provided that, to the extent that an interest rate is not ascertainable pursuant to the foregoing provisions of this definition, the “Eurodollar Base Rate” shall be the interest rate per annum determined by the Administrative Agent to be the average of the rates per annum at which deposits in Dollars are offered for such relevant Interest Period to major banks in the London interbank market in London, England by the Administrative Agent at approximately 11:00 a.m. (London time) on the date that is two Business Days prior to the beginning of such Interest Period.

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

“Eurodollar Rate”: with respect to each day during each Interest Period pertaining to a Eurodollar Loan, a rate per annum determined for such day in accordance with the following formula (rounded upward to the nearest 1/100th of 1%):

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

; provided that in no event shall the Eurodollar Rate be less than 0.00%.

“Eurodollar Revolving Borrowing”: a Borrowing of Revolving Loans that are Eurodollar Loans.

“Event of Default”: any of the events specified in Section 7.1, provided that any requirement for the giving of notice, the lapse of time, or both, has been satisfied.

“Exchange Act”: the Securities Exchange Act of 1934, as amended, or any successor statute or statutes thereto.

“Excluded Taxes”: those Taxes referenced in Section 2.16(a)(i) through 2.16(a)(v).

“Existing Credit Agreement”: the Credit Agreement, dated as July 3, 2018, as amended from time to time, among the Borrower, the lenders from time to time parties thereto and JPMorgan Chase Bank, N.A., as administrative agent.

“Extended Revolving Commitments”: the meaning set forth in Section 2.23(a).

“Extension”: the meaning set forth in Section 2.23(a).

“Extension Offer”: the meaning set forth in Section 2.23(a).

“FATCA”: Sections 1471 through 1474 of the Code as in existence on the date hereof (and any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future Treasury regulations thereunder or published administrative guidance implementing such Sections, any agreement entered into pursuant to current Section 1471(b)(1) of the Code (or any amended or successor version described above) and any intergovernmental agreements (and related legislation or official administrative guidance) implementing the foregoing.

“Federal Funds Effective Rate”: for any day, the rate calculated by the NYFRB based on such day’s federal funds transactions by depository institutions, as determined in such manner as the NYFRB shall set forth on its public website from time to time, and published on the next succeeding Business Day by the

NYFRB as the effective federal funds rate, provided that if the Federal Funds Effective Rate as so determined would be less than zero, such rate shall be deemed to zero for the purposes of this Agreement.

“Fees”: collectively, the fees pursuant to Engagement Letter and Section 2.19, the fees referred to in Section 9.5 and any other fees payable by any Loan Party pursuant to this Agreement or any other Loan Document.

“Floor”: the benchmark rate floor, if any, provided in this Agreement initially (as of the execution of this Agreement, the modification, amendment or renewal of this Agreement or otherwise) with respect to LIBOR.

“Financial Officer”: the Chief Financial Officer, Principal Accounting Officer, Controller or Treasurer of the Borrower.

“Fitch”: Fitch, Inc. and any successor to its rating agency business.

“Foreign Subsidiary”: with respect to any Person, any Subsidiary of such Person other than one that is organized or existing under the laws of the United States, any state thereof or the District of Columbia.

“FSHCO”: with respect to any Person, any Subsidiary substantially all the assets of which consist of Equity Interests of, and/or intercompany debt obligations owed or treated as owed by, one or more (i) CFCs and/or (ii) Subsidiaries described in this definition.

“Funding Office”: the office of the Administrative Agent specified in Section 9.2(a) or such other office as may be specified from time to time by the Administrative Agent as its funding office by written notice to the Borrower and the Lenders.

“GAAP”: generally accepted accounting principles in the United States set forth in the statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as have been approved by a significant segment of the accounting profession, which are in effect as of the date of determination.

“GHG Emissions”: a Key Performance Indicator measured by GHG Emissions Intensity Reduction.

“GHG Emissions Intensity”: (a) the sum of the Borrower and its Subsidiaries’ (i) total Scope 1 Emissions plus (ii) Scope 2 Emissions for any calendar year divided by (b) production units for such calendar year.

“GHG Emissions Intensity Applicable Margin Adjustment Amount”: with respect to GHG Emissions for any calendar year, (a) positive 1.67 basis points if the GHG Emissions Intensity Reduction as set forth in the Sustainability Pricing Certificate is greater than the Partially Successful Completion Threshold for such calendar year, (b) zero basis points if the GHG Emissions Intensity Reduction as set forth in the Sustainability Pricing Certificate is greater than the Successful Completion Threshold and is less than or equal to the Partially Successful Completion Threshold for such calendar year; and (c) negative 1.67 basis points if the GHG Emissions Intensity Reduction as set forth in the Sustainability Pricing Certificate is equal to or less than the Successful Completion Threshold for such calendar year.

“GHG Emissions Intensity Commitment Fee Adjustment Amount”: with respect to GHG Emissions for any calendar year, (a) positive 0.34 basis points if the GHG Emissions Intensity Reduction as set forth in the Sustainability Pricing Certificate is greater than the Partially Successful Completion Threshold for such calendar year, (b) zero basis points if the GHG Emissions Intensity Reduction as set forth in the Sustainability



Pricing Certificate is greater than the Successful Completion Threshold and is less than or equal to the Partially Successful Completion Threshold for such calendar year; and (c) negative 0.34 basis points if the GHG Emissions Intensity Reduction as set forth in the Sustainability Pricing Certificate is equal to or less than the Successful Completion Threshold for such calendar year.

“GHG Emissions Intensity Reduction”: expressed as a percentage, (a) the sum of (i) GHG Emissions Intensity minus (ii) 2018 GHG Emissions Intensity Baseline divided by (b) the 2018 GHG Emissions Intensity Baseline.

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

“Guarantee”: any obligation, contingent or otherwise, of any Person directly or indirectly guaranteeing any Indebtedness of any other Person; provided that (1) obligations pursuant to commercial transactions on arm’s-length terms entered into in the ordinary course of business that are not primarily for the purpose of guaranteeing any Indebtedness of another Person shall not constitute a Guarantee, and (2) for avoidance of doubt, an agreement or arrangement or series of related agreements or arrangements providing for or in connection with the purchase or sale of assets, securities, services or rights that is entered into in connection with the business of the Borrower or any Subsidiary (including any consent or acknowledgement of assignment, including any assignment of payment obligations, warranties, indemnities, performance guarantees and related obligations, and related waivers), shall not constitute a Guarantee, *provided* that payment obligations, warranties, indemnities, performance guarantees and related obligations provided for under such agreements or arrangements are limited to payments for assets, securities, services and rights and other ancillary obligations customary in such transactions. The term “Guarantee” used as a verb has a corresponding meaning.

“Guarantor”: any Subsidiary that is a party to a Subsidiary Guaranty, and its successors and assigns, in each case, until the Guarantee of such Person under the Subsidiary Guaranty has been released in accordance with the provisions of this Agreement or the Subsidiary Guaranty.

“Incremental Amendment”: the meaning set forth in Section 2.21(c).

“Incremental Lender”: a Lender with an Incremental Revolving Commitment.

“Incremental Loans”: Loans made pursuant to Section 2.21.

“Incremental Revolving Commitment”: with respect to any Lender, the commitment of such Lender, established pursuant to an Incremental Amendment and Section 2.21, to make Revolving Loans hereunder, expressed as an amount representing the maximum aggregate amount of such Lender’s Revolving Extensions of Credit under such Incremental Amendment.

“Incremental Revolving Facility”: an incremental portion of the Revolving Commitments established hereunder pursuant to an Incremental Amendment providing for Incremental Revolving Commitments.

“Indebtedness”: indebtedness for borrowed money. For the avoidance of doubt, Indebtedness with respect to a Person only includes indebtedness for the repayment of money provided to such Person, and does not include any other kind of indebtedness or obligation notwithstanding that such other indebtedness or obligation may be evidenced by a note, bond, debenture or other similar instrument, may be in the nature of a

financing transaction, or may be an obligation that under GAAP is classified as “debt” or another type of liability, whether required to be reflected on the balance sheet of the obligor or otherwise.

The amount of any Indebtedness outstanding as of any date will be:

- (1) the accreted value of the Indebtedness, in the case of any Indebtedness that does not require the current payment of interest;
- (2) the principal amount of the Indebtedness, in the case of any other Indebtedness;
- (3) in respect of Indebtedness of another Person secured by a Lien on the assets of the specified Person (and not otherwise Guaranteed by the specified Person), the lesser of: (a) the fair value (as determined in good faith by a Responsible Officer of the Borrower) of such assets at the date of determination; and (b) the principal amount of the Indebtedness of the other Person;
- (4) in respect of any Indebtedness of another Person Guaranteed by the specified Person or one or more of such Persons, the lesser of: (a) the principal amount of such Indebtedness of such other Person and (b) the maximum amount of such Indebtedness payable under the Guarantee or Guarantees (without duplication in the case of one or more Guarantees of the same Indebtedness by Restricted Subsidiaries); and
- (5) in the case of obligations under any sale and lease-back transaction that are included in any calculation of Indebtedness pursuant to this Agreement (whether or not Indebtedness), an amount calculated in accordance with clause (2) of the definition of Attributable Debt.

In no event will the amount of any Indebtedness (including Guarantees of such Indebtedness) be required to be included in the calculation of Indebtedness more than once despite the fact more than one Person is liable with respect to such Indebtedness and despite the fact that such Indebtedness is secured by the assets of more than one Person (for example, and for avoidance of doubt, in the case where more than one Restricted Subsidiary has Guaranteed or otherwise become liable for such Indebtedness or in the case where there are Liens on assets of one or more of the Borrower and its Restricted Subsidiaries securing such Indebtedness or one or more Guarantees thereof, the amount of Indebtedness so Guaranteed or secured shall only be included once in the calculation of Indebtedness). In addition, accrual of interest and accretion or amortization of original issue discount will not be deemed to be an incurrence of Indebtedness for any purpose hereunder. For the avoidance of doubt, the inclusion of specific obligations in Section 6.1 or the definition of Permitted Liens or the inclusion of Attributable Debt in any calculation of Indebtedness shall not create any implication that any such obligations constitute Indebtedness.

“indemnified liabilities”: the meaning set forth in Section 9.5.

“Indemnatee”: the meaning set forth in Section 9.5.

“Initial KPI Metrics Report”: an annual report setting forth each KPI Metric for the calendar year ended December 31, 2020, of which all data and information in such Initial KPI Metrics Report has been made publicly available by the Borrower via the Borrower’s annual report on environmental, social and governance issues.

“Insolvency”: with respect to any Multiemployer Plan, the condition that such Plan is insolvent within the meaning of Section 4245 of ERISA.

“Insolvent”: pertaining to a condition of Insolvency.

“Intellectual Property”: the collective reference to all rights, priorities and privileges relating to intellectual property, whether arising under United States, multinational or foreign laws or otherwise, including, without limitation, the Copyrights, the Copyright Licenses, the Patents, the Patent Licenses, the Trademarks and the Trademark Licenses, trade secrets, and any transferable rights to sue at law or in equity for any infringement or other impairment thereof, including the right to receive all proceeds and damages therefrom.

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

“Interest Period”: as to any Eurodollar Loan, each period commencing on the last day of the next preceding Interest Period applicable to such Eurodollar Loan and ending one, three or six (or, if agreed to by all relevant Lenders, twelve) months thereafter, as selected by the Borrower by irrevocable notice to the Administrative Agent not later than 10:00 A.M., New York City time, on the date that is three (3) Business Days prior to the last day of the then current Interest Period with respect thereto; provided that, all of the foregoing provisions relating to Interest Periods are subject to the following:

(i) if any Interest Period would otherwise end on a day that is not a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless the result of such extension would be to carry such Interest Period into another calendar month in which event such Interest Period shall end on the immediately preceding Business Day;

(ii) the Borrower may not select an Interest Period that would extend beyond the applicable Revolving Maturity Date; and

(iii) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of a calendar month.

“Investment”: any direct or indirect loan, advance (or other extension of credit) or capital contribution to (by means of any transfer of cash or other property or assets to another Person or any other payments for property or services for the account or use of another Person) another Person, including, without limitation, the following: (1) the purchase or acquisition of any Capital Stock or other evidence of beneficial ownership in another Person; and (2) the purchase, acquisition or Guarantee of the Indebtedness or other liability of another Person.

“ISDA Definitions”: the 2006 ISDA Definitions published by the International Swaps and Derivatives Association, Inc. or any successor thereto, as amended or supplemented from time to time, or any successor definitional booklet for interest rate derivatives published from time to time by the International Swaps and Derivatives Association, Inc. or such successor thereto.

“Issuing Bank”: HSBC Bank USA, National Association, BNP Paribas, Credit Agricole Corporate and Investment Bank, Mizuho Bank, Ltd., MUFG Bank, Ltd. and Wells Fargo Bank, National Association party hereto and each other Lender designated by the Borrower as an “Issuing Bank” hereunder that has agreed to such designation (and is reasonably acceptable to the Administrative Agent), each in its capacity as the issuer of Documentary Credits hereunder, and its successors in such capacity as provided in Section 2.4(i).

Any Issuing Bank may, in its discretion and with notice to the Borrower and the Administrative Agent, arrange for one or more Documentary Credits to be issued by Affiliates of such Issuing Bank, in which case the term “Issuing Bank” shall include any such Affiliate with respect to Documentary Credits issued by such Affiliate.

“Joint Lead Arrangers”: HSBC Securities (USA) Inc., BNP Paribas Securities Corp., Credit Agricole Corporate and Investment Bank, DBS Bank Ltd., Industrial and Commercial Bank of China Limited, New York Branch, Mizuho Bank, Ltd., MUFG Bank, Ltd., and Wells Fargo Securities, LLC.

“Joint Venture”: with respect to any Person, any partnership, corporation or other entity in which up to and including 50% of the Equity Interests is owned, directly or indirectly, by such Person and/or one or more of its Subsidiaries.

“Key Performance Indicators”: each of GHG Emissions, RBA Audit Score and Waste.

“KPI Metrics”: means each of GHG Emission Intensity Reduction, the RBA Audit Score Average and Waste Diversion.

“KPI Metrics Auditor”: any auditing or consulting firm designated from time to time by the Borrower (or any replacement auditor thereof as designated from time to time by the Borrower); provided, that any such KPI Metrics Auditor (a) shall be (i) a nationally recognized auditing firm, (ii) a nationally recognized assurance provider or (iii) an independent consultant with experience with environmental, social and governance research and assurance services, and (b) shall apply auditing standards and methodology that (i) are consistent with then generally accepted industry standards or (ii) if not so consistent, are proposed by the Borrower and notified to the Administrative Agent, the Sustainability Structuring Agent and the Lenders, so long as the Lenders constituting the Required Lenders do not object to such changes within five Business Days after written notice thereof.

“KPI Metrics Report”: an annual report audited by the KPI Metrics Auditor that sets forth the calculations for each KPI Metric for the applicable calendar year (except, for the avoidance of doubt, the calendar year ended December 31, 2020); provided that all data and information set forth in such KPI Metrics Report shall also be set forth in the Borrower’s publicly available annual report on environmental, social and governance issues, beginning with the publicly available annual report covering calendar year 2021.

“Legal Holiday”: a Saturday, a Sunday or a day on which banking institutions in the City of New York or at a place of payment are authorized by law, regulation or executive order to remain closed. If a payment date is a Legal Holiday at a place of payment, payment may be made at that place on the next succeeding day that is not a Legal Holiday.

“Lenders”: the meaning set forth in the preamble to this Agreement.

“Lien”: any lien, security interest, mortgage, charge or similar encumbrance, provided, however, that in no event shall either (i) any legal or equitable encumbrances deemed to exist by reason of a negative pledge or (ii) an operating lease or a non-exclusive license be deemed to constitute a Lien.

“Loan”: a loan made by a Lender to the Borrower pursuant to this Agreement.

“Loan Documents”: this Agreement, any Subsidiary Guaranty, any Incremental Amendment, and, after execution and delivery thereof pursuant to the terms of this Agreement, each Note, and any amendment, waiver, supplement or other modification to any of the foregoing.

“Loan Parties”: the Borrower and any Guarantors.

“Material Adverse Effect”: a material adverse effect on (a) the business, financial condition, results of operations or properties of the Borrower and its Subsidiaries taken as a whole, (b) the ability of the Loan Parties taken as a whole, to perform their obligations under the Loan Documents, (c) the validity or enforceability of the Loan Documents taken as a whole or (d) the material rights and remedies available to, or conferred upon, the Lenders and the Administrative Agent under the other Loan Documents, taken as a whole.

“Material Subsidiary”: each Restricted Subsidiary that, as of the last day of the fiscal quarter of the Borrower most recently ended for which financial statements are available, had total assets (based on book value after intercompany eliminations) as of the end of such quarter in excess of \$200,000,000 or that is designated by the Borrower as a “Material Subsidiary.”

“Materials of Environmental Concern”: any gasoline or petroleum (including crude oil or any fraction thereof) or petroleum products, or asbestos, or polychlorinated biphenyls or any other chemicals, substances, materials, wastes, pollutants or contaminants in any form, regulated under any Environmental Law.

“Maximum Adjustment”: the meaning set forth in Section 2.25(b).

“Maximum Incremental Commitment Amount”: \$1,000,000,000.

“Measurement Period”: at any date of determination, the most recently completed four fiscal quarters of the Borrower for which financial statements have been filed with the SEC.

“Maximum Rate” has the meaning assigned to it in Section 9.20.

“Minimum Extension Condition”: the meaning set forth in Section 2.23(b).

“Moody’s”: Moody’s Investors Service, Inc. and any successor to its rating agency business.

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

“Non-Excluded Taxes”: the meaning set forth in Section 2.16(a).

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

“NYFRB”: the Federal Reserve Bank of New York.

“NYFRB Rate”: for any day, the greater of (a) the Federal Funds Effective Rate in effect on such day and (b) the Overnight Bank Funding Rate in effect on such day (or for any day that is not a Business Day, for the immediately preceding Business Day); provided that if none of such rates are published for any day that is a Business Day, the term “NYFRB Rate” means the rate for a federal funds transaction quoted at 11:00 a.m. on such day received by the Administrative Agent from a federal funds broker of recognized standing selected by it; provided, further, that if any of the aforesaid rates as so determined would be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

“Obligations”: the unpaid principal of and interest on (including interest accruing after the maturity of the Loans and interest accruing after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding, relating to the Borrower, whether or not a claim for post-filing or post-petition interest is allowed in such proceeding) the Loans, DC Exposure and all other obligations and liabilities of the Borrower to the Administrative Agent or to any Lender, whether direct or indirect, absolute

or contingent, due or to become due, or now existing or hereafter incurred, which may arise under, out of, or in connection with, this Agreement, any other Loan Document or any other document made, delivered or given in connection herewith or therewith, whether on account of principal, interest, reimbursement obligations, fees, indemnities, costs, expenses (including all fees, charges and disbursements of counsel to the Administrative Agent or to any Lender that are required to be paid by the Borrower pursuant hereto) or otherwise.

“Other Taxes”: all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes arising from any payment made hereunder or under any other Loan Document or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement or any other Loan Document, except any such Taxes imposed with respect to an assignment (other than an assignment pursuant to Section 2.22 (Replacement of Lenders)) as a result of the Administrative Agent, Lender or assignee having a present or former connection with the applicable taxing jurisdiction (other than any such connection arising solely from the Administrative Agent or such Lender or assignee having executed, delivered, become a party to, or performed its obligations or received a payment under, or enforced, and/or engaged in any activities contemplated with respect to this Agreement or any other Loan Document).

“Overnight Bank Funding Rate”: for any day, the rate comprised of both overnight federal funds and overnight Eurodollar borrowings by U.S.-managed banking offices of depository institutions, as such composite rate shall be determined by the NYFRB as set forth on its public website from time to time, and published on the next succeeding Business Day by the NYFRB as an overnight bank funding rate.

“Partially Successful Completion Threshold”: with respect to each calendar year, the number or percentage set forth in Schedule 1.3 (Sustainability Performance Thresholds) in the row labeled “Partially Successful Completion Threshold” for the applicable Key Performance Indicator for the applicable calendar year.

“Participant”: the meaning set forth in Section 9.6(c).

“Participant Register”: the meaning set forth in Section 9.6(c)(ii).

“Patents”: (i) all letters patent and patent rights of the United States, any other country or any political subdivision thereof, all reissues, reexaminations, and extensions thereof, (ii) all applications for letters patent of the United States or any other country and all divisionals, continuations and continuations-in-part thereof, and (iii) all rights to obtain any reissues or extensions of the foregoing.

“Patent License”: all agreements, whether written or oral, providing for the grant by or to Borrower or any Guarantor of any right to make, have made, manufacture, use, sell, offer to sell, have sold, import or export any invention covered in whole or in part by a Patent.

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

“Payment Notice”: the meaning assigned to it in Section 8.11(b).

“Payment Recipient”: the meaning assigned to it in Section 8.11(a).

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

“Permitted Liens”:

- (1) Liens existing as of the Closing Date or arising thereafter pursuant to related agreements existing as of the Closing Date;
- (2) Liens on property given to secure all or any part of the payment of or financing of all or any part of the purchase price thereof, or the cost of development, operation, construction, alteration, repair or improvement of all or any part thereof; provided that such Liens shall be given (or given pursuant to firm commitment financing arrangements obtained within such period) within 18 months (or in the case of Liens securing any Indebtedness supported by an export credit agency, 24 months) after the later of (i) the acquisition of such property and/or the completion of any such development, operation, construction, alteration, repair or improvement, whichever is later and (ii) the placing into commercial operation of such property after the acquisition or completion of any such development, operation, construction, alteration, repair or improvement and shall attach solely to the property acquired, or constructed, altered or repaired and any improvements then or thereafter placed thereon and the capital stock of any Person formed to acquire such property, and any proceeds thereof, accessions thereto and insurance proceeds thereof;
- (3) Liens existing on any property at the time of acquisition of such property or Liens existing on assets of a Person and its Restricted Subsidiaries prior to the time such Person becomes a Restricted Subsidiary (or arising thereafter pursuant to contractual commitments entered into prior to acquiring such property) (including acquisition through merger or consolidation) or at the time of such acquisition (or arising thereafter pursuant to contractual commitments entered into prior to such Person becoming a Restricted Subsidiary) by the Borrower or any Restricted Subsidiary of the Borrower; provided that such Liens do not extend to other assets of the Borrower or its other Restricted Subsidiaries;
- (4) (a) Liens on the Equity Interests of any Person, including any Joint Venture, and its Restricted Subsidiaries which, when such Liens arise, concurrently becomes a Restricted Subsidiary or Liens on all or substantially all of the assets of such Person, including any Joint Venture, and its Subsidiaries arising in connection with the purchase or acquisition thereof or of an interest therein by the Borrower or a Subsidiary and (b) Liens on Equity Interests in any Joint Venture of the Borrower or any of its Subsidiaries, or in any Subsidiary of the Borrower that owns an Equity Interest in a Joint Venture to secure Indebtedness contributed or advanced solely to that Joint Venture; provided that, in the case of each of the preceding clauses (a) and (b), such Liens do not extend to other assets of the Borrower or its other Restricted Subsidiaries;
- (5) Liens securing Indebtedness of up to 5.0% of Consolidated Net Tangible Assets to any strategic partner of the Borrower and/or one or more of its Restricted Subsidiaries incurred in connection with joint technology efforts between such partner and the Borrower and/or one or more of its Subsidiaries and/or the financing of manufacturing of products;
- (6) Liens in favor of the Borrower or a Restricted Subsidiary of the Borrower;
- (7) Liens imposed by law, such as carriers', warehousemen's and mechanic's Liens and other similar Liens arising in the ordinary course of business, Liens in connection with legal proceedings and Liens arising solely by virtue of any statutory, common law or contractual provision relating to banker's Liens, rights of set-off or similar rights and remedies as to securities accounts, deposit accounts or other funds maintained with a creditor depository institution;

(8) Liens for taxes, assessments or other governmental charges not yet overdue for a period of more than 30 days or subject to penalties for non-payment or which are being contested in good faith by appropriate proceedings and for which adequate reserves with respect thereto are maintained on the books of the Borrower or the affected Restricted Subsidiary, as the case may be, in accordance with GAAP;

(9) Liens to secure the performance of bids, trade or commercial contracts, government contracts, purchase, construction, sales and servicing contracts (including utility contracts), leases, statutory obligations, surety, stay, customs and appeal bonds, performance bonds and other obligations of a like nature, in each case in the ordinary course of business, deposits as security for contested taxes, import or customs duties, liabilities to insurance carriers or for the payment of rent, and Liens to secure letters of credit, Guarantees, bonds or other sureties given in connection with the foregoing obligations or in connection with workers' compensation, unemployment insurance or other types of social security or similar laws and regulations;

(10) Liens in favor of any customer arising in respect of and not exceeding the amount of performance deposits and partial, progress, advance or other payments by the customer for goods produced or services rendered (or to be produced or rendered) to that customer and consignment arrangements (whether as consignor or consignee) or similar arrangements for the sale or purchase of goods;

(11) Liens upon specific items of inventory or other goods, documents of title and proceeds of any Person securing such Person's obligation in respect of letters of credit or banker's acceptances issued or created in the ordinary course of business for the account of such Person to facilitate the purchase, shipment, or storage of such inventory or other goods;

(12) Liens and deposits securing netting services, business credit card programs, overdraft protection and other treasury, depository and cash management services or incurred in connection with any automated clearing-house transfers of funds or other fund transfer or payment processing services;

(13) Liens on, and consisting of, deposits made by the Borrower to discharge or defease any other Indebtedness;

(14) Liens on insurance policies and the proceeds thereof (i) incurred in connection with the financing of insurance premiums or (ii) with respect to any Subsidiary that is not a Restricted Subsidiary to the extent of such Subsidiary's interest as an insured under such policies;

(15) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods and Liens deemed to exist in connection with Investments in repurchase agreements;

(16) Liens securing Indebtedness or other obligations in an aggregate amount, together with all other Indebtedness and other obligations secured by Liens pursuant to this clause (16), not to exceed \$100,000,000 at any one time outstanding; or

(17) any extension, renewal, substitution or replacement (or successive extensions, renewals, substitutions or replacements), in whole or in part, of any Lien referred to in this clause (17) or the preceding clauses (1) through (16), or any Liens that secure an extension, renewal, replacement, refinancing or refunding (including any successive extensions, renewals, replacements, refinancings or refundings) of any Indebtedness within 12 months of the maturity, retirement or other



repayment or prepayment of the Indebtedness (including any such repayment pursuant to amortization obligations with respect to such Indebtedness) being extended, renewed, substituted, replaced, refinanced or refunded, which Indebtedness is or was secured by a Lien referred to in this clause (17) or the preceding clauses (1) through (16).

For the avoidance of doubt, the inclusion of specific Liens in the definition of Permitted Liens shall not create any implication that the obligations secured by such Liens constitute Indebtedness. Terms used in the foregoing definition of Permitted Liens that are defined in the UCC, including the terms accounts, consignee, consignment, consignor, deposit accounts, goods, inventory, securities accounts, security interest and proceeds shall have the meanings set forth in the UCC.

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

“Plan”: at a particular time, any employee benefit plan that is covered by ERISA and in respect of which the Borrower or a Commonly Controlled Entity is (or, if such plan were terminated at such time, would under Section 4069 of ERISA be deemed to be) an “employer” as defined in Section 3(5) of ERISA.

“Plan Asset Regulations”: 29 CFR § 2510.3-101 *et seq.*, as modified by Section 3(42) of ERISA, as amended from time to time.

“Platform”: the meaning set forth in Section 9.2(b).

“Prime Rate”: 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 Administrative Agent) or any similar release by the Federal Reserve Board (as determined by the Administrative Agent). Each change in the Prime Rate shall be effective from and including the date such change is publicly announced or quoted as being effective.

“Property”: with respect to any Person, all of such Person’s interests in any kind of property, assets (including the capital stock in and other securities of any other Person) or revenues.

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

“Public Lender”: the meaning set forth in Section 9.15.

“Qualified Acquisition”: any acquisition (directly or through the acquisition of equity interests) of all or substantially all or any significant portion of the assets of a Person, an operating unit, division or line of business, or other bulk purchase transaction not prohibited under this Agreement so long as (i) the consideration, which shall be cash consideration and/or other non-equity consideration (including any assumed liabilities), equals or exceeds \$400,000,000 and (ii) that the Borrower notifies the Administrative Agent in writing at least five Business Days (or such shorter period as may be reasonably acceptable to the Administrative Agent) prior to the consummation of such acquisition that such acquisition shall be a “Qualified Acquisition” for purposes of this Agreement along with a certificate signed by a Responsible Officer of the Borrower setting forth a calculation of (x) the Total Leverage Ratio immediately prior to such Qualified Acquisition and (y) the Total Leverage Ratio after giving pro forma effect to such Qualified Acquisition; provided that if the Borrower publicly announces such Qualified Acquisition later than five

Business Days prior to consummation of the Qualified Acquisition, the Borrower shall deliver such notice (and certificate, if applicable) on the date of announcement.

“Rating Agencies”: each of Moody’s, S&P and Fitch.

“RBA Audit Score”: a Key Performance Indicator measured by RBA Audit Score Average.

“RBA Audit Score Average”: the average of the Responsible Business Alliance (RBA) Validated Assessment Program (VAP) audit scores received by the manufacturing locations of the Borrower and its Subsidiaries at the applicable calendar year end.

“RBA Audit Score Average Applicable Margin Adjustment Amount”: with respect to RBA Audit Score for any calendar year, (a) positive 1.67 basis points if the RBA Audit Score Average as set forth in the Sustainability Pricing Certificate is less than the Partially Successful Completion Threshold for such calendar year, (b) zero basis points if the RBA Audit Score Average as set forth in the Sustainability Pricing Certificate is less than the Successful Completion Threshold and is greater than or equal to the Partially Successful Completion Threshold for such calendar year; and (c) negative 1.67 basis points if the RBA Audit Score Average as set forth in the Sustainability Pricing Certificate is equal to or greater than the Successful Completion Threshold for such calendar year.

“RBA Audit Score Average Commitment Fee Adjustment Amount”: with respect to RBA Audit Score for any calendar year, (a) positive 0.34 basis points if the RBA Audit Score Average as set forth in the Sustainability Pricing Certificate is less than the Partially Successful Completion Threshold for such calendar year, (b) zero basis points if the RBA Audit Score Average as set forth in the Sustainability Pricing Certificate is less than the Successful Completion Threshold and is greater than or equal to the Partially Successful Completion Threshold for such calendar year; and (c) negative 0.34 basis points if the RBA Audit Score Average as set forth in the Sustainability Pricing Certificate is equal to or greater than the applicable Successful Completion Threshold for such calendar year.

“Reference Time” with respect to any setting of the then-current Benchmark means (1) if such Benchmark is LIBOR, 11:00 a.m. (London time) on the day that is two London banking days preceding the date of such setting, and (2) if such Benchmark is not LIBOR, the time determined by the Administrative Agent in its reasonable discretion.

“Refinancing” shall mean the repayment, repurchase, redemption, defeasance or other discharge of the Existing Credit Agreement and the termination and release of any security interests and guarantees in connection therewith.

“Regulatory Change” with respect to each calendar year and in relation to any Key Performance Indicator, a policy change, on which the Borrower and its Subsidiaries has no recourse or ability to act upon, which affects, significantly, whether positively and / or negatively, one or more of the KPI Metrics.

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

“Register”: the meaning set forth in Section 9.6(b)(iv).

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

**“Related Persons”**: with respect to any Indemnitee, any Affiliate of such Indemnitee and any officer, director, employee, representative or agent of such Indemnitee or Affiliate thereof, in each case that has provided any services in connection with the transactions contemplated under this Agreement and the other Loan Documents.

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

**“Required Lenders”**: at any time, Lenders holding more than 50% of the total Commitments then in effect or, if the Commitments have been terminated, the Total Revolving Credit Exposure of all Lenders then outstanding; with respect to any Class, “Required Lenders” means at any time, Lenders holding more than 50% of the total Commitments then in effect for such Class, or if such Commitments have been terminated, the total Revolving Credit Exposure of all Lenders in such Class; provided that whenever there are one or more Defaulting Lenders, the Commitments and Revolving Credit Exposure held or deemed held by each Defaulting Lender shall be excluded for purposes of making any determination of Required Lenders.

**“Requirement of Law”**: as to any Person, the certificate of incorporation and bylaws or other organizational or governing documents of such Person, and any law, treaty, rule or regulation or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

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

**“Responsible Officer”**: the chief executive officer, any president, any vice president, the chief financial officer, the treasurer, any assistant treasurer, the secretary or any assistant secretary of the Borrower.

**“Restricted Subsidiary”**: each Subsidiary of the Borrower, (i) at least 80% of the Voting Stock of which is owned by the Borrower or one or more Subsidiaries of which at least 80% of the Voting Stock is owned directly or indirectly by the Borrower and (ii) is not an Unrestricted Subsidiary, provided that, for purposes of clause (i), any Voting Stock owned by a Subsidiary of the Borrower that is not a Restricted Subsidiary based on the foregoing clause shall be excluded.

**“Revolving Commitments”**: with respect to each Lender, the commitment of such Lender to make Revolving Loans and to acquire participations in Documentary Credits hereunder, expressed as an amount representing the maximum aggregate amount of such Lender’s Revolving Credit Exposure hereunder, as such commitment may be (a) reduced from time to time pursuant to Section 2.6 and (b) reduced or increased from time to time pursuant to assignments by or to such Lender pursuant to Section 9.4. The initial amount of each Lender’s Revolving Commitment is set forth on Schedule 1.1, or in the Assignment and Assumption or other documentation or record (as such “term” is defined in Section 9-102(a)(70) of the New York Uniform Commercial Code) as provided in Section 9.04(b)(ii)(C), pursuant to which such Lender shall have assumed its Revolving Commitment, as applicable. As of the Closing Date, the aggregate amount of the Lenders’ Revolving Commitments is \$2,500,000,000.

**“Revolving Credit Exposure”**: with respect to any Lender at any time, the sum of the outstanding principal amount of such Lender’s Loans and its DC Exposure at such time.

**“Revolving Credit Exposure Percentage”**: with respect to any Lender at any time, the ratio (expressed as a percentage) of such Lender’s Revolving Credit Exposure at such time to the Revolving Credit Exposure of all Lenders at such time.

“Revolving Extensions of Credit”: as to any Lender at any time, an amount equal to the sum of (a) the aggregate principal amount of all Revolving Loans made by such Lender then outstanding, and (b) such Lender’s Revolving Loan Percentage of the DC Obligations then outstanding.

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

“Revolving Loan”: a Loan made pursuant to Section 2.3.

“Revolving Loan Percentage”: as to any Lender at any time, the percentage of which such Lender’s Revolving Commitment represents of the aggregate Revolving Commitments or, if the Revolving Commitments have been terminated, the percentage held by such Lender of the aggregate principal amount of all Revolving Loans and DC Obligations (via risk participation) then outstanding.

“Revolving Maturity Date”: the earlier to occur of (a) the Stated Maturity and (b) the acceleration of the Revolving Loans and termination of the Revolving Commitments. In the event that one or more Extensions are effected in accordance with Section 2.23, then the Revolving Maturity Date of the Revolving Loans shall be determined based on the respective Stated Maturity applicable thereto (except in cases where clause (b) of the preceding sentence is applicable).

“S&P”: Standard & Poor’s Ratings Services, and any successor to its rating agency business.

“Sanctioned Country”: at any time, a country, region or territory which is itself the subject or target of any Sanctions (at the time of this Agreement, Crimea, Cuba, Iran, North Korea and Syria).

“Sanctioned Person”: at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the U.S. Department of State, by the United Nations Security Council, the European Union, any European Union member state, Her Majesty’s Treasury of the United Kingdom or other relevant sanctions authority, (b) any Person operating, organized or resident in a Sanctioned Country, (c) any Person owned or controlled by any such Person or Persons described in the foregoing clauses (a) or (b), or (d) any Person otherwise the subject of any Sanctions.

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

“Scope 1 Emissions”: emissions represented in metric tons CO<sub>2</sub>e from the Borrower and its Subsidiaries’ direct operations, including the manufacturing process, onsite combustion and refrigeration and cooling, with such emissions data collected and calculated in alignment with the Greenhouse Gas Protocol: A Corporate Accounting and Reporting Standard (Revised Edition).

“Scope 2 Emissions”: emissions represented in metric tons CO<sub>2</sub>e from purchased electricity consumed by the Borrower and its Subsidiaries, with such emissions data collected and calculated in alignment with the Greenhouse Gas Protocol: A Corporate Accounting and Reporting Standard (Revised Edition).

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

“Securities Act”: the Securities Act of 1933, as amended, or any successor statute or statutes thereto.

“Significant Subsidiary”: any Subsidiary that is a “significant subsidiary” of the Borrower as defined under clauses (1) or (2) of Rule 1-02(w) of Regulation S-X under the Exchange Act; provided that references to “10 percent” in clauses (1) and (2) of such definition shall be replaced with “20 percent”.

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

“SOFR”: with respect to any Business Day, a rate per annum equal to the secured overnight financing rate for such Business Day published by the SOFR Administrator on the SOFR Administrator’s Website at approximately 8:00 a.m. (New York City time) on the immediately succeeding Business Day.

“SOFR Administrator”: the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

“SOFR Administrator’s Website”: 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.

“Solvent”: when used with respect to any Person and its Subsidiaries, means that, as of any date of determination, (a) the amount of the “present fair saleable value” of the assets of such Person and its Subsidiaries on a consolidated basis will, as of such date, exceed the amount of all “liabilities of such Person and its Subsidiaries on a consolidated basis, contingent or otherwise”, as of such date, as such quoted terms are determined in accordance with applicable federal and state laws governing determinations of the insolvency of debtors, (b) the present fair saleable value of the assets of such Person and its Subsidiaries will, as of such date, be greater than the amount that will be required to pay the probable liability of such Person and its Subsidiaries on a consolidated basis on its debts as such debts become absolute and matured, (c) such Person and its Subsidiaries on a consolidated basis will not have, as of such date, an unreasonably small amount of capital with which to conduct their business, and (d) such Person and its Subsidiaries will be able to pay their debts as they mature. For purposes of this definition, (i) “debt” means liability on a “claim”, and (ii) “claim” means any (x) right to payment, whether or not such a right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured or (y) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured or unmatured, disputed, undisputed, secured or unsecured.

“Stated Maturity”: May 14, 2026; provided that, with respect to any Extended Revolving Commitments, the Stated Maturity with respect thereto shall instead be the final maturity date as specified in the applicable Extension Offer accepted by the respective Lender.

“Subsidiary”: with respect to any specified Person:

(1) any corporation, association or other business entity of which more than 50% of the total voting power of shares of Capital Stock entitled (without regard to the occurrence of any contingency and after giving effect to any voting agreement or stockholders’ agreement that effectively transfers voting power) to vote in the election of directors, managers or trustees of the corporation, association or other business entity is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person (or a combination thereof); and

(2) any partnership (a) the sole general partner or the managing general partner of which is such Person or a Subsidiary of such Person or (b) the only general partners of which are that Person or one or more Subsidiaries of that Person (or any combination thereof).

“Subsidiary Guaranty”: a guarantee agreement between a Subsidiary and Administrative Agent providing for a Guarantee of the Obligations by such Subsidiary, in such form as the Administrative Agent, the Borrower and such Subsidiary shall deem appropriate.

“Successful Completion Threshold” with respect to each calendar year, the number or percentage set forth in Schedule 1.3 (Sustainability Performance Thresholds) in the row labeled “Successful Completion Threshold” for the applicable Key Performance Indicator for the applicable calendar year.

“Sustainability Adjustment Date”: the date that is five Business Days following receipt from the Administrative Agent of the Sustainability Pricing Certificate in accordance with Section 5.2(d) for the applicable calendar year or the date that is 180 days after the end of the applicable calendar year if the Borrower fails to or elects not to deliver a Sustainability Pricing Certificate for such calendar year.

“Sustainability Applicable Rate Adjustment”: at any date, the applicable rate per annum determined in accordance with the Sustainability Margin Adjustment and Sustainability Commitment Fee Adjustment.

“Sustainability Commitment Fee Adjustment”: with respect to any calendar year, an amount (whether positive, negative or zero), equal to the sum of (a) GHG Emissions Intensity Commitment Fee Adjustment Amount, plus (b) the RBA Audit Score Average Commitment Fee Adjustment Amount, plus (c) Waste Diversion Commitment Fee Adjustment Amount, in each case for such calendar year.

“Sustainability Margin Adjustment”: with respect to any calendar year, an amount (whether positive, negative or zero), equal to the sum of (a) GHG Emissions Intensity Applicable Margin Adjustment Amount, plus (b) the RBA Audit Score Average Applicable Margin Adjustment Amount, plus (c) Waste Diversion Applicable Margin Adjustment Amount, in each case for such calendar year.

“Sustainability Performance Thresholds”: the Borrower’s objectives to improve or maintain over a certain level the KPI Metric of each of the Key Performance Indicators as reflected in the Sustainability Pricing Certificate, and specified in Schedule 1.3 (Sustainability Performance Thresholds).

“Sustainability Pricing Certificate”: a certificate signed by a duly elected Responsible Officer of the Borrower which shall be delivered by the Borrower once per calendar year to the Administrative Agent and Sustainability Structuring Agent pursuant to Section 5.2(d) substantially in the form of Exhibit I attaching (a) true and correct copies of the KPI Metrics Report for the immediately preceding calendar year and setting forth each of the Sustainability Commitment Fee Adjustment and the Sustainability Margin Adjustment and (b) a review report of the KPI Metrics Auditor confirming that the KPI Auditor is not aware of any material modifications that should be made to such computations in order for them to be presented in all material respects in conformity with the applicable reporting criteria.

“Sustainability Pricing Certificate Inaccuracy”: as defined in Section 2.25(d).

“Sustainability Structuring Agent”: Credit Agricole Corporate and Investment Bank or any successor thereto.

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

“Term SOFR”: for the applicable Corresponding Tenor as of the applicable Reference Time, the forward-looking term rate based on SOFR that has been selected or recommended by the Relevant Governmental Body.

“Total Leverage Ratio”: as of the of the date of determination thereof, the ratio of Indebtedness of the Borrower and its Consolidated Subsidiaries as of such date to Consolidated EBITDA of the Borrower for such Measurement Period.

“Total Revolving Credit Exposure”: the sum of the outstanding principal amount of all Lenders’ Loans and their DC Exposure at such time.

“Trademarks”: (i) all trademarks, service marks, trade names, corporate names, company names, business names, fictitious business names, trade styles, service marks, logos, domain names, and other source or business identifiers, and all goodwill associated therewith, all registrations and recordings thereof, and all applications in connection therewith (other than “intent to use” applications), whether in the United States Patent and Trademark Office or in any similar office or agency of the United States, any state thereof or any other country or any political subdivision thereof, or otherwise, and all common-law rights related thereto, and (ii) the right to obtain all renewals thereof.

“Trademark License”: any agreement, whether written or oral, providing for the grant by or to Borrower or any Guarantor of any right to use any Trademark.

“tranche”: the meaning set forth in Section 2.23(a).

“Transferee”: any Assignee or Participant.

“Type”: when used in reference to any Loan or Borrowing, refers to whether the rate of interest on such Loan, or on the Loans comprising such Borrowing, is determined by reference to the Base Rate or the Eurodollar Rate.

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

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

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

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

“United States”: the United States of America.

“Unrestricted Subsidiary”: (1) any Subsidiary of the Borrower listed on Schedule 1.2, (2) any Subsidiary of the Borrower designated by the Borrower as an Unrestricted Subsidiary pursuant to Section 5.7 subsequent to the Closing Date, until such Person ceases to be an Unrestricted Subsidiary of the Borrower in accordance with Section 5.7 and (3) any Subsidiary of an Unrestricted Subsidiary.

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

“Voting Stock”: all classes of capital stock or other interests (including partnership interests) of a Person then outstanding and normally entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof.

“Waste”: a Key Performance Indicator measured by Waste Diversion.

“Waste Diversion”: for each calendar year, expressed as a percentage, the Borrower and its Subsidiaries’ (i) hazardous and non-hazardous waste represented in kilograms diverted from landfill through on-site reuse, off-site reuse, recycling, composting, and recovery (including incineration with energy recovery) divided by (ii) total waste represented in kilograms.

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

“Waste Diversion Applicable Margin Adjustment Amount”: with respect to Waste for any calendar year, (a) positive 1.67 basis points if the Waste Diversion as set forth in the Sustainability Pricing Certificate is less than the Partially Successful Completion Threshold for such calendar year, (b) zero basis points if the Waste Diversion as set forth in the Sustainability Pricing Certificate is less than the Successful Completion Threshold and is greater than or equal to the Partially Successful Completion Threshold for such calendar year; and (c) negative 1.67 basis points if the Waste Diversion as set forth in the Sustainability Pricing Certificate is equal to or greater than the Successful Completion Threshold for such calendar year.

“Waste Diversion Commitment Fee Adjustment Amount”: with respect to Waste for any calendar year, (a) positive 0.34 basis points if the Waste Diversion as set forth in the Sustainability Pricing Certificate is less than the Partially Successful Completion Threshold for such calendar year, (b) zero basis points if the Waste Diversion as set forth in the Sustainability Pricing Certificate is less than the Successful Completion Threshold and is greater than or equal to the Partially Successful Completion Threshold for such calendar year; and (c) negative 0.34 basis points if the Waste Diversion as set forth in the Sustainability Pricing Certificate is equal to or greater than the applicable Successful Completion Threshold for such calendar year.

## 1.2. Other Definitional Provisions.

(a) Unless otherwise specified therein, all terms defined in this Agreement shall have the defined meanings when used in the other Loan Documents or any certificate or other document made or delivered pursuant hereto or thereto.

(b) As used herein and in the other Loan Documents, and any certificate or other document made or delivered pursuant hereto or thereto, (i) the words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”, (ii) the word “incur” shall be construed to mean incur, create,



issue, assume, become liable in respect of or suffer to exist (and the words “incurred” and “incurrence” shall have correlative meanings) and (iii) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, Capital Stock, securities, revenues, accounts, leasehold interests and contract rights.

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

(d) The meanings given to terms defined herein shall be equally applicable to both the singular and plural forms of such terms. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. References to agreements or other Contractual Obligations shall, unless otherwise specified, be deemed to refer to such agreements or Contractual Obligations as amended, supplemented, restated or otherwise modified from time to time to the extent permitted herein.

Except as otherwise provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP.

1.3. Delivery of Notices. Any reference to a delivery or notice date that is not a Business Day shall be deemed to mean the next succeeding day that is a Business Day.

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

## SECTION 2

### The Credits

2.1. Revolving Commitments. Subject to the terms and conditions hereof, each Lender severally agrees to make Revolving Loans in Dollars to the Borrower from time to time during the Availability Period in an aggregate amount that will not result (after giving effect to any application of proceeds of such Borrowing pursuant to Section 2.7) in (a) such Lender’s Revolving Credit Exposure exceeding such Lender’s Revolving Commitment or (b) the Total Revolving Credit Exposure exceeding the total Revolving Commitments. Within the foregoing limits and subject to the terms and conditions set forth herein, the Borrower may borrow, prepay and reborrow Revolving Loans. The Revolving Loans may from time to time be Eurodollar Loans or Base Rate Loans, as determined by the Borrower and notified to the Administrative Agent in accordance with Sections 2.2 and 2.12.

2.2. Revolving Loans and Borrowing. (a) Each Revolving Loan shall be made as part of a Borrowing consisting of Revolving Loans made by the Lenders ratably in accordance with their respective Revolving Loan Percentages. The failure of any Lender to make any Revolving Loan required to be made by it shall not relieve any other Lender of its obligations hereunder; provided that the Revolving Commitments of the Lenders are several and no Lender shall be responsible for any other Lender’s failure to make Loans as required.

(b) Subject to Section 2.10, each Revolving Borrowing shall be comprised entirely of Base Rate Loans or Eurodollar Loans as the Borrower may request in accordance herewith. Each Lender at its

option may make any Eurodollar Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan by designating such branch or Affiliate as its lending office; provided that any exercise of such option shall not affect the obligation of the Borrower to repay such Loan in accordance with the terms of this Agreement.

(c) At the commencement of each Interest Period for any Eurodollar Revolving Borrowing, such Borrowing shall be in an aggregate amount that is an integral multiple of \$1,000,000 and not less than \$5,000,000. At the time that each Base Rate Revolving Borrowing is made, such Borrowing shall be in an aggregate amount that is an integral multiple of \$1,000,000 and not less than \$3,000,000; provided that a Base Rate Revolving Borrowing may be in an aggregate amount that is equal to the entire unused balance of the total Revolving Commitments or that is required to finance the reimbursement of a DC Disbursement as contemplated by Section 2.4(e). Borrowings of more than one Type and Class may be outstanding at the same time; provided that there shall not at any time be more than a total of ten Eurodollar Revolving Borrowings outstanding.

(d) Notwithstanding any other provision of this Agreement, the Borrower shall not be entitled to request, or to elect to convert or continue, any Borrowing of Revolving Loans if the Interest Period requested with respect thereto would end after the applicable Revolving Maturity Date.

2.3. Requests for Revolving Borrowings. To request a Revolving Borrowing, the Borrower shall notify the Administrative Agent of such request by submitting a Borrowing Request (a) in the case of a Eurodollar Borrowing, not later than 1:00 p.m. New York City time, three Business Days before the date of the proposed Borrowing or (b) in the case of a Base Rate Borrowing, not later than 12:00 p.m. New York City time, on the date of the proposed Borrowing (which shall be a Business Day). Each such Borrowing Request shall be irrevocable and shall be signed by a Responsible Officer of the Borrower. Each such Borrowing Request shall specify the following information in compliance with Section 2.2:

- (i) the aggregate amount of the requested Borrowing;
- (ii) the Borrowing Date;
- (iii) whether such Borrowing is to be a Base Rate Borrowing or a Eurodollar Borrowing;
- (iv) in the case of a Eurodollar Borrowing, the initial Interest Period to be applicable thereto, which shall be a period contemplated by the definition of the term "Interest Period"; and
- (v) the location and number of the Borrower's account to which funds are to be disbursed, which shall comply with the requirements of Section 2.5.

If no election as to the Type of Revolving Borrowing is specified, then the requested Revolving Borrowing shall be a Base Rate Borrowing. If no Interest Period is specified with respect to any requested Eurodollar Revolving Borrowing, then the Borrower shall be deemed to have selected an Interest Period of one month's duration. Promptly following receipt of a Borrowing Request in accordance with this Section, the Administrative Agent shall advise each Lender of the details thereof and of the amount of such Lender's Loan to be made as part of the requested Borrowing.

2.4. Documentary Credits. (a) General. Subject to the terms and conditions set forth herein, the Borrower may request the issuance of Documentary Credits as the applicant thereof for the support of its or its Subsidiaries' obligations, in a form reasonably acceptable to the Administrative Agent and the applicable Issuing Bank, at any time and from time to time during the Availability Period. In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of any

Documentary Credit Agreement, the terms and conditions of this Agreement shall control. Notwithstanding anything herein to the contrary, no Issuing Bank shall have an obligation hereunder to issue, and no Issuing Bank shall issue, any Documentary Credit the proceeds of which would be made available to any Person (i) to fund any activity or business of or with any Sanctioned Person, or in any Sanctioned Country, (ii) in any manner that would result in a violation of any Sanctions by any party to this Agreement or (iii) in any manner that would result in a violation of one or more policies of such Issuing Bank applicable to letters of credit or bank guarantees generally.

(b) Notice of Issuance, Amendment, Renewal, Extension; Certain Conditions. To request the issuance of a Documentary Credit (or the amendment, renewal or extension of an outstanding Documentary Credit), the Borrower shall hand deliver or telecopy (or transmit by electronic communication, if arrangements for doing so have been approved by the applicable Issuing Bank) to the applicable Issuing Bank and the Administrative Agent (reasonably in advance of the requested date of issuance, amendment, renewal or extension, but in any event no less than three Business Days) a notice requesting the issuance of a Documentary Credit, or identifying the Documentary Credit to be amended, renewed or extended, and specifying the date of issuance, amendment, renewal or extension (which shall be a Business Day), the date on which such Documentary Credit is to expire (which shall comply with paragraph (c) of this Section), the amount of such Documentary Credit, the name and address of the beneficiary thereof and such other information as shall be necessary to prepare, amend, renew or extend such Documentary Credit. In addition, as a condition to any such Documentary Credit issuance, the Borrower shall have entered into a continuing agreement (or other letter of credit agreement) for the issuance of letters of credit and/or shall submit a letter of credit application, in each case, as required by the applicable Issuing Bank and using such bank's standard form (each, a "Documentary Credit Agreement"). A Documentary Credit shall be issued, amended, renewed or extended only if (and upon issuance, amendment, renewal or extension of each Documentary Credit the Borrower shall be deemed to represent and warrant that), after giving effect to such issuance, amendment, renewal or extension (i) the DC Exposure shall not exceed \$200,000,000, (ii) the Total Revolving Credit Exposures shall not exceed the total Revolving Commitments, (iii) following an Extension Offer and acceptance of such Extension Offer, the DC Exposure in respect of all Documentary Credits having an expiration date after the fifth Business Day prior to the Revolving Maturity Date as extended shall not exceed the total Revolving Commitments outstanding after such extension, (iv) the Revolving Credit Exposure of any Lender shall not exceed such Lender's Revolving Commitments and (v) the applicable Issuing Bank has consented, in its sole discretion, to issue such Documentary Credit.

(c) Expiration Date. Each Documentary Credit shall expire (or be subject to termination by notice from the Issuing Bank to the beneficiary thereof) at or prior to the close of business on the earlier of (i) the date one year after the date of the issuance of such Documentary Credit (or, in the case of any renewal or extension thereof, one year after such renewal or extension) and (ii) the date that is five Business Days prior to the applicable Revolving Maturity Date.

(d) Participations. By the issuance of a Documentary Credit (or an amendment to a Documentary Credit increasing the amount thereof) and without any further action on the part of the applicable Issuing Bank or the Lenders, each such Issuing Bank hereby grants to each Lender, and each Lender hereby acquires from such Issuing Bank, a participation in such Documentary Credit equal to such Lender's Revolving Loan Percentage of the aggregate amount available to be drawn under such Documentary Credit. In consideration and in furtherance of the foregoing, each Lender hereby absolutely and unconditionally agrees to pay to the Administrative Agent, for the account of such Issuing Bank, such Lender's Revolving Loan Percentage of each DC Disbursement made by such Issuing Bank and not reimbursed by the Borrower on the date due as provided in paragraph (e) of this Section, or of any reimbursement payment required to be refunded to the Borrower for any reason. Each Lender acknowledges and agrees that its obligation to acquire participations pursuant to this paragraph in respect of Documentary Credits is absolute and unconditional and shall not be affected by any circumstance whatsoever, including any amendment, renewal or extension of any

Documentary Credit or the occurrence and continuance of a Default or reduction or termination of the Commitments, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever.

(e) Reimbursement. If any Issuing Bank shall make any DC Disbursement in respect of a Documentary Credit, the Borrower shall reimburse such DC Disbursement by paying to the Administrative Agent an amount equal to such DC Disbursement not later than 12:00 noon, New York City time, on the date that is two Business Days after such DC Disbursement is made, if the Borrower shall have received notice of such DC Disbursement prior to 10:00 a.m., New York City time, on such date, or, if such notice has not been received by the Borrower prior to such time on such date, then not later than 12:00 noon, New York City time, on the Business Day immediately following the day that the Borrower receives such notice, if such notice is not received prior to such time on the day of receipt; provided that the Borrower may, subject to the conditions to borrowing set forth herein, request in accordance with Section 2.3 or 2.5 that such payment be financed with a Base Rate Revolving Borrowing in an equivalent amount and, to the extent so financed, the Borrower's obligation to make such payment shall be discharged and replaced by the resulting Base Rate Revolving Borrowing Loan. If the Borrower fails to make such payment when due, the Administrative Agent shall notify each Lender of the applicable DC Disbursement, the payment then due from the Borrower in respect thereof and such Lender's Revolving Loan Percentage thereof. Promptly following receipt of such notice, each Lender shall pay to the Administrative Agent its Revolving Loan Percentage of the payment then due from the Borrower, in the same manner as provided in Section 2.5 with respect to Revolving Loans made by such Lender (and Section 2.5 shall apply, *mutatis mutandis*, to the payment obligations of the Lenders), and the Administrative Agent shall promptly pay to such Issuing Bank the amounts so received by it from the Lenders. Promptly following receipt by the Administrative Agent of any payment from the Borrower pursuant to this paragraph, the Administrative Agent shall distribute such payment to such Issuing Bank or, to the extent that Lenders have made payments pursuant to this paragraph to reimburse such Issuing Bank, then to such Lenders and such Issuing Bank as their interests may appear. Any payment made by a Lender pursuant to this paragraph to reimburse such Issuing Bank for any DC Disbursement (other than the funding of Base Rate Revolving Loans as contemplated above) shall not constitute a Loan and shall not relieve the Borrower of its obligation to reimburse such DC Disbursement.

(f) Obligations Absolute. The Borrower's obligation to reimburse DC Disbursements as provided in paragraph (e) of this Section shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever and irrespective of (i) any lack of validity or enforceability of any Documentary Credit, any Documentary Credit Agreement or this Agreement, or any term or provision therein, (ii) any draft or other document presented under a Documentary Credit proving to be forged, fraudulent or invalid in any respect or any statement therein being untrue or inaccurate in any respect, (iii) payment by the applicable Issuing Bank under a Documentary Credit against presentation of a draft or other document that does not comply with the terms of such Documentary Credit, or (iv) any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section, constitute a legal or equitable discharge of, or provide a right of setoff against, the Borrower's obligations hereunder. Neither the Administrative Agent, the Lenders nor the Issuing Banks, nor any of their Related Persons, shall have any liability or responsibility by reason of or in connection with the issuance or transfer of any Documentary Credit or any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to in the preceding sentence), or any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Documentary Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms or any consequence arising from causes beyond the control of the Issuing Banks; provided that the foregoing shall not be construed to excuse the applicable Issuing Bank from liability to the Borrower to the extent of any direct damages (as opposed to special, indirect, consequential or punitive damages, claims in respect of which are hereby waived by the Borrower to the extent permitted by applicable law) suffered by the Borrower that are caused by such Issuing

Bank's failure to exercise care when determining whether drafts and other documents presented under a Documentary Credit comply with the terms thereof. The parties hereto expressly agree that, in the absence of gross negligence or willful misconduct on the part of the applicable Issuing Bank (as finally determined by a court of competent jurisdiction), such Issuing Bank shall be deemed to have exercised care in each such determination. In furtherance of the foregoing and without limiting the generality thereof, the parties agree that, with respect to documents presented which appear on their face to be in substantial compliance with the terms of a Documentary Credit, the applicable Issuing Bank may, in its sole discretion, either accept and make payment upon such documents without responsibility for further investigation, regardless of any notice or information to the contrary, or refuse to accept and make payment upon such documents if such documents are not in strict compliance with the terms of such Documentary Credit.

(g) Disbursement Procedures. The applicable Issuing Bank shall, promptly following its receipt thereof, examine all documents purporting to represent a demand for payment under a Documentary Credit. Such Issuing Bank shall promptly notify the Administrative Agent and the Borrower by telephone (confirmed by telecopy or electronic mail) of such demand for payment and whether such Issuing Bank has made or will make an DC Disbursement thereunder; provided that any failure to give or delay in giving such notice shall not relieve the Borrower of its obligation to reimburse such Issuing Bank and the Lenders with respect to any such DC Disbursement.

(h) Interim Interest. If the applicable Issuing Bank shall make any DC Disbursement, then, unless the Borrower shall reimburse such DC Disbursement in full on the date such DC Disbursement is made, the unpaid amount thereof shall bear interest, for each day from and including the date such DC Disbursement is made to but excluding the date that the reimbursement is due and payable at the rate *per annum* then applicable to Base Rate Revolving Loans and such interest shall be due and payable on the date when such reimbursement is payable; provided that, if the Borrower fails to reimburse such DC Disbursement when due pursuant to paragraph (e) of this Section, then Section 2.8(c) shall apply. Interest accrued pursuant to this paragraph shall be for the account of the applicable Issuing Bank, except that interest accrued on and after the date of payment by any Lender pursuant to paragraph (e) of this Section to reimburse such Issuing Bank shall be for the account of such Lender to the extent of such payment.

(i) Replacement of the Issuing Bank. (i) An Issuing Bank may be replaced at any time by written agreement among the Borrower, the Administrative Agent, the replaced Issuing Bank and the successor Issuing Bank. The Administrative Agent shall notify the Lenders of any such replacement of an Issuing Bank. At the time any such replacement shall become effective, the Borrower shall pay all unpaid fees accrued for the account of the replaced Issuing Bank pursuant to Section 2.19(c). From and after the effective date of any such replacement, (x) the successor Issuing Bank shall have all the rights and obligations of Issuing Banks under this Agreement with respect to Documentary Credits to be issued thereafter and (y) references herein to the term "Issuing Bank" shall be deemed to refer to such successor or to any previous Issuing Banks, or to such successor and all previous Issuing Banks, as the context shall require. After the replacement of an Issuing Bank hereunder, the replaced Issuing Bank shall remain a party hereto and shall continue to have all the rights and obligations of an Issuing Bank under this Agreement with respect to Documentary Credits issued by it prior to such replacement, but shall not be required to issue additional Documentary Credits.

(ii) Subject to the appointment and acceptance of a successor Issuing Bank, any Issuing Bank may resign as an Issuing Bank at any time upon thirty days' prior written notice to the Administrative Agent, the Borrower and the Lenders, in which case, such Issuing Bank shall be replaced in accordance with Section 2.4(i) above.

(j) Cash Collateralization. If any Event of Default shall occur and be continuing, on the Business Day that the Borrower receives notice from the Administrative Agent or the Required Revolving Lenders (or, if

the maturity of the Loans has been accelerated, Revolving Lenders with DC Exposure representing greater than 50% of the total DC Exposure) demanding the deposit of cash collateral pursuant to this paragraph, the Borrower shall deposit in an account with the Administrative Agent, in the name of the Administrative Agent and for the benefit of the Revolving Lenders, an amount in cash equal to the DC Exposure as of such date plus any accrued and unpaid interest thereon; provided that the obligation to deposit such cash collateral shall become effective immediately, and such deposit shall become immediately due and payable, without demand or other notice of any kind, upon the occurrence of any Event of Default with respect to the Borrower described in Section 7.1(f) or (g). Such deposit shall be held by the Administrative Agent as collateral for the payment and performance of the obligations of the Borrower under this Agreement. The Administrative Agent shall have exclusive dominion and control, including the exclusive right of withdrawal, over such account. Other than any interest earned on the investment of such deposits, which investments shall be made at the option and sole discretion of the Administrative Agent and at the Borrower's risk and expense, such deposits shall not bear interest. Interest or profits, if any, on such investments shall accumulate in such account. Moneys in such account shall be applied by the Administrative Agent to reimburse the Issuing Bank for DC Disbursements for which it has not been reimbursed and, to the extent not so applied, shall be held for the satisfaction of the reimbursement obligations of the Borrower for the DC Exposure at such time or, if the maturity of the Loans has been accelerated (but subject to the consent of Revolving Lenders with DC Exposure representing greater than 50% of the total DC Exposure), be applied to satisfy other Obligations. If the Borrower is required to provide an amount of cash collateral hereunder as a result of the occurrence of an Event of Default, such amount (to the extent not applied as aforesaid) shall be returned to the Borrower within three Business Days after all Events of Default have been cured or waived.

(k) Documentary Credits Issued for Account of Restricted Subsidiaries. Notwithstanding that a Documentary Credit issued or outstanding hereunder supports any obligations of, or is for the account of, a Subsidiary of the Borrower, or states that a Subsidiary of the Borrower is the "account party," "applicant," "customer," "instructing party," or the like of or for such Documentary Credit, and without derogating from any rights of the applicable Issuing Bank (whether arising by contract, at law, in equity or otherwise) against such Subsidiary in respect of such Documentary Credit, the Borrower (i) shall reimburse, indemnify and compensate the applicable Issuing Bank hereunder for such Documentary Credit (including to reimburse any and all drawings thereunder) as if such Documentary Credit had been issued solely for the account of the Borrower and (ii) irrevocably waives any and all defenses that might otherwise be available to it as a guarantor or surety of any or all of the obligations of such Subsidiary in respect of such Documentary Credit. The Borrower hereby acknowledges that the issuance of such Documentary Credits for its Subsidiaries inures to the benefit of the Borrower, and that the Borrower's business derives substantial benefits from the businesses of such Subsidiaries.

2.5. Funding of Revolving Borrowings.

(a) Each Lender shall make each Revolving Loan to be made by it hereunder on the proposed date thereof by wire transfer of immediately available funds by 2:00 p.m., New York City time, to the account of the Administrative Agent most recently designated by it for such purpose by notice to the Lenders. The Administrative Agent will make such Loans available to the Borrower by promptly crediting the amounts so received, in like funds, to an account of the Borrower maintained at a financial institution reasonably acceptable to the Administrative Agent and designated by the Borrower in the applicable Borrowing Request; provided that Base Rate Revolving Loans made to finance the reimbursement of an DC Disbursement as provided in Section 2.4(e) shall be remitted by the Administrative Agent to the relevant Issuing Bank.

(b) Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing that such Lender will not make available to the Administrative Agent such Lender's Revolving Loan Percentage of such Borrowing, the Administrative Agent may assume that such Lender has made such Revolving Loan Percentage of such Borrowing available on such date in accordance

with paragraph (a) of this Section and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its Revolving Loan Percentage of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and the Borrower severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at (i) in the case of such Lender, the greater of the NYFRB Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation or (ii) in the case of the Borrower, the interest rate applicable to Base Rate Loans. If such Lender pays such amount to the Administrative Agent, then such amount shall constitute such Lender's Revolving Loan included in such Borrowing.

2.6. Termination and Reduction of Revolving Commitments.

(a) Unless previously terminated, the Revolving Commitments of any Class shall terminate on the Revolving Maturity Date of such Class.

(b) The Borrower may at any time terminate, or from time to time reduce, the Revolving Commitments; provided that (i) each reduction of the Revolving Commitments shall be in an amount that is an integral multiple of \$5,000,000 and not less than \$10,000,000 and (ii) the Borrower shall not terminate or reduce the Revolving Commitments if, after giving effect to any concurrent prepayment of the Revolving Loans in accordance with Section 2.11, the sum of the Revolving Credit Exposures would exceed the total Revolving Commitments.

(c) The Borrower shall notify the Administrative Agent of any election to terminate or reduce the Revolving Commitments under paragraph (b) of this Section at least three Business Days prior to the effective date of such termination or reduction, specifying such election and the effective date thereof. Promptly following receipt of any notice, the Administrative Agent shall advise the Lenders of the contents thereof. Each notice delivered by the Borrower pursuant to this Section shall be irrevocable; provided that a notice of termination of the Commitments delivered by the Borrower may state that such notice is conditioned upon the effectiveness of other credit facilities or another contingency, in which case such notice may be revoked by the Borrower (by notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied. Any termination or reduction of the Revolving Commitments shall be permanent. Each reduction of the Revolving Commitments shall be made ratably among the Lenders in accordance with their respective Revolving Commitments.

2.7. Repayment of Loans; Evidence of Debt.

(a) The Borrower hereby unconditionally promises to pay the Administrative Agent for the account of each Lender the then unpaid principal amount of each Loan made by such Lender on the applicable Revolving Maturity Date.

(b) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing Indebtedness of the Borrower to such Lender resulting from each Loan of such Lender from time to time, including the amounts of principal and interest payable and paid to such Lender from time to time under this Agreement.

(c) The Administrative Agent shall, in respect of this Agreement, record in the Register, with separate sub-accounts for each Lender, (i) the amount and Borrowing Date of each Loan made hereunder, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder and (iii) both the amount of any payment received by the Administrative Agent hereunder from the Borrower and each Lender's share thereof.

(d) The entries made in the Register and the accounts of each Lender maintained pursuant to Sections 2.7(b) and (c) shall, to the extent permitted by applicable law, be prima facie evidence of the existence and amounts of the obligations of the Borrower therein recorded absent manifest error; provided, however, that the failure of any Lender or the Administrative Agent to maintain the Register or any such account, or any error therein, shall not in any manner affect the obligation of the Borrower to repay (with applicable interest) the Loans made to the Borrower by such Lender in accordance with the terms of this Agreement.

(e) If so requested after the Closing Date by any Lender by written notice to the Borrower (with a copy to the Administrative Agent), the Borrower will execute and deliver to such Lender, promptly after the Borrower's receipt of such notice, a Note to evidence such Lender's Loans in form and substance reasonably satisfactory to the Lender and the Borrower.

## 2.8. Interest Rates and Payment Dates.

(a) Each Eurodollar Loan shall bear interest for each day during each Interest Period with respect thereto at a rate per annum equal to the Eurodollar Rate determined for such Interest Period plus the Applicable Margin.

(b) Each Base Rate Loan shall bear interest at a rate per annum equal to the Base Rate from time to time plus the Applicable Margin.

(c) Notwithstanding the foregoing, upon the occurrence and during the continuance of an Event of Default under Section 7.1(a) or (b), at any time after the date on which any principal amount of any Loan is due and payable (whether on the maturity date therefor, upon acceleration or otherwise), or after any other monetary Obligation of the Borrower or any other Loan Party shall have become due and payable, and, in each case, for so long as such overdue Obligation remains unpaid, the Borrower shall pay, but only to the extent permitted by law, interest (after as well as before judgment) on such unpaid overdue amounts at a rate per annum equal to (i) in the case of overdue principal on any Loan, the rate of interest that otherwise would be applicable to such Loan plus 2% per annum and (ii) in the case of overdue interest, fees, and other monetary Obligations, the rate then applicable to Base Rate Loans plus 2% per annum.

(d) Interest shall be payable in arrears on each Interest Payment Date; provided that interest accruing pursuant to paragraph (c) of this Section shall be payable from time to time on demand.

(e) The provisions of this Section 2.8 (and the interest rates applicable to various extensions of credit hereunder) shall be subject to modification as expressly provided in Section 2.23 hereof.

## 2.9. Computation of Interest and Fees.

(a) Interest and fees payable pursuant hereto shall be calculated on the basis of a 360-day year for the actual days elapsed, except that, with respect to Base Rate Loans, when the Base Rate is based on the Prime Rate the interest thereon shall be calculated on the basis of a 365- (or 366-, as the case may be) day year for the actual days elapsed. The Administrative Agent shall as soon as practicable notify the Borrower and the Lenders of each determination of a Eurodollar Rate. Any change in the interest rate on a Loan resulting from a change in the Base Rate or the Eurocurrency Reserve Requirements shall become effective as of the opening of business on the day on which such change becomes effective. The Administrative Agent shall as soon as practicable notify the Borrower and the Lenders of the effective date and the amount of each such change in interest rate.



(b) Each determination of an interest rate by the Administrative Agent pursuant to any provision of this Agreement shall be conclusive and binding on the Borrower and the Lenders in the absence of manifest error.

(c) If, as a result of any restatement of public disclosure, inaccuracy in any certificate delivered or similar miscalculation of the KPI Metrics and an increase in the Applicable Margins for such period would result from proper calculations based thereon, the Borrower shall retroactively be obligated to pay (or, after the occurrence of an actual or deemed entry of an order for relief with respect to the Borrower Debtor Relief Laws, automatically and without further action by the Administrative Agent or any Lender), an amount equal to the excess of the amount of interest and fees that should have been paid for such period over the amount of interest and fees actually paid for such period.

2.10. Benchmark Replacement Setting.

(a) Subject to clauses (b), (c), (d), (e) and (f) of this Section 2.10, if prior to the first day of any Interest Period:

(i) the Administrative Agent shall have reasonably determined (which determination shall be conclusive and binding upon the Borrower) that, by reason of circumstances affecting the relevant market, adequate and reasonable means do not exist for ascertaining the Eurodollar Rate for such Interest Period, or

(ii) the Administrative Agent shall have received notice from the Required Lenders that the Eurodollar Rate determined or to be determined for such Interest Period in good faith by such Required Lenders will not adequately and fairly reflect the cost to such Lenders (as conclusively certified by such Lenders) of making or maintaining their affected Loans during such Interest Period,

the Administrative Agent shall give telecopy or telephonic notice thereof to the Borrower and the relevant Lenders as soon as practicable thereafter. If such notice is given (x) any Eurodollar Loans hereunder requested to be made on the first day of such Interest Period shall be made as Base Rate Loans, (y) any Loans hereunder that were to have been converted on the first day of such Interest Period to Eurodollar Loans shall be continued as Base Rate Loans and (z) any outstanding Eurodollar Loans hereunder shall be converted, on the last day of the then-current Interest Period, to Base Rate Loans;

provided that if the circumstances giving rise to such notice shall cease or otherwise become inapplicable to such Required Lenders, then such Required Lenders shall promptly give notice of such change in circumstances to the Administrative Agent and the Borrower. Until such notice has been withdrawn by the Administrative Agent, no further Eurodollar Loans hereunder shall be made or continued as such, nor shall the Borrower have the right to convert Loans hereunder to Eurodollar Loans.

(b) Benchmark Replacement. Notwithstanding anything to the contrary herein or in any other Loan Document, if a Benchmark Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date have occurred prior to the Reference Time in respect of any setting of the then-current Benchmark, then (x) if a Benchmark Replacement is determined in accordance with clause (1) or (2) 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 (y) if a Benchmark Replacement is determined in accordance with clause (3) 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 date notice of such Benchmark Replacement is provided to the Lenders without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document so long as the Administrative Agent has not received, by such time, written notice of objection to such Benchmark Replacement from Lenders comprising the Required Lenders.

(c) Benchmark Replacement Conforming Changes. In connection with the implementation of a Benchmark Replacement, the Administrative Agent will have the right to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document.

(d) Notices; Standards for Decisions and Determinations. The Administrative Agent will promptly notify the Borrower and the Lenders of (i) any occurrence of a Benchmark Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date, (ii) the implementation of any Benchmark Replacement, (iii) the effectiveness of any Benchmark Replacement Conforming Changes, (iv) the removal or reinstatement of any tenor of a Benchmark pursuant to clause (e) below and (v) the commencement or conclusion of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Administrative Agent or, if applicable, any Lender (or group of Lenders) pursuant to this Section titled "Benchmark Replacement Setting," 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 titled "Benchmark Replacement Setting."

(e) 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 or LIBOR) 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 Administrative Agent in its reasonable discretion or (B) 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 or will be no longer representative, then the Administrative Agent may modify the definition of "Interest Period" for any Benchmark settings at or after such time to remove such unavailable or non-representative 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 or will no longer be representative for a Benchmark (including a Benchmark Replacement), then the Administrative Agent may modify the definition of "Interest Period" for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(f) Benchmark Unavailability Period. Upon the Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period, the Borrower may revoke any request for a Eurodollar Borrowing of, conversion to or continuation of Eurodollar Loans to be made, converted or continued during any Benchmark Unavailability Period and, failing that, the Borrower will be deemed to have converted any such request into a request for a Borrowing of or conversion to Base Rate Loans. During any Benchmark Unavailability Period or at any time that a 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.

The Administrative Agent does not warrant or accept any responsibility for, and shall not have any liability in respect of (a) the monitoring, determination or verification of the unavailability or cessation of LIBOR (or other applicable Benchmark), (b) the administration of, submission of or any other matter related to the reference rate or any spread adjustment, any component definition thereof or rates referenced in the definition thereof or any alternative, comparable or successor rate or adjustment thereto (including any then-current Benchmark, any Benchmark Replacement or any Benchmark Replacement Adjustment), including whether the composition or characteristics of any such alternative, comparable or successor rate or adjustment (including any Benchmark Replacement or any Benchmark Replacement Adjustment) will be similar to, or produce the same value of economic equivalence of, reference rate, any other Benchmark or any Benchmark Replacement Adjustment, or (b) the effect, implementation or composition of any Benchmark Replacement Conforming Changes.

2.11. Prepayment of Loans.

(a) Subject to the provisos below, the Borrower may at any time and from time to time prepay the Loans, in whole or in part, without premium or penalty, upon irrevocable notice, which shall be in substantially the form attached hereto as Exhibit G, delivered to the Administrative Agent prior to 10:00 A.M., New York City time on the same Business Day, which notice shall specify the date and amount of prepayment and whether the prepayment is of Eurodollar Loans or Base Rate Loans; provided that if a Eurodollar Loan is prepaid on any day other than the last day of the Interest Period applicable thereto, the Borrower shall also pay any amounts owing pursuant to Section 2.17. Upon receipt of any such notice of prepayment, the Administrative Agent shall notify each relevant Lender thereof on the date of receipt of such notice. If any such notice is given, the amount specified in such notice shall be due and payable on the date specified therein, together with (except in the case of prepayments of Loans maintained as Base Rate Loans) accrued interest to such date on the amount prepaid. Partial prepayments shall be in an aggregate principal amount of \$1,000,000 or a whole multiple of \$1,000,000 in excess thereof (or, if less, the then outstanding principal amount of Loans). The application of any prepayment pursuant to this Section 2.11(a) shall be made, first, to Base Rate Loans of the respective Lenders (and of the respective tranche, if there are multiple tranches) and, second, to Eurodollar Loans of the respective Lenders (and of the respective tranche, if there are multiple tranches). A notice of prepayment of all outstanding Loans pursuant to this Section 2.11(a) may state that such notice is conditioned upon the effectiveness of other credit facilities, securities offerings or other transactions, the proceeds of which will be used to refinance in full this Agreement, in which case such notice may be revoked by the Borrower (by notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied.

2.12. Conversion and Continuation Options.

(a) The Borrower may elect from time to time to convert Eurodollar Loans to Base Rate Loans by giving the Administrative Agent prior irrevocable notice, in substantially the form attached hereto as Exhibit F, of such election no later than 12:00 Noon, New York City time, on the Business Day preceding the proposed conversion date, provided that any such conversion of Eurodollar Loans may only be made on the last day of an Interest Period with respect thereto. The Borrower may elect from time to time to convert Base Rate Loans to Eurodollar Loans by giving the Administrative Agent prior irrevocable notice of such election no later than 12:00 Noon, New York City time, on the third (3rd) Business Day preceding the proposed conversion date (which notice shall specify the length of the initial Interest Period therefor), provided that no Base Rate Loan may be converted into a Eurodollar Loan when any Event of Default has occurred and is continuing and the Administrative Agent or the Required Lenders have determined in its or their sole discretion not to permit such conversions. Upon receipt of any such notice, the Administrative Agent shall promptly notify each relevant Lender thereof.

(b) Any Eurodollar Loan may be continued as such upon the expiration of the then current Interest Period with respect thereto by the Borrower giving irrevocable notice no later than 12:00 Noon, New York City time, on the third (3rd) Business Day preceding the proposed continuation date to the Administrative Agent, in substantially the form attached hereto as Exhibit F, in accordance with the applicable provisions of the term "Interest Period" set forth in Section 1.1, of the length of the next Interest Period to be applicable to such Loans, provided that no Eurodollar Loan may be continued as such when any Event of Default has occurred and is continuing and the Administrative Agent has or the Required Lenders have determined in its or their sole discretion not to permit such continuations, and provided, further, that if the Borrower shall fail to give any required notice as described above in this paragraph or if such continuation is not permitted pursuant to the preceding proviso such Eurodollar Loans shall be automatically converted to Base Rate Loans on the last day of such then expiring Interest Period. Upon receipt of any such notice, the Administrative Agent shall promptly notify each relevant Lender thereof.

2.13. Limitations on Eurodollar Tranches. Notwithstanding anything to the contrary in this Agreement, all borrowings, conversions and continuations of Eurodollar Loans and all selections of Interest Periods shall be in such amounts and be made pursuant to such elections so that no more than ten different Interest Periods for any Class of Loans be outstanding at any one time (unless a greater number of Interest Periods is permitted by the Administrative Agent).

2.14. Pro Rata Treatment, etc.

(a) Except as otherwise provided herein (including Section 2.23), each borrowing by the Borrower from the Lenders hereunder shall be made pro rata according to their Revolving Loan Percentages.

(b) Except as otherwise provided herein (including Section 2.23), each payment (including each prepayment) by the Borrower on account of principal or interest on each Class of Loans shall be made pro rata according to the respective outstanding principal amounts of such Class of Loans then held by the applicable Lenders.

(c) All payments by the Borrower hereunder and under the Notes shall be made in Dollars in immediately available funds without setoff or counterclaim at the Funding Office of the Administrative Agent by 2:00 P.M., New York City time, on the date on which such payment shall be due, provided that if any payment hereunder would become due and payable on a day other than a Business Day such payment shall become due and payable on the next succeeding Business Day and, with respect to payments of principal, interest thereon shall be payable at the then applicable rate during such extension. Interest in respect of any Loan hereunder shall accrue from and including the date of such Loan to but excluding the date on which such Loan is paid in full.

(d) Unless the Administrative Agent shall have been notified in writing by the Borrower prior to the date of any payment due to be made by the Borrower hereunder that the Borrower will not make such payment to the Administrative Agent, the Administrative Agent may assume that the Borrower is making such payment, and the Administrative Agent may, but shall not be required to, in reliance upon such assumption, make available to the Lenders their respective pro rata shares of a corresponding amount. If such payment is not made to the Administrative Agent by the Borrower within three (3) Business Days after such due date, the Administrative Agent shall be entitled to recover, on demand, from each Lender to which any amount which was made available pursuant to the preceding sentence, such amount with interest thereon at the rate per annum equal to the daily average Federal Funds Effective Rate. Nothing herein shall be deemed to limit the rights of the Administrative Agent or any Lender against the Borrower.

(e) Notwithstanding anything to the contrary contained in this Section 2.14 or elsewhere in this Agreement, the Borrower may extend the final maturity of Loans in connection with an Extension that is

permitted under Section 2.23 without being obligated to effect such extensions on a pro rata basis among the Lenders. Furthermore, the Borrower may take all actions contemplated by Section 2.23 in connection with any Extension (including modifying pricing and repayments or prepayments), and in each case such actions shall be permitted, and the differing payments contemplated therein shall be permitted without giving rise to any violation of this Section 2.14 or any other provision of this Agreement.

2.15. Requirements of Law.

(a) If the adoption of or any change in any Requirement of Law or in the interpretation or application thereof or compliance by any Lender or Issuing Bank with any request or directive (whether or not having the force of law) from any central bank or other Governmental Authority, in each case, made subsequent to the Closing Date (including, but not limited to, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and, in each case, all requests, rules, guidelines or directives thereunder or issued in connection therewith and (ii) all requests, rules, guidelines, requirements and directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign Governmental Authorities, in each case pursuant to Basel III):

(i) shall subject the Administrative Agent, any Lender or Issuing Bank to any Tax of any kind whatsoever with respect to this Agreement or any Eurodollar Loan made by it (except for Non-Excluded Taxes or Other Taxes covered by Section 2.16 and any Excluded Taxes);

(ii) shall impose, modify or hold applicable any reserve, special deposit, compulsory loan or similar requirement against assets held by, deposits or other liabilities in or for the account of, advances, loans or other extensions of credit by, or any other acquisition of funds by, any office of such Lender or Issuing Bank that is not otherwise included in the determination of the Eurodollar Rate; or

(iii) shall impose on any such Lender or Issuing Bank or the London interbank market (by reasons of such Lender or Issuing Bank's participation in the London interbank market) any other condition, cost or expense (other than Taxes) affecting this Agreement or Loans made by such Lender or any Documentary Credit or participation therein;

and the result of any of the foregoing is to increase the cost to such Lender or Issuing Bank, by an amount that such Lender or Issuing Bank deems to be material, of making, converting into, continuing or maintaining Eurodollar Loans or any Documentary Credit, or to reduce any amount receivable hereunder in respect thereof, then, in any such case, the Borrower shall promptly pay such Lender or Issuing Bank, upon its demand, any additional amounts necessary to compensate such Lender or Issuing Bank for such increased cost or reduced amount receivable. If any Lender or Issuing Bank becomes entitled to claim any additional amounts pursuant to this paragraph, it shall promptly notify the Borrower (with a copy to the Administrative Agent) of the event by reason of which it has become so entitled.

(b) If any Lender or Issuing Bank shall have determined that the adoption of or any change in any Requirement of Law regarding capital adequacy or liquidity requirements or in the interpretation or application thereof or compliance by such Lender or Issuing Bank or any corporation controlling such Lender or Issuing Bank with any request or directive regarding capital adequacy or liquidity requirements (whether or not having the force of law) from any Governmental Authority made subsequent to the Closing Date shall have the effect of reducing the rate of return on such Lender's, such Issuing Bank's or such corporation's capital as a consequence of its obligations hereunder to a level below that which such Lender, such Issuing Bank's or such corporation could have achieved but for such adoption, change or compliance (taking into consideration such Lender's, such Issuing Bank's or such corporation's policies with respect to capital adequacy or liquidity requirements) by an amount deemed by such Lender to be material, then from time to

time, after submission by such Lender or Issuing Bank to the Borrower (with a copy to the Administrative Agent) of a written request therefor, the Borrower shall pay to such Lender or Issuing Bank such additional amount or amounts as will compensate such Lender, such Issuing Bank or such corporation for such reduction.

(c) A certificate as to any additional amounts payable pursuant to this Section submitted by any Lender or Issuing Bank to the Borrower (with a copy to the Administrative Agent) shall be conclusive in the absence of manifest error. Notwithstanding anything to the contrary in this Section 2.15, the Borrower shall not be required to compensate any Lender or Issuing Bank pursuant to this Section 2.15 for any amounts incurred more than 180 days prior to the date that such Lender or Issuing Bank notifies the Borrower of such Lender's or Issuing Bank's intention to claim compensation therefor; provided that, if the circumstances giving rise to such claim have a retroactive effect, then such 180 days period shall be extended to include the period of such retroactive effect. The obligations of the Borrower pursuant to this Section 2.15 shall survive the termination of this Agreement and the payment of the Loans and all other amounts payable hereunder.

#### 2.16. Taxes.

(a) Unless required by applicable law (as determined in good faith by the applicable withholding agent), all payments by or on account of any obligation of any Loan Party hereunder or under any other Loan Document shall be made free and clear of, and without deduction or withholding for or on account of, any Taxes, excluding (i) Taxes imposed on or measured by net income (however denominated), gross receipts Taxes (imposed in lieu of net income Taxes) and franchise Taxes (imposed in lieu of net income Taxes) imposed on the Administrative Agent or any Lender as a result of such recipient (A) being organized or having its principal office in the applicable taxing jurisdiction, or in the case of any Lender, having its applicable lending office in such jurisdiction, or (B) having any other present or former connection with the applicable taxing jurisdiction (other than any such connection arising solely from the Administrative Agent or such Lender having executed, delivered, become a party to, or performed its obligations or received a payment under, or enforced, and/or engaged in any activities contemplated with respect to this Agreement or any other Loan Document); (ii) any Taxes in the nature of the branch profits tax within the meaning of Section 884 of the Code imposed by any jurisdiction described in clause (i) above; (iii) other than in the case of an assignee pursuant to a request by the Borrower under Section 2.22 hereof, any U.S. federal withholding tax except (A) to the extent such withholding tax results from a change in a Requirement of Law after the recipient became a party hereto or changed its lending office or (B) to the extent that such recipient's assignor (if any) was entitled immediately prior to such assignment or such recipient was entitled immediately prior to changing its lending office to receive additional amounts from any Loan Party with respect to such withholding tax pursuant to this Section 2.16(a); (iv) any withholding Tax that is attributable to the recipient's failure to comply with Section 2.16(e) hereof; and (v) any withholding Taxes imposed pursuant to FATCA. If any such non-excluded Taxes ("Non-Excluded Taxes") or Other Taxes are required by law to be withheld by the applicable withholding agent from any amounts payable to the Administrative Agent or any Lender hereunder, or under any other Loan Document: (x) the amounts so payable by the applicable Loan Party to the Administrative Agent or such Lender shall be increased to the extent necessary so that after all required deductions for Non-Excluded Taxes and Other Taxes (including deductions for Non-Excluded Taxes and Other Taxes applicable to additional sums payable under this Section 2.16) have been made, the Lender (or, in the case of any payment made to the Administrative Agent for its own account, the Administrative Agent) receives an amount equal to the sum it would have received had no such deduction or withholding for Non-Excluded Taxes and Other Taxes been made, (y) the applicable withholding agent shall make such deductions, and (z) the applicable withholding agent shall timely pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law.

Notwithstanding anything to the contrary contained in this Section 2.16(a) or Section 2.16(b), unless the Administrative Agent or a Lender gives notice to the applicable Loan Party that such Loan Party is

obligated to pay an amount under Section 2.16(a) or Section 2.16(b) within 180 days of the later of (x) the date the applicable party incurs the Taxes or (y) the date the applicable party has knowledge of its incurrence of the Taxes, then such party shall not be entitled to be compensated for any penalties, interest or expenses relating to such Taxes, except to the extent such penalties, interest or expenses arise or accrue on or after the date that occurs 180 days prior to the date such party gives notice to the applicable Loan Party, but if the circumstances giving rise to such claim have a retroactive effect (e.g., in connection with the audit of a prior tax year), then such 180 day period shall be extended to include such period of retroactive effect.

(b) In addition, the relevant Loan Party shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law.

(c) Whenever any Taxes are payable by a Loan Party pursuant to this Section 2.16, as promptly as possible thereafter such Loan Party shall send to the Administrative Agent for its own account or for the account of the relevant Lender, as the case may be, a certified copy of an original official receipt received, if any, by the Borrower or other documentary evidence showing payment thereof.

(d) The Borrower shall indemnify the Administrative Agent and each Lender (within 10 days after demand therefor) for the full amount of any Non-Excluded Taxes or Other Taxes (including Non-Excluded Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section 2.16), and for any reasonable expenses arising therefrom or with respect thereto, that may become payable by the Administrative Agent or any Lender, whether or not such Non-Excluded Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority; provided that the Borrower shall not be obligated to indemnify the Administrative Agent or any Lender for any penalties, interest or expenses relating to Non-Excluded Taxes or Other Taxes to the extent that such penalties, interest or expenses are found by a final and nonappealable decision of a court of competent jurisdiction to have resulted from such party's gross negligence or willful misconduct. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(e) Each Lender shall, at such times as are reasonably requested by the Borrower or the Administrative Agent, provide the Borrower and the Administrative Agent with any documentation prescribed by law, or reasonably requested by the Borrower or the Administrative Agent, certifying as to any entitlement of such Lender to an exemption from, or reduction in, any withholding Tax with respect to any payments to be made to such Lender under the Loan Documents. In addition, each Lender shall, at such times as reasonably requested by the Borrower or the Administrative Agent, deliver such other documentation prescribed by applicable law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Each such Lender shall, whenever a lapse in time or change in circumstances renders any such documentation (including any documentation specifically referenced below) expired, obsolete or inaccurate in any material respect, or upon the reasonable request of the Borrower or the Administrative Agent, deliver promptly to the Borrower and the Administrative Agent updated or other appropriate documentation (including any new documentation reasonably requested by the applicable withholding agent) or promptly notify the Borrower and the Administrative Agent of its legal inability to do so. Unless the applicable withholding agent has received forms or other documents satisfactory to it indicating that payments under any Loan Document to or for a Lender are not subject to withholding tax or are subject to such Tax at a rate reduced by an applicable tax treaty, the Borrower, Administrative Agent or other applicable withholding agent shall withhold amounts required to be withheld by applicable law from such payments at the applicable statutory rate. Each Lender hereby authorizes the Administrative Agent to deliver to the Borrower and to any successor Administrative Agent any documentation provided to the Administrative Agent pursuant to this Section 2.16(e).

Without limiting the generality of the foregoing:

(i) Each Lender that is a “United States person” (as defined in Section 7701(a)(30) of the Code) shall deliver to the Borrower and the Administrative Agent on or before the date on which it becomes a party to this Agreement two properly completed and duly signed original copies of Internal Revenue Service Form W-9 (or any successor form) certifying that such Lender is exempt from U.S. federal backup withholding.

(ii) Each Lender that is not a “United States person” (as defined in Section 7701(a)(30) of the Code) shall deliver to the Borrower and the Administrative Agent on or before the date on which it becomes a party to this Agreement whichever of the following is applicable:

(A) two duly completed copies of Internal Revenue Service Form W-8BEN or W-8BEN-E (or any successor forms) claiming eligibility for benefits of an income tax treaty to which the United States of America is a party,

(B) two duly completed copies of Internal Revenue Service Form W-8ECI (or any successor forms),

(C) in the case of a Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate, in substantially the form of Exhibit E (any such certificate a “United States Tax Compliance Certificate”), or any other form approved by the Administrative Agent, to the effect that such Lender is not (A) a “bank” within the meaning of Section 881(c)(3)(A) of the Code, (B) a “10 percent shareholder” of the Borrower within the meaning of Section 881(c)(3)(B) of the Code, or (C) a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Code, and that no payments in connection with the Loan Documents are effectively connected with such Lender’s conduct of a U.S. trade or business and (y) two duly completed copies of Internal Revenue Service Form W-8BEN or W-8BEN-E (or any successor forms),

(D) to the extent a Lender is not the beneficial owner (for example, where the Lender is a partnership, or is a Lender that has granted a participation), Internal Revenue Service Form W-8IMY (or any successor forms) of the Lender, accompanied by a Form W-8ECI, W-8BEN or W-8BEN-E, United States Tax Compliance Certificate, Form W-9, Form W-8IMY (or other successor forms) or any other required information 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 are claiming the portfolio interest exemption, the United States Tax Compliance Certificate shall be provided by such Lender on behalf of such direct or indirect partner(s)), or

(E) any other form prescribed by applicable requirements of U.S. federal income tax 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 requirements of law to permit the Borrower and the Administrative Agent to determine the withholding or deduction required to be made.

(iii) If a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the



Borrower or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their FATCA obligations, to determine whether such Lender has or has not complied with such Lender's FATCA obligations and to determine the amount, if any, to deduct and withhold from such payment. Solely for purposes of this clause (iii), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certificate or promptly notify the Loan Parties and the Administrative Agent in writing of its legal inability to do so. Notwithstanding any other provision of this clause (e), a Lender shall not be required to deliver any forms, documentation or other information that such Lender is not legally eligible to deliver.

(f) If the Administrative Agent or any Lender determines, in its sole discretion, that it has received a refund of any Non-Excluded Taxes or Other Taxes as to which it has been indemnified by a Loan Party or with respect to which a Loan Party has paid additional amounts pursuant to this Section 2.16, it shall pay over such refund the applicable Loan Party (but only to the extent of indemnity payments made, or additional amounts paid, by such Loan Party under this Section 2.16 with respect to the Non-Excluded Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of the Administrative Agent or such Lender, as the case may be, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund, net of any Taxes payable by the Administrative Agent or such Lender); provided that the applicable Loan Party, upon the request of the Administrative Agent or such Lender, agrees to repay the amount paid over to such Loan Party (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Administrative Agent or such Lender in the event the Administrative Agent or such Lender, as the case may be, is required to repay such refund to such Governmental Authority. This paragraph shall not be construed to require the Administrative Agent or any Lender to make available its tax returns (or any other information relating to its Taxes which it deems confidential) to the Borrower or any other Person.

(g) The agreements in this Section 2.16 shall survive the termination of this Agreement, any assignment by or replacement of a Lender, resignation of the Administrative Agent and the payment of the Loans and all other amounts payable hereunder or any other Loan Document.

(h) For the avoidance of doubt, any payments made by the Administrative Agent to any Lender shall be treated as payments made by the applicable Loan Party.

2.17. Indemnity. The Borrower agrees to indemnify each Lender for, and to hold each Lender harmless from, any loss or expense that such Lender may sustain or incur as a consequence of (a) default by the Borrower in making a borrowing of, conversion into or continuation of Eurodollar Loans after the Borrower has given a notice requesting the same in accordance with the provisions of this Agreement, (b) default by the Borrower in making any prepayment of or conversion from Eurodollar Loans after the Borrower has given a notice thereof in accordance with the provisions of this Agreement, or (c) the making of a prepayment or conversion of Eurodollar Loans on a day that is not the last day of an Interest Period with respect thereto. Such indemnification may include an amount equal to the excess, if any, of (i) the amount of interest that would have accrued on the amount so prepaid, or not so borrowed, converted or continued, for the period from the date of such prepayment or of such failure to borrow, convert or continue to the last day of such Interest Period (or, in the case of a failure to borrow, convert or continue, the Interest Period that would have commenced on the date of such failure) in each case at the applicable rate of interest for such Loans provided for herein (excluding, however, the Applicable Margin included therein, if any) over (ii) the amount of interest (as reasonably determined by such Lender) that would have accrued to such Lender on

such amount by placing such amount on deposit for a comparable period with leading banks in the interbank eurodollar market. A certificate as to any amounts payable pursuant to this Section submitted to the Borrower by any Lender shall be conclusive in the absence of manifest error. Notwithstanding anything to the contrary in this Section 2.17, the Borrower shall not be required to compensate a Lender pursuant to this Section 2.17 for any amounts incurred more than 180 days prior to the date that such Lender notifies the Borrower of such Lender's intention to claim compensation therefor; provided that, if the circumstances giving rise to such claim have a retroactive effect, then such 180 days period shall be extended to include the period of such retroactive effect. This covenant shall survive the termination of this Agreement and the payment of the Loans and all other amounts payable hereunder.

2.18. Change of Lending Office. Each Lender agrees that, upon the occurrence of any event giving rise to the operation of Section 2.15 or 2.16(a) with respect to such Lender, it will, if requested by the Borrower, use reasonable efforts (subject to overall policy considerations of such Lender) to designate another lending office for any Loans affected by such event with the object of avoiding the consequences of such event; provided that such designation is made on terms that, in the good faith judgment of such Lender, cause such Lender and its lending office(s) to suffer no economic, legal or regulatory disadvantage, and provided, further, that nothing in this Section shall affect or postpone any of the obligations of the Borrower or the rights of any Lender pursuant to Section 2.15 or 2.16(a).

2.19. Fees.

(a) The Borrower agrees to pay to the Administrative Agent (i) the fees in the amounts and on the dates as set forth in the Engagement Letter and (ii) for its own account, the annual administration fee separately agreed in writing between the Borrower and the Administrative Agent, and, in each case, to perform any other obligations contained therein.

(b) The Borrower agrees to pay to the Administrative Agent for the ratable account of each Lender according to its Revolving Loan Percentage a commitment fee at a rate per annum equal to the Commitment Fee Percentage (computed on the basis of a year of 360 days and the actual number of days elapsed) on the average daily aggregate Unused Revolving Commitments (the "Commitment Fee"); provided, however, that no Commitment Fee shall accrue to the Unused Revolving Credit Commitment of a Defaulting Lender, or be payable for the benefit of such Lender, so long as such Lender shall be a Defaulting Lender. Such Commitment Fee amount accrued through and including the last day of March, June, September and December of each year shall be payable quarterly in arrears on the third Business Day following the Borrower's receipt of an invoice from Administrative Agent for such period, commencing on the first such date to occur after the date hereof; provided that such Commitment Fee shall also be payable on the date on which the Revolving Commitments terminate.

(c) The Borrower agrees to pay (i) to the Administrative Agent for the account of each Lender (other than a Defaulting Lender) a participation fee with respect to its participations in Documentary Credits, which shall accrue at the same Applicable Margin used to determine the interest rate applicable to Eurodollar Revolving Borrowings on the average daily amount of such Lender's DC Exposure (excluding any portion thereof attributable to unreimbursed DC Disbursements) during the period from and including the Closing Date to but excluding the later of the date on which such Lender's Revolving Commitment terminates and the date on which such Lender ceases to have any DC Exposure, and (ii) to the relevant Issuing Bank a fronting fee, as may be agreed between the Issuing Bank and the Borrower, as well as such Issuing Bank's standard fees with respect to the issuance, amendment, renewal or extension of any Documentary Credit or processing of drawings thereunder. Participation fees and fronting fees accrued through and including the last day of March, June, September and December of each year shall be payable on the third Business Day following the Borrower's receipt of an invoice from Administrative Agent for such period, commencing on the first such date to occur after the Closing Date; provided that all such fees shall be payable on the date on which the

Commitments terminate and any such fees accruing after the date on which the Commitments terminate shall be payable on demand. Any other fees payable to any Issuing Bank pursuant to this paragraph shall be payable within 10 days after demand (accompanied by reasonable back-up documentation relating thereto). All participation fees and fronting fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

2.20. Nature of Fees. All Fees shall be paid on the dates due, in immediately available funds, to the Administrative Agent (for the respective accounts of the Administrative Agent and the Lenders), as provided herein. Once paid, none of the Fees shall be refundable under any circumstances.

2.21. Incremental Revolving Facilities.

(a) The Borrower may at any time or from time to time after the Closing Date, by notice to the Administrative Agent, request, during the Availability Period, the establishment of Incremental Revolving Commitments by an aggregate amount not in excess of the Maximum Incremental Commitment Amount; provided that

(i) (y) no Default or Event of Default shall have occurred and be continuing or would exist after giving effect thereto and (z) the conditions set forth in Section 4.2 are satisfied;

(ii) on the date of the incurrence or effectiveness of such Incremental Revolving Facility (in the case of the incurrence or effectiveness of Incremental Revolving Commitments, assuming such increase has been drawn in full), the Borrower shall be in compliance, on a pro forma basis, with the financial covenants set forth in Section 6.6 recomputed as of the last day of the most recently ended fiscal quarter for which financial statements have been or were required to be delivered pursuant to Section 5.1;

(iii) the Borrower shall have delivered to the Administrative Agent a certificate of a Financial Officer certifying to the effect set forth in subclauses (i) and (ii) above, together with reasonably detailed calculations demonstrating compliance with subclause (ii) above (which calculations shall, if made as of the last day of any fiscal quarter of the Borrower for which the Borrower has not delivered to the Administrative Agent the financial statements and Compliance Certificate required to be delivered by Section 5.2, be accompanied by a reasonably detailed calculation of Consolidated EBITDA of the Borrower for the relevant period);

(iv) all fees or other payments owing pursuant to this Agreement or as otherwise agreed in writing to the Administrative Agent and the applicable Incremental Lenders shall have been paid; and

(v) the other terms and conditions of any Incremental Revolving Facility shall be identical to those of the Revolving Commitments and Revolving Loans then outstanding with a like Revolving Maturity Date, and shall be treated as a single Class with such Revolving Commitments and Revolving Loans with a like Revolving Maturity Date; provided that the upfront fees applicable to any Incremental Revolving Facility shall be as determined by the Borrower and the Incremental Lenders providing such Incremental Revolving Facility.

(b) Each notice from the Borrower pursuant to this Section 2.21 shall specify (i) the date on which the Borrower proposes that the Incremental Revolving Facility shall, as applicable shall be effective, which shall be a date not less than five (5) Business Days (or such shorter period as may be agreed to by the Administrative Agent) after the date on which such notice is delivered to the Administrative Agent and (ii) the requested amount and proposed terms of the relevant Incremental Revolving Commitments, as applicable (it

being agreed that (x) any Lender approached to provide any Incremental Revolving Commitment may elect or decline, in its sole discretion, to provide such Incremental Revolving Commitment and (y) any Person that the Borrower proposes to become an Incremental Lender, must be consented to (such consent not to be unreasonably withheld, delayed or conditioned) by the Administrative Agent and each Issuing Bank if such consent would be required under Section 9.4 for an assignment of Loans or Commitments, as applicable to such Lender or Incremental Lender.

(c) Incremental Revolving Commitments in respect of Incremental Loans shall become Commitments under this Agreement pursuant to an amendment (an “Incremental Amendment”) to this Agreement and, as appropriate, the other Loan Documents, executed (in the case of such amendment to this Agreement) by the Borrower, each Lender agreeing to provide such Commitment, if any, each Incremental Lender and the Administrative Agent.

(d) Upon each increase in the Revolving Commitments pursuant to this Section 2.21, (i) each Lender with a Revolving Commitment immediately prior to such increase will automatically and without further act be deemed to have assigned to each Incremental Lender in respect of such increase, and each Incremental Lender will automatically and without further act be deemed to have assumed, a portion of such Lender’s participations hereunder in outstanding Documentary Credits such that, immediately after giving effect to each such deemed assignment and assumption of participations, the percentage of the aggregate outstanding participations hereunder in Documentary Credits held by each Lender with a Revolving Commitment (including each Incremental Lender) will equal the percentage of the aggregate Revolving Commitments of all Lenders with Revolving Commitments represented by such Lender’s Revolving Commitment and (ii) 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 increase in the Revolving Commitments be prepaid from the proceeds of additional Revolving Loans made hereunder (reflecting such increase in Revolving 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 2.17. The Administrative 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.

(e) This Section 2.21 shall supersede any provisions in Section 9.1 to the contrary.

2.22. Replacement of Lenders. The Borrower shall be permitted to replace any Lender that (a) requests reimbursement for amounts owing pursuant to Section 2.15, 2.16 or 2.17, and is unable to designate a different lending office in accordance with Section 2.18 so as to eliminate the continued need for payment of amounts owing pursuant to Sections 2.15, 2.16 or 2.17, (b) refuses to extend its Loans pursuant to an Extension Offer pursuant to Section 2.23 or (c) does not consent to any proposed amendment, supplement, modification, consent or waiver of any provision of this Agreement or any other Loan Document that requires the consent of each of the Lenders or each of the Lenders affected thereby (so long as the consent of the Required Lenders (of all Loans or the affected Classes of Loans) has been obtained), in each case with a replacement financial institution(s); provided that (i) such replacement does not conflict with any Requirement of Law, (ii) no Event of Default shall have occurred and be continuing at the time of such replacement, (iii) the replacement financial institution(s) shall purchase, at par, all Loans outstanding, Commitments, DC Exposure and other amounts related thereto owing to such replaced Lender on or prior to the date of replacement, (iv) the Borrower shall be liable to such replaced Lender under Section 2.17 if any Eurodollar Loan owing to such replaced Lender shall be purchased other than on the last day of the Interest Period relating thereto, (v) the replacement financial institution(s) (if other than a then existing Lender or an affiliate thereof) shall be reasonably satisfactory to the Administrative Agent (such consent not to be unreasonably withheld, delayed or conditioned), (vi) the replaced Lender shall be obligated to make such replacement in accordance with the provisions of Section 9.6 (provided that the Borrower shall be obligated to

pay the registration and processing fee referred to therein), (vii) until such time as such replacement shall be consummated, the Borrower shall pay all additional amounts (if any) required pursuant to Section 2.15, 2.16 or 2.17, as the case may be, and (viii) any such replacement shall not be deemed to be a waiver of any rights that the Borrower, the Administrative Agent or any other Lender shall have against the replaced Lender.

2.23. Extensions of Commitments.

(a) Notwithstanding anything to the contrary in this Agreement, pursuant to one or more offers (each, an “Extension Offer”) made from time to time by the Borrower to any or all Lenders holding Commitments with a like Revolving Maturity Date, the Borrower may from time to time request an extension to such Revolving Maturity Date and otherwise modify the terms of such Commitments pursuant to the terms of the relevant Extension Offer (including, without limitation, by increasing the interest rate or fees payable in respect of such Loans (and related outstandings)) (an “Extension”, such Commitments so extended, “Extended Revolving Commitments”; and each group of Commitments so extended, as well as the original Commitments of such Credit Facility (not so extended), being a “tranche”; any Extended Revolving Commitments shall constitute a separate tranche of Commitments from the tranche of Commitments from which they were converted and Loans made pursuant to Extended Revolving Commitments shall constitute a separate Class of Loan); provided that (i) each applicable Lender shall have the right (but not the obligation) to agree to the extension of such Revolving Maturity Date, (ii) no Default or Event of Default shall have occurred and be continuing at the time any the offering document (if any) in respect of an Extension Offer is delivered to the Lenders, (iii) except as to interest rates, fees and final maturity, the Extended Revolving Commitments of any Lender shall have the same terms as the original Commitments in the applicable Credit Facility; provided that at no time shall there be more than three different Revolving Maturity Dates, (iv) if the aggregate principal amount of Commitments in respect of which Lenders shall have accepted the relevant Extension Offer shall exceed the maximum aggregate principal amount of Commitments offered to be extended by the Borrower pursuant to such Extension Offer, then the Commitments of such Lenders shall be extended ratably up to such maximum amount based on the respective principal amounts (but not to exceed actual holdings of record) with respect to which such Lenders have accepted such Extension Offer, (v) all documentation in respect of such Extension shall be consistent with the foregoing, and all written communications by the Borrower generally directed to the Lenders in connection therewith shall be in form and substance consistent with the foregoing and otherwise reasonably satisfactory to the Administrative Agent and (vi) any applicable Minimum Extension Condition shall be satisfied.

(b) With respect to an Extension consummated by the Borrower pursuant to this Section 2.23, (i) such Extensions shall not constitute prepayments for purposes of Section 2.11 and (ii) no Extension Offer is required to be in any minimum amount or any minimum increment, provided that the Borrower may at its election specify as a condition (a “Minimum Extension Condition”) to consummating any such Extension that a minimum amount (to be determined and specified in the relevant Extension Offer in the Borrower’s discretion) of Commitments of any or all applicable tranches be tendered.

(c) The Lenders hereby irrevocably authorize the Administrative Agent to enter into amendments to this Agreement and the other Loan Documents with the Borrower as may be necessary in order establish new tranches or sub-tranches in respect of Commitments so extended and such technical amendments as may be necessary in connection with the establishment of such new tranches or sub-tranches, in each case on terms consistent with this Section 2.23. Notwithstanding the foregoing, the Administrative Agent shall have the right (but not the obligation) to seek the advice or concurrence of the Required Lenders (of one or more Classes of Loans) with respect to any matter contemplated by this Section 2.23(c) and, if the Administrative Agent seeks such advice or concurrence, the Administrative Agent shall be permitted to enter into such amendments with the Borrower in accordance with any instructions actually received by such Required Lenders and shall also be entitled to refrain from entering into such amendments with the Borrower unless and until it shall have received such advice or concurrence; provided, however, that whether or not there has

been a request by the Administrative Agent for any such advice or concurrence, all such amendments entered into with the Borrower by the Administrative Agent hereunder shall be binding and conclusive on the Lenders.

(d) In connection with any Extension, the Borrower shall provide the Administrative Agent at least five (5) Business Days' (or such shorter period as may be agreed by the Administrative Agent) prior written notice thereof, and shall agree to such procedures, if any, as may be established by, or acceptable to, the Administrative Agent, in each case acting reasonably to accomplish the purposes of this Section 2.23.

2.24. Defaulting Lenders. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as such Lender is no longer a Defaulting Lender, to the extent permitted by applicable law:

(a) Waivers and Amendments. The Loans and Commitments of such Defaulting Lender shall not be included in determining whether the Required Lenders have taken or may take any action hereunder or under any other Loan Document (including any consent to any amendment, waiver or other modification pursuant to Section 9.1); provided that any amendment, waiver or other modification requiring the consent of all Lenders or all Lenders affected thereby shall, except as otherwise provided in Section 9.1, require the consent of such Defaulting Lender in accordance with the terms hereof.

(b) Defaulting Lender Waterfall. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender hereunder (whether voluntary, at maturity, pursuant to Article VII or otherwise) shall be applied at such time or times as may be determined by the Administrative Agent as follows: first, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder; second, as the Borrower may request (so long as no Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; third, if so determined by the Administrative Agent and the Borrower, to be held in a deposit account and released pro rata in order to satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement; fourth, to the payment of any amounts owing to the Lenders or Issuing Banks as a result of any judgment of a court of competent jurisdiction obtained by any Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; fifth, so long as no Default exists, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and sixth, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (x) such payment is a payment of the principal amount of any Loans in respect of which such Defaulting Lender has not fully funded its appropriate share, and (y) such Loans were made at a time when the conditions set forth in Section 4.1 were satisfied or waived, such payment shall be applied solely to pay the Loans of the same Class of all non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of such Class of such Defaulting Lender until such time as all Loans of such Class are held by the Lenders pro rata in accordance with the applicable Commitments. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post cash collateral pursuant to this Section shall be deemed paid to and redirected by such Defaulting Lender, and such Defaulting Lender irrevocably consents hereto.

(c) If any DC Exposure exists at the time such Lender becomes a Defaulting Lender then:

(i) all or any part of the DC Exposure of such Defaulting Lender shall be reallocated among the non-Defaulting Lenders in accordance with their respective Revolving Credit Exposure Percentages but only to the extent (i) the sum of all non-Defaulting Lenders' Loans and DC Exposure

then outstanding plus such Defaulting Lender's DC Exposure does not exceed the total of all non-Defaulting Lenders' Commitments and (ii) that after giving effect to such reallocation, no non-Defaulting Lender's Loans and DC Exposure exceeds its Commitment;

(ii) if the reallocation described in clause (i) above cannot, or can only partially, be effected, the Borrower shall within one Business Day following notice by the Administrative Agent cash collateralize in Dollars (or, at the option of the Administrative Agent, in the applicable currency) for the benefit of the Issuing Banks only the Borrower's obligations corresponding to such Defaulting Lender's DC Exposure (after giving effect to any partial reallocation pursuant to clause (i) above) in accordance with the procedures set forth in Section 7 for so long as such DC Exposure is outstanding;

(iii) if the Borrower cash collateralizes any portion of such Defaulting Lender's DC Exposure pursuant to clause (ii) above, the Borrower shall not be required to pay any fees to such Defaulting Lender pursuant to Section 2.19(c) with respect to such Defaulting Lender's DC Exposure during the period such Defaulting Lender's DC Exposure is cash collateralized;

(iv) if the DC Exposure of the non-Defaulting Lenders is reallocated pursuant to clause (i) above, then the fees payable to the Lenders pursuant to Section 2.19(c) shall be adjusted in accordance with such non-Defaulting Lenders' Revolving Credit Exposure Percentages; and

(v) if all or any portion of such Defaulting Lender's DC Exposure is neither reallocated nor cash collateralized pursuant to clause (i) or (ii) above, then, without prejudice to any rights or remedies of the Issuing Banks or any other Lender hereunder, all fees payable under Section 2.19(c) with respect to such Defaulting Lender's DC Exposure shall be payable to the Issuing Banks until and to the extent that such DC Exposure is reallocated and/or cash collateralized; and

(d) So long as such Lender is a Defaulting Lender, the Issuing Banks shall not be required to issue, amend or increase any Documentary Credit, unless it is satisfied that the related exposure and the Defaulting Lender's then outstanding DC Exposure will be 100% covered by the Commitments of the non-Defaulting Lenders and/or cash collateral will be provided by the Borrower in accordance with Section 2.24(c), and participating interests in any newly issued or increased Documentary Credit shall be allocated among non-Defaulting Lenders in a manner consistent with Section 2.24(c)(i) (and such Defaulting Lender shall not participate therein).

(e) Defaulting Lender Cure. If the Borrower and the Administrative Agent (unless the Administrative Agent is the Defaulting Lender) agree in writing that a Lender is no longer a Defaulting Lender, the Administrative Agent will so notify the applicable parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any cash collateral), the DC Exposure of the Lenders will be readjusted to reflect the inclusion of such Lender's Commitment and such Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders or take such other actions as the Administrative Agent (unless the Administrative Agent is the Defaulting Lender) may determine to be necessary to cause the Loans to be held pro rata by the Lenders in accordance with the relative amounts of their Commitments for each applicable Class of Loans, whereupon such Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while that Lender was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to non-Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

## 2.25. Sustainability Adjustments.

(a) (A) Each of the Sustainability Margin Adjustment and the Sustainability Commitment Fee Adjustment shall be effective on the Sustainability Adjustment Date and (B) each change in the Applicable Margin and the Commitment Fee Percentage resulting from a Sustainability Pricing Certificate shall be effective during the period commencing on and including the applicable Sustainability Adjustment Date and ending on the date immediately preceding the next such Sustainability Adjustment Date.

(b) For the avoidance of doubt, the Sustainability Pricing Certificate may be delivered only once in respect of any calendar year. It is further understood and agreed that the Applicable Margin will never be reduced or increased by more than 5.00 basis points and the Commitment Fee Percentage will never be reduced or increased by more than 1.00 basis points, in each case pursuant to the Sustainability Margin Adjustment or the Sustainability Commitment Fee Adjustment, as applicable, during any calendar year (the “Maximum Adjustment”). For the avoidance of doubt, any adjustment to the Applicable Margin due to a Sustainability Margin Adjustment or any adjustment to the Commitment Fee Percentage due to a Sustainability Commitment Fee Adjustment in any calendar year shall not be cumulative year-over-year. Each applicable adjustment shall only apply until the date on which the next adjustment is due to take place.

(c) If the Borrower fails to provide the Administrative Agent with the Sustainability Pricing Certificate or one or more of the KPI Metrics for any calendar year within the timeframe indicated in Section 5.2(d), the Applicable Margin shall be increased by 1.67 basis points and the Commitment Fee Percentage shall be increased by 0.34 basis points for each applicable Key Performance Indicator for which a KPI Metric has not been submitted, commencing on the day by which such Sustainability Pricing Certificate was required to have been delivered pursuant to the terms of Section 5.2(d) and continuing until the Borrower submits another Sustainability Pricing Certificate for the subsequent calendar year; provided that it is understood and agreed that the Applicable Margin and the Commitment Fee Percentage, as applicable, will never be increased by more than the Maximum Adjustment.

(d) If (i)(A) the Borrower or any Lender becomes aware of any material inaccuracy in any Sustainability Applicable Rate Adjustment or any KPI Metric calculation as reported in a Sustainability Pricing Certificate (any such material inaccuracy, a “Sustainability Pricing Certificate Inaccuracy”) and, in the case of any Lender, such Lender delivers, not later than 10 Business Days after obtaining knowledge thereof, a written notice to the Administrative Agent and the Sustainability Structuring Agent describing such Sustainability Pricing Certificate Inaccuracy in reasonable detail (which description shall be promptly shared with each Lender and the Borrower), or (B) the Borrower and the Lenders agree that there was a Sustainability Pricing Certificate Inaccuracy at the time of delivery of a Sustainability Pricing Certificate, and (ii) a proper calculation of the Sustainability Applicable Rate Adjustments or the KPI Metrics would have resulted in an increase in the Applicable Margin and/or Commitment Fee Percentage for any applicable period, the Borrower shall pay to the Administrative Agent for the account of the Lenders promptly following written demand by the Administrative Agent (or, after the occurrence of an actual or deemed entry of an order for relief with respect to the Borrower under the Bankruptcy Code, automatically and without further action by the Administrative Agent, any Lender), but in any event within 10 Business Days after the Borrower has received written notice in reasonable detail of, or has agreed in writing that there was, a Sustainability Pricing Certificate Inaccuracy, an amount equal to the excess of (1) the amount of interest or fee that should have been paid for such period over (2) the amount of interest or fee actually paid for such period. If the Borrower becomes aware of any Sustainability Pricing Certificate Inaccuracy and, in connection therewith, if a proper calculation of the Sustainability Applicable Rate Adjustment or the KPI Metrics would have resulted in a decrease in the Applicable Margin or Commitment Fee Percentage for any period, then, upon receipt by the Administrative Agent of notice from the Borrower of such Sustainability Pricing Certificate Inaccuracy (which notice shall include corrections to the calculations of the Sustainability Applicable Rate Adjustment or the KPI Metrics, as applicable and be certified to by a Responsible Officer of the Borrower), commencing on the Business Day following receipt by the Administrative Agent of such notice, the Applicable Margin or the Commitment Fee Percentage, as applicable, shall be adjusted to reflect the corrected calculations of the



Sustainability Applicable Rate Adjustment or the KPI Metrics, as applicable. It is understood and agreed that any Sustainability Pricing Certificate Inaccuracy with respect to any applicable period shall not constitute a Default or Event of Default unless the Borrower fails to make a payment required by the foregoing terms of this Section 2.25(d) with respect to such Sustainability Pricing Certificate Inaccuracy following demand for payment by the Administrative Agent made in accordance with the foregoing terms of this Section 2.25(d). Notwithstanding anything to the contrary herein, unless such amounts shall be due upon the occurrence of an actual or deemed entry of an order for relief with respect to the Borrower under the Bankruptcy Code, (a) any additional amounts required to be paid pursuant the immediately preceding paragraph shall not be due and payable until a written demand is made for such payment by the Administrative Agent in accordance with such paragraph, (b) any nonpayment of such additional amounts prior to or upon such demand for payment by Administrative Agent shall not constitute a Default or Event of Default (whether retroactively or otherwise) and (c) none of such additional amounts shall be deemed overdue prior to such a demand or shall accrue interest at the Default Rate prior to such a demand.

(e) Each party hereto hereby agrees that neither the Administrative Agent nor the Sustainability Structuring Agent shall have any responsibility for (or liability in respect of) reviewing, auditing or otherwise evaluating any calculation by the Borrower of any Sustainability Applicable Rate Adjustment (or any of the data or computations that are part of or related to any such calculation) set forth in the Initial KPI Metrics Report, any KPI Metrics Report or any Sustainability Pricing Certificate (and the Administrative Agent may rely conclusively on any such certificate, without further inquiry).

(f) In the event of a Regulatory Change in relation to any Key Performance Indicator, the Borrower and the Sustainability Structuring Agent shall negotiate in good faith, by no later than 60 days following such Regulatory Change any necessary amendment, modification or other supplement to Schedule 1.3 (Sustainability Performance Thresholds) (and any component definitions thereof). Such amendment, modification or other supplement, shall be consented to by the Administrative Agent, Sustainability Structuring Agent and the Borrower and will take effect so long as Lenders constituting Required Lenders do not object to such changes within five Business Days after notice of such proposed amendment, modification or other supplement. If the Borrower and the Structuring Sustainability Agent do not agree to any such amendment, modification or supplement following the 60 day period, then, upon the written agreement among the Sustainability Structuring Agent, the Borrower and the Administrative Agent, which will take effect so long as Lenders constituting Required Lenders do not object to such agreement within five Business Days after notice of such proposed agreement, the Sustainability Applicable Rate Adjustment shall cease to apply for the relevant Key Performance Indicator and, notwithstanding anything to the contrary herein, for all purposes hereunder, the Sustainability Applicable Rate Adjustment for such Key Performance Indicator shall be deemed to be zero. In the case such Key Performance Indicator no longer applies, the Borrower will then cease to refer to the applicable Key Performance Indicator in the Sustainability Pricing Certificate.

### SECTION 3

#### Representations and Warranties

The Borrower represents and warrant on the Closing Date to the Administrative Agent, each Lender and each Issuing Bank as follows:

3.1. Existence; Compliance with Law. Each Loan Party (a) is duly organized, validly existing and (to the extent such concept is applicable) in good standing under the laws of the jurisdiction of its organization, (b) has the power and authority, and the legal right, to own and operate its property, to lease the property it operates as lessee and to conduct the business in which it is currently engaged, (c) is duly qualified as a foreign corporation or other organization and (to the extent such concept is applicable) in good standing under the laws of each jurisdiction where its ownership, lease or operation of property or the conduct of its business requires such qualification, and (d) is in compliance with all Requirements of Law, except, in the

case of each of the foregoing clauses (a) through (d), to the extent that the failure to comply therewith would not, in the aggregate, reasonably be expected to have a Material Adverse Effect.

3.2. Power; Authorizations; Enforceable Obligations. Each Loan Party has the power and authority, and the legal right, to make, deliver and perform the Loan Documents to which it is a party and, in the case of the Borrower, to obtain extensions of credit hereunder. Each Loan Party has taken all necessary organizational action to authorize the execution, delivery and performance of the Loan Documents to which it is a party and, in the case of the Borrower, to authorize the extensions of credit on the terms and conditions of this Agreement. No consent or authorization of, filing with, notice to or other act by or in respect of, any Governmental Authority is required in connection with the extensions of credit hereunder or with the execution, delivery, performance, validity or enforceability of this Agreement or any of the Loan Documents, except (i) that have been obtained or made and are in full force and effect and (ii) to the extent that the failure to obtain any such consent, authorization, filing, notice or other act would not, in the aggregate, reasonably be expected to have a Material Adverse Effect. Each Loan Document has been duly executed and delivered on behalf of each Loan Party party thereto. This Agreement constitutes, and each other Loan Document upon execution will constitute, a legal, valid and binding obligation of each Loan Party party thereto, enforceable against each such Loan Party in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general equitable principles (whether enforcement is sought by proceedings in equity or at law).

3.3. No Legal Bar. The execution, delivery and performance of this Agreement and the other Loan Documents, the borrowings hereunder and the use of the proceeds thereof (x) will not violate any Requirement of Law or any material Contractual Obligation of any Loan Party and (y) will not result in, or require, the creation or imposition of any Lien on any of their respective properties or revenues pursuant to any Requirement of Law or any such material Contractual Obligation except, in the case of each of the foregoing clauses (x) and (y), to the extent that the failure to comply therewith would not, in the aggregate, reasonably be expected to have a Material Adverse Effect.

3.4. Accuracy of Information. No statement or information contained in this Agreement, any other Loan Document, or any other document, certificate or statement, including, without limitation, with respect to the KPI Metrics and any reporting in connection therewith, furnished by or on behalf of any Loan Party to the Administrative Agent or the Lenders, or any of them, for use in connection with the transactions contemplated by this Agreement or the other Loan Documents, contained as of the Closing Date, taken as a whole and in light of the circumstances in which made, any untrue statement of a material fact or omitted to state a material fact necessary to make the statements contained herein or therein not materially misleading; provided that, with respect to projected financial information, each Loan Party represents only that such information was prepared in good faith based upon assumptions believed by them to be reasonable at the time delivered and, if such projected financial information was delivered prior to the Closing Date, as of the Closing Date, it being understood that any such projected financial information may vary from actual results and such variations could be material.

3.5. No Material Adverse Effect. Since the last day of the most recently ended fiscal year of the Borrower prior to the Closing Date there has been no development or event that has had or would reasonably be expected to have a Material Adverse Effect.

3.6. Title to Assets; Liens. The Borrower and its Restricted Subsidiaries have good and marketable title to, or a valid leasehold or easement interest in, all their other material property, taken as a whole, except for minor defects in title that do not interfere with their ability to conduct their business as currently conducted or as proposed to be conducted or to utilize such properties for their intended purposes, in

each case, except as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, and none of such property is subject to any Lien except Liens permitted under Section 6.2.

3.7. Intellectual Property. The Borrower and its Restricted Subsidiaries own, or are licensed to use, all Intellectual Property material to the conduct of their businesses, and the use thereof by the Borrower and its Restricted Subsidiaries does not, to the knowledge of the Borrower, infringe upon, misappropriate or otherwise violate the Intellectual Property rights of any other Person, in each case except where the failure to own or license Intellectual Property, or any infringement on Intellectual Property rights would not, in the aggregate, reasonably be expected to have a Material Adverse Effect.

3.8. Use of Proceeds. The proceeds of the Loans shall be utilized for the Refinancing and general corporate purposes.

3.9. Litigation. No litigation, investigation or proceeding of or before any arbitrator or Governmental Authority is pending or, to the knowledge of the Borrower, threatened (including “cease and desist” letters and invitations to take a patent license) by or against the Borrower or its Restricted Subsidiaries or against any of their respective properties, rights or revenues that, in the aggregate, would reasonably be expected to have a Material Adverse Effect.

3.10. Federal Reserve Regulations. No part of the proceeds of any Loan will be used for any purpose that violates the provisions of the Regulations of the Board of Governors. Neither the Borrower nor any of its Subsidiaries is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying any “margin stock.”

3.11. Solvency. The Borrower and its Subsidiaries, taken as a whole, are, and after giving effect to the incurrence of all Indebtedness and obligations being incurred in connection herewith will be, Solvent.

3.12. Taxes. Each of the Borrower and its Restricted Subsidiaries has filed or caused to be filed all federal and state income Tax and other Tax returns that are required to be filed, except if the failure to make any such filing would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, and has paid all Taxes shown to be due and payable on said returns or on any assessments made against it or any of its property and all other Taxes, fees or other charges imposed on it or any of its property by any Governmental Authority (other than any (x) the amount or validity of which are currently being contested in good faith by appropriate proceedings and with respect to which reserves in conformity with GAAP have been provided on the books of the relevant entity, or (y) those where the failure to pay, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect). There is no proposed Tax assessment or other claim against, and no Tax audit with respect to, the Borrower or its Restricted Subsidiaries that would reasonably be expected to, individually or in the aggregate, have a Material Adverse Effect.

3.13. ERISA. Except as, in the aggregate, does not or would not reasonably be expected to result in a Material Adverse Effect: neither a Reportable Event nor a failure to satisfy the minimum funding standard of Section 430 of the Code or Section 303 of ERISA, whether or not waived, with respect to a Plan has occurred during the five-year period prior to the date on which this representation is made or deemed made with respect to any Plan, and each Plan has complied in all respects with the applicable provisions of ERISA and the Code; no termination of a Single Employer Plan has occurred, and no Lien in favor of the PBGC or a Plan has arisen, during such five-year period; the present value of all accrued benefits under each Single Employer Plan (based on those assumptions used to fund such Plans) did not, as of the last annual valuation date prior to the date on which this representation is made or deemed made, exceed the value of the assets of such Plan allocable to such accrued benefits; neither the Borrower nor any Commonly Controlled Entity has had a complete or partial withdrawal from any Multiemployer Plan; to the knowledge of the

Borrower after due inquiry, neither the Borrower nor any Commonly Controlled Entity would become subject to any liability under ERISA if the Borrower or any such Commonly Controlled Entity were to withdraw completely from any Multiemployer Plans as of the valuation date most closely preceding the date on which this representation is made or deemed made; and to the knowledge of the Borrower after due inquiry, no Multiemployer Plan is in “critical status” (within the meaning of Section 432 of the Code or Section 305 of ERISA) or Insolvent.

3.14. Environmental Matters; Hazardous Material. There has been no matter with respect to Environmental Laws or Materials of Environmental Concern which, in the aggregate, would reasonably be expected to have a Material Adverse Effect.

3.15. Investment Company Act; Other Regulations. Neither the Borrower nor any Restricted Subsidiary is required to register as an “investment company”, or a company “controlled” by an “investment company”, within the meaning of the Investment Company Act of 1940, as amended. Neither the Borrower nor any Restricted Subsidiary is subject to regulation under any Requirement of Law that limits its ability to incur Indebtedness under this Agreement and the other Loan Documents.

3.16. Labor Matters. Except as, in the aggregate, would not reasonably be expected to have a Material Adverse Effect: (a) there are no strikes or other labor disputes against the Borrower or any Restricted Subsidiary pending or, to the knowledge of the Borrower, threatened; (b) hours worked by and payment made to employees of each of the Borrower and its Restricted Subsidiaries have not been in violation of the Fair Labor Standards Act or any other applicable Requirement of Law dealing with such matters; and (c) all payments due from the Borrower and its Restricted Subsidiaries on account of employee health and welfare insurance have been paid or accrued as a liability on the books of the relevant entity.

3.17. Anti-Corruption Laws and Sanctions. The Borrower has implemented and maintains in effect policies and procedures designed to ensure compliance by the Borrower, its Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions, and the Borrower, its Subsidiaries and their respective officers and directors and to the knowledge of the Borrower its employees and agents, are in compliance with Anti-Corruption Laws and applicable Sanctions in all material respects. None of (a) the Borrower, any Subsidiary or any of their respective directors, officers or employees, or (b) to the knowledge of the Borrower, any agent of the Borrower or any Subsidiary that will act in any capacity in connection with or benefit from the credit facility established hereby, is a Sanctioned Person. No Borrowing, use of proceeds or other transaction contemplated by this Agreement will violate any Anti-Corruption Law or applicable Sanctions.

3.18. Affected Financial Institutions. No Loan Party is an Affected Financial Institution.

3.19. Disclosure. As of the Closing Date, to the best knowledge of the Borrower, the information included in the Beneficial Ownership Certification provided on or prior to the Closing Date to any Lender in connection with this Agreement is true and correct in all respects.

3.20. ERISA Event. No ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other such ERISA Events for which liability is reasonably expected to occur, would reasonably be expected to result in a Material Adverse Effect.

## SECTION 4

### Conditions Precedent

4.1. Conditions to the Closing Date. The obligations of the Lenders to make Loans and of the Issuing Banks to issue Documentary Credits hereunder shall not become effective until the date on which each of the following conditions is satisfied (or waived in accordance with Section 9.1):

- (a) Loan Documents. The Administrative Agent shall have received counterparts hereof executed and delivered by the Borrower, the Administrative Agent, the Sustainability Structuring Agent, and each other Lender and Issuing Bank and Schedules to this Agreement.
- (b) Corporate Documents and Proceedings. The Administrative Agent shall have received (i) a certificate of each Borrower, dated the Closing Date, substantially in the form attached hereto as Exhibit A, with appropriate insertions and attachments, including the certificate of incorporation of Borrower, and (ii) a long form good standing certificate for Borrower from its jurisdiction of organization.
- (c) No Material Adverse Effect. Since September 3, 2020, there has been no development or event that has had or would reasonably be expected to have a Material Adverse Effect.
- (d) Officer's Certificate. The Administrative Agent shall have received a certificate, dated as of the Closing Date by a Responsible Officer of the Borrower, confirming compliance with the conditions set forth in Section 4.1(c) and Section 4.2(a) and (b) (and covering all representations and warranties in Section 3).
- (e) Solvency Certificate. The Administrative Agent shall have received a customary certificate from the chief financial officer of the Borrower in form and substance satisfactory to the Administrative Agent certifying as to the solvency of the Borrower and its Subsidiaries on a consolidated basis after giving effect to the transactions contemplated to occur on the Closing Date.
- (f) Payment of Fees; Expenses. The Arrangers and the Administrative Agent shall have received all fees required to be paid, and all reasonable costs and expenses required to be paid and for which invoices have been presented (including the reasonable fees and expenses of legal counsel), on or before the Closing Date.
- (g) Legal Opinion. The Administrative Agent shall have received a legal opinion from Wilson Sonsini Goodrich & Rosati P.C., counsel to the Borrower, in form and substance satisfactory to the Administrative Agent.
- (h) Refinancing. Substantially simultaneously with the Closing Date, the Refinancing shall be consummated.
- (i) Patriot Act and Beneficial Ownership Regulation. (i) The Administrative Agent shall have received, at least three (3) Business Days prior to the Closing Date, all documentation and information as is reasonably requested in writing by any Lender at least eight days prior to the Closing Date about the Borrower and its Subsidiaries that is required by U.S. Governmental Authorities under applicable "know your customer" and anti-money laundering rules and regulations, including without limitation, the Patriot Act and (ii) to the extent the Borrower qualifies as a "legal entity customer" under the Beneficial Ownership Regulation, at least five days prior to the Closing Date, any Lender that has requested, in a written notice to the Borrower at least 10 days prior to the Closing Date, a Beneficial Ownership Certification in relation to the Borrower shall have received such Beneficial Ownership Certification (provided that, upon the execution and

delivery by such Lender of its signature page to this Agreement, the condition set forth in this clause (ii) shall be deemed to be satisfied).

(j) Initial KPI Metrics Report. The Administrative Agent shall have received the Initial KPI Metrics Report, of which all data and information in such Initial KPI Metrics Report has been made publicly available by the Borrower via the Borrower's annual report on environmental, social and governance issues.

4.2. Each Credit Event. The obligation of each Lender to make a Revolving Loan on the occasion of any Borrowing, and of each Issuing Bank to issue, amend, renew or extend any Documentary Credit, is subject to the satisfaction of the following conditions:

(a) All representations and warranties contained in this Agreement (except the representations and warranties contained in Sections 3.5 and 3.9, which are only made as of the Closing Date) shall be true and correct in all material respects on and as of the date of such Borrowing or the date of issuance, amendment, renewal or extension of such Documentary Credit, as applicable, with the same effect as if made on and as of such date (unless stated to relate to a specific earlier date, in which case, such representations and warranties shall be true and correct in all material respects as of such earlier date) (it being understood that any representation or warranty that is qualified as to materiality or Material Adverse Effect shall be correct in all respects).

(b) At the time of and immediately after giving effect to such Revolving Loan or the issuance, amendment, renewal or extension of such Documentary Credit, as applicable, no Default or Event of Default shall have occurred and be continuing.

(c) The Administrative Agent shall have received a notice requesting such Borrowing or the issuance, amendment, renewal or extension of such Documentary Credit, as applicable to the extent required hereunder.

Each Borrowing and each issuance, amendment, renewal or extension of a Documentary Credit shall be deemed to constitute a representation and warranty by the Borrower on the date thereof as to the matters specified in paragraphs (a) and (b) of this Section.

## SECTION 5

### Affirmative Covenants

Until the Commitments have expired or been terminated and the principal of and interest on each Loan and all fees payable hereunder shall have been paid in full and all Documentary Credits shall have expired or terminated and all DC Disbursements shall have been reimbursed, the Borrower covenants and agrees that:

5.1. Financial Statements, etc. The Borrower will furnish to the Administrative Agent (for distribution to the Lenders), within 15 days after the Borrower has filed the same with the SEC, copies of the quarterly and annual reports and the information, documents and reports (or copies of such portions of any of the foregoing as the SEC may prescribe) that the Borrower may be required to file with the SEC pursuant to Section 13 or 15(d) of the Exchange Act (other than confidential filings, documents subject to confidential treatment and correspondence with the SEC); provided that in each case the delivery of materials to the Administrative Agent by electronic means or filing of documents pursuant to the SEC's "EDGAR" system (or any successor electronic filing system) shall be deemed to be "furnished" with the Administrative Agent as of the time such documents are filed via the "EDGAR" system for purposes of this Section 5.1.

5.2. Compliance Certificate; Reporting.

(a) Promptly (and in any event within 5 Business Days) following delivery of the quarterly and annual financial statements provided for in Section 5.1 on Form 10-Q or 10-K, as applicable, a certificate of a Financial Officer of the Borrower substantially in the form of Exhibit C (y) stating no Default or Event of Default has occurred and is then continuing or, if a Default or Event of Default exists, a detailed description of the Default or Event of Default and all actions the Borrower is taking with respect to such Default or Event of Default and (z) containing calculations demonstrating the Borrower's compliance with the covenants set forth in Section 6.6.

(b) The Borrower will deliver to the Administrative Agent, forthwith upon any Responsible Officer becoming aware of any Default or Event of Default (which shall be no more than five (5) Business Days following the date on which the Responsible Officer becomes aware of such Default or Event of Default), an officer's certificate of a Responsible Officer of the Borrower specifying such Default or Event of Default and what action the Borrower is taking or proposes to take with respect thereto.

(c) Promptly following any request therefor, the Borrower will deliver information and documentation reasonably requested by the Administrative Agent or any Lender for purposes of compliance with applicable "know your customer" and anti-money laundering rules and regulations, including the Patriot Act and the Beneficial Ownership Regulation. Promptly following any request therefor, the Borrower shall provide written notice of any change in the list of beneficial owners identified in the most recent Beneficial Ownership Certification delivered to Administrative Agent or a Lender.

(d) as soon as available and in any event within 180 days following the end of each calendar year (commencing with the calendar year ending December 31, 2021, the Borrower will furnish to the Administrative Agent a Sustainability Pricing Certificate for the most recently-ended calendar year; provided, however, that for any calendar year the Borrower may elect not to deliver a Sustainability Pricing Certificate, and such election shall not constitute a Default or Event of Default under this Agreement (but such failure to so deliver a Sustainability Pricing Certificate by the end of such 180-day period shall result in the Sustainability Applicable Rate Adjustment being applied as set forth in Section 2.25(c)).

5.3. Maintenance of Existence. The Borrower and its Restricted Subsidiaries shall (i) preserve, renew and keep in full force and effect its organizational existence and (ii) take all reasonable action to maintain all rights, privileges and franchises reasonably necessary in the normal conduct of its business, except, in each case, (x) as otherwise permitted by Section 6.3 or (y) to the extent that failure to do so would not, in the aggregate, reasonably be expected to have a Material Adverse Effect.

5.4. Maintenance of Insurance.

The Loan Parties will maintain insurance policies (or self-insurance) on all its property in at least such amounts and against at least such risks as are usually insured against by companies of a similar size engaged in the same or a similar business (after giving effect to any self-insurance which in the good faith judgment of management of the Borrower is reasonable and prudent in light of the size and nature of its business). Notwithstanding anything to the contrary herein, with respect to Foreign Subsidiaries that are Guarantors, the requirements of this Section 5.4 shall be deemed satisfied if the Borrower obtains insurance policies that are customary and appropriate for the applicable jurisdiction.

5.5. Use of Proceeds and Documentary Credits. The proceeds of the Loans and the Documentary Credits will be used only for general corporate purposes. No part of the proceeds of any Loan or any Documentary Credit will be used, whether directly or indirectly, for any purpose that entails a violation of any of the regulations of the Federal Reserve Board, including Regulations T, U and X.

5.6. Compliance with Laws. The Borrower will maintain in effect and enforce policies and procedures designed to ensure compliance by the Borrower, its Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions.

5.7. Designation of Subsidiaries. The Borrower may at any time by written notice to the Administrative Agent (i) designate any Restricted Subsidiary as an Unrestricted Subsidiary or (ii) designate any Unrestricted Subsidiary as a Restricted Subsidiary; provided that no Default or Event of Default shall have occurred and be continuing or would result therefrom.

## SECTION 6

### Negative Covenants

Until the Commitments have expired or been terminated and the principal of and interest on each Loan and all fees payable hereunder shall have been paid in full and all Documentary Credits shall have expired or terminated and all DC Disbursements shall have been reimbursed, the Borrower covenants and agrees that:

6.1. Limitation on Indebtedness. The Borrower will not permit any of its Restricted Subsidiaries to create, assume, incur, Guarantee or otherwise become liable for any Indebtedness, without causing such Restricted Subsidiary (excluding any Subsidiary that is not a Material Subsidiary) to become a Guarantor, other than:

(a) Indebtedness in respect of or under the Obligations or Guarantees thereof;

(b) Indebtedness of a Person existing at the time such Person is merged into or consolidated with or otherwise acquired by the Borrower or any Restricted Subsidiary of the Borrower or otherwise becomes a Restricted Subsidiary of the Borrower (or arising thereafter pursuant to contractual commitments entered into prior to such Person becoming a Restricted Subsidiary) or at the time of a sale, lease or other disposition of the properties and assets of such Person (or a division thereof) as an entirety or substantially as an entirety to any Restricted Subsidiary of the Borrower (or arising thereafter pursuant to contractual commitments entered into prior to such Person becoming a Restricted Subsidiary) and is assumed by such Subsidiary, other than any increase in the amount of such Indebtedness (including any increase in the amount of such Indebtedness arising pursuant to contractual commitments entered into prior to such acquisition) incurred in contemplation thereof;

(c) Indebtedness owed to the Borrower or any Restricted Subsidiary;

(d) Indebtedness created, incurred, issued, assumed or Guaranteed to pay or finance the payment of all or any part of the purchase price or the cost of development, operation, construction, alteration, repair or improvement of property, assets or equipment acquired or developed, operated, constructed, altered, repaired or improved by a Restricted Subsidiary, and any related transactional fees, costs and expenses, provided such Indebtedness is created, incurred, issued, assumed or Guaranteed within 18 months (or in the case of any Indebtedness supported by an export credit agency, 24 months) after the later of (i) the acquisition or the completion of any such development, operation, construction, alteration, repair or improvement of such property, assets or equipment, whichever is later, or (ii) the placing into commercial operation of such property after the acquisition or completion of any such development, operation, construction, alteration, repair or improvement (or, in each case, is incurred pursuant to firm commitment financing arrangements obtained within such period), and, provided further, that the outstanding amount of such Indebtedness, without duplication, does not exceed 100% of the fair value of the property or equipment acquired or developed, operated, constructed, altered, repaired or improved at the time such Indebtedness is incurred;



(e) Indebtedness permitted to be secured by Liens permitted by clauses (5) or (6) of the definition of Permitted Lien (whether or not such Indebtedness is in fact secured by such Liens) and any Guarantees thereof;

(f) any extension, renewal, substitution, replacement, refinancing or refunding of Indebtedness that was permitted pursuant to Section 6.1(a), (b), (c), or (d) at the time such Indebtedness was created or incurred; provided that (1) any Indebtedness incurred to so extend, renew, substitute, replace, refinance or refund shall be incurred within 12 months of the maturity, retirement or other repayment or prepayment (including any such repayment pursuant to amortization obligations with respect to such Indebtedness), (2) the outstanding amount of the Indebtedness incurred to so extend, renew, substitute, replace, refinance or refund shall not exceed the outstanding amount of Indebtedness being extended, renewed, substituted, replaced, refinanced or refunded plus any premiums or fees (including tender premiums) or other reasonable amounts payable, plus the amount of fees, expenses and other costs incurred, in connection with any such extension, renewal, substitution, replacement, refinancing or refunding, (3) if the Indebtedness being extended, renewed, substituted, replaced, refinanced or refunded was secured by a Lien on Property, the Indebtedness incurred to so extend, renew, substitute, replace, refinance or refund may be secured by such Property, and (4) if the Indebtedness being extended, renewed, substituted, replaced, refinanced or refunded was not secured by a Lien on Property, the Indebtedness incurred to so extend, renew, substitute, replace, refinance or refund shall not be secured by Property; and

(g) other Indebtedness; provided that the aggregate principal amount of Indebtedness outstanding at any one time pursuant to this clause shall not exceed the sum of (i) the greater of (x) \$5,600,000,000 and (y) 15% of Consolidated Net Tangible Assets of the Borrower for the Measurement Period immediately preceding the date of such incurrence minus (ii) the aggregate principal amount of Indebtedness of the Borrower that is secured by a Lien under Section 6.2(b);

For purposes of this Section 6.1, in the event that any Indebtedness meets the criteria of more exceptions in this Section 6.1, the Borrower, in its sole discretion, will classify, and may reclassify, such Indebtedness and such Indebtedness may be divided and classified and reclassified into more than one of the exceptions in this Section 6.1 described above. In addition, for purposes of calculating compliance with this Section 6.1, in no event will the amount of any Indebtedness (including any Guarantees of such Indebtedness) be required to be included more than once despite the fact more than one Person is or becomes liable with respect to any related Indebtedness and despite the fact that such Indebtedness is secured by the assets of more than one Person (for example, and for avoidance of doubt, in the case where more than one Restricted Subsidiary incurs Indebtedness, Guarantees or otherwise becomes liable for such Indebtedness, or in the case where there are Liens on the assets of one or more of the Borrower and its Restricted Subsidiaries securing such Indebtedness or one or more Guarantees thereof permitted under this Section 6.1, the amount of such Indebtedness shall only be included once for purposes of such calculations).

6.2. Limitation on Liens. The Borrower will not, and will not permit any of its Restricted Subsidiaries, to create or incur any Lien on Property, whether now owned or hereafter acquired, in order to secure any Indebtedness, other than:

(a) Permitted Liens; and

(b) Liens securing Indebtedness of the Restricted Subsidiaries permitted by Section 6.1(g) and Indebtedness of the Borrower; provided that the aggregate principal amount of Indebtedness that is secured pursuant to this Section 6.2(b) shall not exceed the greater of (x) \$5,600,000,000 and (y) 15% of Consolidated Net Tangible Assets of the Borrower for the Measurement Period immediately preceding the date of such incurrence; provided that, for the avoidance of doubt, any Liens will be excluded from this clause (b) to the extent the Lien relating thereto is included in clause (a) of this Section 6.2.

For purposes of this Section 6.2, (1) the creation of a Lien to secure Indebtedness which existed prior to the creation of such Lien will be deemed to involve Indebtedness in an amount equal to the lesser of (x) the fair value (as determined in good faith by the Borrower) of the asset subjected to such Lien and (y) the principal amount secured by such Lien, and (2) in the event that a Lien meets the criteria of more than one of the types of exceptions in this Section 6.2, the Borrower, in its sole discretion, will classify, and may reclassify, such Lien and such Lien may be divided and classified and reclassified into more than one of the exceptions in this Section 6.2.

6.3. Merger, Consolidation, or Sale of Assets.

(a) The Borrower may not consolidate with or merge with or into, or sell, assign, convey, transfer, lease or otherwise dispose of all or substantially all of the properties, rights and assets of the Borrower and its Restricted Subsidiaries, taken as a whole, to any Person, in a single transaction or in a series of related transactions, unless:

(1) either (i) the Person formed by or surviving such consolidation or merger is the Borrower or (ii) the Person (if other than the Borrower) formed by such consolidation or into which the Borrower is merged or the Person which acquires by conveyance or transfer, or which leases, all or substantially all of the properties, rights and assets of the Borrower (the "Successor Company"), is an entity organized under the laws of the United States of America, any State thereof or the District of Columbia; provided that such Successor Company shall provide such information reasonably requested by the Administrative Agent or any Lender for purposes of compliance with applicable "know your customer" rules and regulations;

(2) in any such transaction in which there is a Successor Company, the Successor Company expressly assumes the Obligations pursuant to joinder agreements or other documents reasonably satisfactory to the Administrative Agent; and

(3) immediately after giving effect to the transaction, no Event of Default and no Default shall have occurred and be continuing.

This Section 6.3 shall not apply to a merger of the Borrower with an Affiliate solely for the purpose of reincorporating the Borrower in another jurisdiction in the United States of America, any State thereof or the District of Columbia.

(b) Upon any consolidation of the Borrower with, or merger of the Borrower into, any other Person or any sale, assignment, conveyance, transfer, lease or other disposition of all or substantially all the properties, rights and assets of the Borrower to a Successor Company in accordance with the conditions described in Section 6.3(a), the Successor Company shall succeed to and be substituted for, and may exercise every right and power of, the Borrower under this Agreement with the same effect as if such Successor Company had been named as the Borrower and thereafter, except in the case of a lease, the predecessor Person shall be relieved of all obligations and covenants under this Agreement.

6.4. Limitation on Sale and Leaseback Transactions.

(a) The Borrower will not, and will not permit any of its Restricted Subsidiaries, to enter into any sale and lease-back transaction with respect to any Property, whether now owned or hereafter acquired, unless:

(1) such transaction was entered into prior to the Closing Date;

(2) such transaction was for the sale and leasing back to the Borrower or a Restricted Subsidiary by the Borrower or any Restricted Subsidiary of any Property;

(3) such transaction involves a lease of Property executed by the time of or within 18 months (or in the case of any transaction supported by the credit of an export credit agency, 24 months) after the later of (i) the acquisition or the completion of any such development, operation, construction, alteration, repair or improvement of such property, assets or equipment or (ii) the placing into commercial operation of such Property after the acquisition or completion of any such development, operation, construction, alteration, repair or improvement;

(4) such transaction involves a lease for not more than three years (or which may be terminated by the Borrower or the applicable Restricted Subsidiary within a period of not more than three years);

(5) the Borrower or the applicable Restricted Subsidiary would be entitled to incur Indebtedness secured by a Lien on the property to be leased in an amount equal to Attributable Debt with respect to such sale and lease-back transaction pursuant to Section 6.1 and Section 6.2; or

(6) the Borrower or the applicable Restricted Subsidiary applies an amount equal to the net proceeds from the sale of the Property to the purchase of other Property or to the retirement, repurchase or other repayment or prepayment of the Loans within 365 calendar days before or after the effective date of any such sale and lease-back transaction; and

(b) Notwithstanding the other provisions of Section 6.4(a), the Borrower and the applicable Restricted Subsidiary may enter into any sale and lease-back transaction with respect to any Property if the Borrower or the applicable Restricted Subsidiary would be entitled to incur Indebtedness secured by a Lien on the property to be leased in an amount equal to Attributable Debt with respect to such sale and lease-back transaction pursuant to Section 6.1 and Section 6.2.

6.5. Anti-Corruption Laws and Sanctions. The Borrower will not request any Borrowing or Documentary Credit, and the Borrower shall not use, and shall procure that its Subsidiaries and its or their respective directors, officers, employees and agents shall not use, the proceeds of any Borrowing or Documentary Credit (a) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws, (b) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country, to the extent such activities, business or transaction would be prohibited by Sanctions if conducted by a corporation incorporated in the United States or in a European Union member state, or (c) in any manner that would result in the violation of any Sanctions applicable to any party hereto.

6.6. Financial Covenant. The Borrower will not permit, as of the last day of any fiscal quarter of the Borrower, the Total Leverage Ratio to exceed 3.25 to 1.00; provided that following the consummation of a Qualified Acquisition for the four fiscal quarters of the Borrower then ended as set forth in the last Compliance Certificate delivered pursuant to Section 5.2, the Total Leverage Ratio set forth above shall increase for each of the four fiscal quarters of the Borrower ending following the consummation of a Qualified Acquisition to 3.75 to 1.00.

## SECTION 7

### Events of Default

7.1. Events of Default. Each of the following is an “Event of Default”:

- (a) failure by the Borrower to pay principal of a Loan when due;
- (b) failure by the Borrower to pay (i) any interest or scheduled fees due under this Agreement for five Business Days after such amount” becomes due and (ii) any other obligation due under this Agreement for ten Business Days after such amount becomes due;
- (c) failure by the Borrower to comply with Section 6.6;
- (d) failure by the Borrower or any of its Restricted Subsidiaries to perform, or breach by the Borrower or any of its Restricted Subsidiaries of, any other covenant (other than Section 5.2(d)), agreement, representation or warranty or condition in this Agreement for 30 calendar days after either the Administrative Agent or the Required Lenders have given the Borrower written notice of the breach in the manner required by this Agreement;
- (e) default under any mortgage, indenture or instrument under which there is issued or by which there is secured or evidenced any Indebtedness of the Borrower or any Guarantor, whether such Indebtedness or guarantee now exists or is created after the Closing Date, if both: (a) such default either results from the failure to pay any principal of such Indebtedness at its stated final maturity (after giving effect to any applicable grace periods) or such default is with respect to another obligation under such Indebtedness and results in the holder or holders of such Indebtedness causing the payment of such Indebtedness to be accelerated and to become due prior to its stated maturity without such Indebtedness having been discharged or such acceleration having been cured, waived, rescinded or annulled within a period of thirty (30) calendar days; and (b) the principal amount of such Indebtedness, together with the principal amount of any other such Indebtedness not so paid when due, or the maturity of which has been so accelerated, aggregates \$100,000,000 or more;
- (f) the Borrower or any Significant Subsidiary, pursuant to or within the meaning of any Debtor Relief Law:
  - (1) commences proceedings to be adjudicated bankrupt or insolvent;
  - (2) consents to the institution of bankruptcy or insolvency proceedings against it, or the filing by it of a petition or answer or consent seeking an arrangement of debt, reorganization, dissolution, winding up or relief under applicable Debtor Relief Laws;
  - (3) consents to the appointment of a receiver, interim receiver, receiver and manager, liquidator, assignee, trustee, sequestrator or other similar official of it or for all or substantially all of its property; or
  - (4) makes a general assignment for the benefit of its creditors;
- (g) a court of competent jurisdiction enters an order or decree under any Debtor Relief Law that:
  - (1) is for relief against the Borrower or any Significant Subsidiary in a proceeding in which the Borrower or any Significant Subsidiary is to be adjudicated bankrupt or insolvent;

(2) appoints a receiver, interim receiver, receiver and manager, liquidator, assignee, trustee, sequestrator or other similar official of the Borrower or any Significant Subsidiary, or for all or substantially all of the property of the Borrower or any Significant Subsidiary; or

(3) orders the liquidation, dissolution or winding up of the Borrower or any Significant Subsidiary;

and the order or decree remains unstayed and in effect for 60 consecutive days;

provided that, in the cases of the foregoing clauses (f) and (g), (i) such event or circumstance is either (x) a voluntary proceeding or results therefrom or (y) under or pursuant to the laws of such Person's jurisdiction of incorporation or organization or the jurisdiction in which its head office is located or the laws of the jurisdictions in which all or substantially all its assets are located, and (ii) in no event shall any such event or circumstance constitute an Event of Default if such event or circumstance is a result of a bankruptcy, insolvency, reorganization or other similar proceeding with respect such Person or its assets or business that was ongoing or in process at the time such Person became a Subsidiary of the Borrower (including any alternate proceedings) or other such proceedings that are in the nature of either a continuation or extension thereof;

(h) An ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other such ERISA Events for which liability is reasonably expected to occur, would reasonably be expected to result in a Material Adverse Effect; and

(i) any Change of Control shall occur.

In the case of an Event of Default, then, and in every such event (other than an event with respect to the Borrower described in clause (f) or (g) of this Section), and at any time thereafter during the continuance of such event, the Administrative Agent may take any and all of the following actions: (A) at the request of the Required Lenders, the Administrative Agent shall, by notice to the Borrower, (i) terminate the Revolving Commitments, and thereupon the Revolving Commitments shall terminate immediately and (ii) require that the Borrower provide cash collateral as required in Section 2.4(j) and (B) at the request of the Required Lenders, the Administrative Agent shall, by notice to the Borrower (i) declare the Loans then outstanding to be due and payable in whole (or in part, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), and thereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and all fees and other obligations of the Borrower accrued hereunder, shall become due and payable immediately, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower and (ii) exercise on behalf of itself, the Lenders and the Issuing Banks all rights and remedies available to it, the Lenders and the Issuing Banks under the Loan Documents and applicable law. In case of any event with respect to the Borrower described in clause (f) or (g) of this Section, the Commitments shall automatically terminate and the principal of the Loans then outstanding, together with accrued interest thereon and all fees and other obligations of the Borrower accrued hereunder, shall automatically become due and payable, and the obligation of the Borrower to cash collateralize the DC Exposure as provided in clause (ii) above shall automatically become effective, in each case, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower.

In the event of a declaration of acceleration of the Loans because an Event of Default described in Section 7.1(e) has occurred and is continuing, the declaration of acceleration of the Loans shall be automatically annulled if the event of default or payment default triggering such Event of Default pursuant to Section 7.1(e) shall be remedied or cured, or waived by the holders of the Indebtedness or the Indebtedness that gave rise to such Event of Default shall have been discharged in full, within thirty (30) calendar days

after declaration of acceleration with respect thereto, and if (1) the annulment of the acceleration of the Loans would not conflict with any judgment or decree of a court of competent jurisdiction and (2) all existing Events of Default, except nonpayment of principal, premium or interest on the Loans that became due solely because of the acceleration of the Loans, have been cured or waived.

## SECTION 8

### The Agents

8.1. Appointment. Each Lender and each Issuing Bank hereby irrevocably designates and appoints the Administrative Agent as the agent of such Lender under this Agreement and the other Loan Documents, and each such Lender and Issuing Bank irrevocably authorizes the Administrative Agent, in such capacity, to take such action on its behalf under the provisions of this Agreement and the other Loan Documents and to exercise such powers and perform such duties as are expressly delegated to the Administrative Agent by the terms of this Agreement and the other Loan Documents, together with such other powers as are reasonably incidental thereto. Each Lender and each Issuing Bank hereby irrevocably designates and appoints the Sustainability Structuring Agent as the agent of such Lender and Issuing Bank under this Agreement and the other Loan Documents, and each such Lender and Issuing Bank irrevocably authorizes the Sustainability Structuring Agent, in such capacity, to take such action on its behalf under the provisions of this Agreement and the other Loan Documents and to exercise such powers and perform such duties as are expressly delegated to the Sustainability Structuring Agent by the terms of this Agreement and the other Loan Documents, together with such other powers as are reasonably incidental thereto. Notwithstanding any provision to the contrary elsewhere in this Agreement, none of the Administrative Agent and the Sustainability Structuring Agent shall have any duties or responsibilities, except those expressly set forth herein, or any fiduciary relationship with any Lender or Issuing Bank, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against the Administrative Agent or the Sustainability Structuring Agent.

8.2. Delegation of Duties. Each of the Administrative Agent and the Sustainability Structuring Agent may execute any of their duties under this Agreement and the other Loan Documents by or through agents or attorneys in fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. None of the Administrative Agent and the Sustainability Structuring Agent shall be responsible for the negligence or misconduct of any agents or attorneys in fact selected by it with reasonable care.

8.3. Exculpatory Provisions. “Use of the term “agent” in the Agreement or in any other Loan Documents (or any other similar term) with reference to the Administrative Agent or Sustainability Structuring Agent does not connote (and is not intended to connote), any fiduciary or other implied (or express) obligation arising under agency doctrine of any applicable law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between the contracting parties. The Administrative Agent and Sustainability Structuring Agent shall not have any duty to take any discretionary action or exercise any discretionary power, except discretionary rights and powers expressly contemplated by the Agreement that the Administrative Agent and Sustainability Structuring Agent are required to exercise and only so long as so directed in writing to take such discretionary action by the “Required Lenders” provided, however, that the Administrative Agent and Sustainability Structuring Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent or Sustainability Structuring Agent to liability or that is contrary to any Loan Document or Applicable Law, including, for the avoidance of doubt, any action that may be in violation of the automatic stay or that may effect a forfeiture, modification or termination of a property interest in violation of any applicable bankruptcy/insolvency laws and the Administrative Agent and Sustainability Structuring Agent shall in all cases be fully justified in failing or refusing to act under the Agreement or any other Loan Document unless it first receives further assurances of its indemnification from the Lenders that the Administrative Agent and Sustainability Structuring Agent reasonably believe it may require, including

prepayment of any related expenses and any other protection it requires against any and all costs, expenses and liabilities it may incur in taking or continuing to take any such discretionary action at the direction of the Required Lenders. The Administrative Agent and Sustainability Structuring Agent shall not have any duty to disclose, and shall not be liable for the failure to disclose, except as expressly set forth in the Agreement and in the other Loan Documents, any information relating to the borrower or any of its affiliates that is communicated to or obtained by the Administrative Agent, Sustainability Structuring Agent, or any of their affiliates in any capacity. The Administrative Agent and Sustainability Structuring Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with the Loan Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any covenant, agreement or other term or condition set forth herein or therein or the occurrence of any default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, or (v) the satisfaction of any conditions precedent set forth in the Loan Agreement, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent or Sustainability Structuring Agent.

8.4. Reliance by the Administrative Agent. The Administrative Agent and Sustainability Structuring Agent shall be entitled to rely, and shall be fully protected in relying, upon any instrument, writing, resolution, notice, consent, certificate, affidavit, letter, telecopy, email message, statement, order 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 the Borrower), independent accountants and other experts reasonably selected by the Administrative Agent and Sustainability Structuring Agent. The Administrative Agent and Sustainability Structuring Agent shall be fully justified in failing or refusing to take any action under this Agreement or any other Loan Document unless the Administrative Agent and Sustainability Structuring Agent shall first receive such advice or concurrence of the Required Lenders (or, if so specified by this Agreement, all Lenders and Issuing Banks) as it deems appropriate or it shall first be indemnified to its satisfaction by the Lenders and Issuing Banks against any and all liability and expense that may be incurred by it by reason of taking or continuing to take any such action. In determining compliance with any condition to the making of a loan, or the issuance, extension, renewal or increase of a Documentary Credit, the Administrative Agent may presume that such condition is satisfactory to such Lender or Issuing Bank unless the Administrative Agent receives notice to the contrary from such Lender or Issuing Bank prior to the making of such loan or the issuance of such Documentary Credit. The Administrative Agent and Sustainability Structuring Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement and the other Loan Documents in accordance with a request of the Required Lenders (or, if so specified by this Agreement or any other Loan Document, all Lenders and Issuing Banks), and such request and any action taken or failure to act pursuant thereto shall be binding upon all the Lenders and Issuing Banks and all future holders of the Loans. The Administrative Agent and Sustainability Structuring Agent shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

8.5. Notice of Default. The Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default unless it has received written notice from a Lender, Issuing Bank or the Borrower referring to this Agreement, describing such Default or Event of Default and stating that such notice is a “notice of default”. In the event that the Administrative Agent receives such a notice, it shall give notice thereof to the Lenders and Issuing Banks. The Administrative Agent shall take such action with respect to such Default or Event of Default as shall be reasonably directed by the Required Lenders (or, if so specified by this Agreement or any other Loan Document, all Lenders and Issuing Banks); provided that unless and until the Administrative Agent shall have received such directions, the Administrative Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as the Administrative Agent shall deem advisable in the best interests of the Lenders and Issuing Banks. The Administrative Agent shall not be obligated to follow

any direction by Required Lenders if the Administrative Agent reasonably determines that such direction is in conflict with any provisions of any applicable law, and the Administrative Agent shall not, under any circumstances, be liable to any Lenders, Issuing Banks, the Borrower or any other person or entity for following the direction of Required Lenders. At all times, if the Administrative Agent acting at the direction of the Required Lenders advises the Lenders that it wishes to proceed in good faith with respect to any enforcement action, each of the Lenders will cooperate in good faith with respect to such enforcement action.

8.6. Non-Reliance on the Agent and Other Lenders. Each Lender and each Issuing Bank expressly acknowledges that neither the Agent, the Sustainability Structuring Agent, nor any of their respective officers, directors, employees, agents, attorneys in fact or affiliates have made any representations or warranties to it and that no act by any Agent or the Sustainability Structuring Agent hereafter taken, including any review of the affairs of a Loan Party or any affiliate of a Loan Party, shall be deemed to constitute any representation or warranty by any Agent or the Sustainability Structuring Agent to any Lender or Issuing Bank. Each Lender and Issuing Bank represents to the Agent and Sustainability Structuring Agent that it has, independently and without reliance upon any Agent or the Sustainability Structuring Agent, any other Lender or any Issuing Bank, and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, operations, property, financial and other condition and creditworthiness of the Loan Parties and their affiliates and made its own decision to make its Loans hereunder and enter into this Agreement. Each Lender and Issuing Bank also represents that it will, independently and without reliance upon any Agent, the Sustainability Structuring Agent, any other Lender or any Issuing Bank, 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 investigation as it deems necessary to inform itself as to the business, operations, property, financial and other condition and creditworthiness of the Loan Parties and their affiliates. Except for notices, reports and other documents expressly required to be furnished to the Lenders and Issuing Banks by the Administrative Agent or the Sustainability Structuring Agent hereunder, the Administrative Agent and Sustainability Structuring Agent shall not have any duty or responsibility to provide any Lender or Issuing Bank with any credit or other information concerning the business, operations, property, condition (financial or otherwise), prospects or creditworthiness of any Loan Party or any affiliate of a Loan Party that may come into the possession of the Administrative Agent, the Sustainability Structuring Agent, or any of their officers, directors, employees, agents, attorneys in fact or affiliates.

It is understood and agreed that the Administrative Agent and the Sustainability Structuring Agent make no assurances as to (i) whether this Agreement meets any Loan Party or Lender criteria or expectations with regard to environmental impact and sustainability performance, or (ii) whether the characteristics of the relevant sustainability performance targets and/or key performance indicators included in the Agreement, including any environmental and sustainability criteria or any computation methodology with respect thereto, meet any industry standards for sustainability-linked credit facilities. It is further understood and agreed that neither the Administrative Agent nor the Sustainability Structuring Agent shall have any responsibility for (or liability in respect of) reviewing, auditing or otherwise evaluating any calculation by any Loan Party of (i) the relevant sustainability performance targets and/or key performance indicators or (ii) any Sustainability Adjustment (or any of the data or computations that are part of or related to any such calculation) set forth in any Sustainability Pricing Certificate (and the Administrative Agent may rely conclusively on any such certificate, without further inquiry, when implementing any such pricing adjustment).

8.7. Indemnification. To the extent the Borrower fails to pay any amount required to be paid by it to the Administrative Agent, the Sustainability Structuring Agent or any other agent under Section 9.5, the Lenders and Issuing Banks severally agree to indemnify the Agent in their capacity as such (to the extent not reimbursed by the Borrower and without limiting the obligation of the Borrower to do so), ratably according to their respective Revolving Loan Percentage in effect on the date on which indemnification is sought under



this Section 8.7 (or, if indemnification is sought after the date upon which the Commitments shall have terminated and the Loans shall have been paid in full, ratably in accordance with such Revolving Loan Percentage immediately prior to such date), from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind whatsoever that may at any time (whether before or after the payment of the Loans) be imposed on, incurred by or asserted against such Agent, in any way relating to or arising out of, the Commitments, this Agreement, any of the other Loan Documents or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby or any action taken or omitted by such Agent under or in connection with any of the foregoing; provided that no Lender shall be liable for the payment of any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements that are found by a final and nonappealable decision of a court of competent jurisdiction to have resulted from such Agent's, gross negligence or willful misconduct. The agreements in this Section 8.7 shall survive the payment of the Loans and all other amounts payable hereunder.

8.8. Agent and Sustainability Structuring Agent in Their Individual Capacity. Each Agent, the Sustainability Structuring Agent and their affiliates may make loans to, accept deposits from and generally engage in any kind of business with any Loan Party as though such Agent or Sustainability Structuring Agent, as applicable, were not an Agent or Sustainability Structuring Agent, as applicable. With respect to its Loans made or renewed by it, each Agent and the Sustainability Structuring Agent shall have the same rights and powers under this Agreement and the other Loan Documents as any Lender and may exercise the same as though it were not an Agent or the Sustainability Structuring Agent, as applicable, and the terms "Lender" and "Lenders" shall include each Agent or the Sustainability Structuring Agent in their individual capacity.

8.9. Successor Administrative Agent. The Administrative Agent may resign as Administrative Agent upon 30 days' notice to the Lenders, Issuing Bank and any Loan Party. If the Administrative Agent shall resign as Administrative Agent under this Agreement and the other Loan Documents, then the Required Lenders shall appoint from among the Lenders and Issuing Banks a successor agent for the Lenders and Issuing Banks, which successor agent shall be subject to approval by the Borrower (which approval shall not be unreasonably withheld or delayed), whereupon such successor agent shall succeed to the rights, powers and duties of the Administrative Agent, and the term "Administrative Agent" shall mean such successor agent effective upon such appointment and approval, and the former Administrative Agent's rights, powers and duties as an Administrative Agent shall be terminated, without any other or further act or deed on the part of such former Administrative Agent or any of the parties to this Agreement or any holders of the Loans. If no successor agent has accepted appointment as an Administrative Agent by the date that is ten (10) days following the retiring Administrative Agent's notice of resignation, the retiring Administrative Agent's resignation shall nevertheless thereupon become effective, and the Lenders and Issuing Banks shall assume and perform all of the duties of the Administrative Agent hereunder until such time, if any, as the Required Lenders appoint a successor agent as provided for above. After the retiring Administrative Agent's resignation, the provisions of this Section 8 and Section 9.5 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent under this Agreement and the other Loan Documents.

8.10. Successor Sustainability Structuring Agent. The Sustainability Structuring Agent may resign as Sustainability Structuring Agent upon 30 days' notice to the Lenders, Issuing Bank and any Loan Party. If the Sustainability Structuring Agent shall resign as Sustainability Structuring Agent under this Agreement and the other Loan Documents, then the Required Lenders shall appoint from among the Lenders and Issuing Banks a successor agent for the Lenders and Issuing Banks, which successor agent shall be subject to approval by the Borrower (which approval shall not be unreasonably withheld or delayed), whereupon such successor agent shall succeed to the rights, powers and duties of the Sustainability Structuring Agent, and the term "Sustainability Structuring Agent" shall mean such successor agent effective upon such appointment and approval, and the former Sustainability Structuring Agent's rights, powers and duties as an Sustainability

Structuring Agent shall be terminated, without any other or further act or deed on the part of such former Sustainability Structuring Agent or any of the parties to this Agreement or any holders of the Loans. If no successor agent has accepted appointment as an Sustainability Structuring Agent by the date that is ten (10) days following the retiring Sustainability Structuring Agent's notice of resignation, the retiring Sustainability Structuring Agent's resignation shall nevertheless thereupon become effective, and the Lenders and Issuing Banks shall assume and perform all of the duties of the Sustainability Structuring Agent hereunder until such time, if any, as the Required Lenders appoint a successor agent as provided for above. After the retiring Sustainability Structuring Agent's resignation, the provisions of this Section 8 and Section 9.5 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Sustainability Structuring Agent under this Agreement and the other Loan Documents.

#### 8.11. Payments

(a) If the Administrative Agent notifies a Lender or Issuing Bank, or any Person who has received funds on behalf of a Lender or Issuing Bank (any such Lender, Issuing Bank or other recipient, a "Payment Recipient") that the Administrative Agent has determined in its sole discretion (whether or not after receipt of any notice under immediately succeeding clause (b)) that any funds received by such Payment Recipient from the Administrative 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 Lender, Issuing Bank or other Payment Recipient on its behalf) (any such funds, whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise, individually and collectively, an "Erroneous Payment") and demands the return of such Erroneous Payment (or a portion thereof), such Erroneous Payment shall at all times remain the property of the Administrative Agent, and such Lender or Issuing Bank shall (or, with respect to any Payment Recipient who received such funds on its behalf, shall cause such Payment Recipient to) promptly, but in no event later than two Business Day thereafter, return to the Administrative Agent the amount of any such Erroneous Payment (or portion thereof) as to which such a demand was 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 Erroneous Payment (or portion thereof) was received by such Payment Recipient to the date such amount is repaid to the Administrative Agent in same day funds at the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation from time to time in effect. A notice of the Administrative Agent to any Payment Recipient under this clause (a) shall be conclusive, absent manifest error.

(b) Without limiting immediately preceding clause (a), each Payment Recipient hereby further agrees that if it receives a payment, prepayment or repayment (whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise) from the Administrative Agent (or any of its Affiliates) (x) that is in a different amount than, or on a different date from, that specified in a notice of payment, prepayment or repayment sent by the Administrative Agent (or any of its Affiliates) with respect to such payment, prepayment or repayment (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:

(i) an error may have been made (in the case of immediately preceding clauses (x) or (y)) or an error has been made (in the case of immediately preceding clause (z)) with respect to such payment, prepayment or repayment; and

(ii) such Payment Recipient shall promptly (and, in all events, within one Business Day of its knowledge of such error) notify the Administrative Agent of its receipt of such payment, pre-payment or repayment, the details thereof and that it is so notifying the Administrative pursuant to this Section 8.11(b).

(c) Each Lender or Issuing Bank hereby authorizes the Administrative Agent to set off, net and apply any and all amounts at any time owing to such Lender or Issuing Bank under any Loan Document, or otherwise payable or distributable by the Administrative Agent to such Lender or Issuing Bank from any source, against any amount due to the Administrative Agent under immediately preceding clause (a) or under the indemnification provisions of this Agreement.

(d) In the event an Erroneous Payment (or portion thereof) is not recovered by the Administrative Agent for any reason, after demand therefor by the Administrative Agent in accordance with immediately preceding clause (a), from any Lender or Issuing Bank that has received such Erroneous Payment (or portion thereof) (or from any Payment Recipient who received such Erroneous Payment (or portion thereof) on its respective behalf) (such unrecovered amount, an “Erroneous Payment Return Deficiency”), upon the Administrative Agent’s request to such Lender or Issuing Bank at any time, (i) such Lender or Issuing Bank shall be deemed to have assigned its Loans (but not its Commitments) of the relevant Class with respect to which such Erroneous Payment was made (the “Erroneous Payment Impacted Class”) in an amount equal to the Erroneous Payment Return Deficiency (such assignment of the Loans (but not Commitments) of the Erroneous Payment Impacted Class, the “Erroneous Payment Deficiency Assignment”) at par plus any accrued and unpaid interest (with the assignment fee to be waived by the Administrative Agent in such instance), and is hereby (together with the Borrower) deemed to execute and deliver an Assignment and Acceptance (or, to the extent applicable, an agreement incorporating an Assignment and Assumption by reference pursuant to an approved electronic platform as to which the Administrative Agent and such parties are participants) with respect to such Erroneous Payment Deficiency Assignment, and such Lender or Issuing Bank shall deliver any Notes evidencing such Loans to the Borrower or the Administrative Agent, (ii) the Administrative Agent as the assignee Lender shall be deemed to acquire the Erroneous Payment Deficiency Assignment and (iii) upon such deemed acquisition, the Administrative Agent as the assignee Lender shall become a Lender or Issuing Bank, as applicable, hereunder with respect to such Erroneous Payment Deficiency Assignment and the assigning Lender or assigning Issuing Bank shall cease to be a Lender or Issuing Bank, as applicable, hereunder with respect to such Erroneous Payment Deficiency Assignment, excluding, for the avoidance of doubt, its obligations under the indemnification provisions of this Agreement and its applicable Commitments which shall survive as to such assigning Lender or assigning Issuing Bank. For the avoidance of doubt, no Erroneous Payment Deficiency Assignment will reduce the Commitments of any Lender or Issuing Bank and such Commitments shall remain available in accordance with the terms of this Agreement.

(e) The parties hereto agree that an Erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Obligations owed by the Borrower or any other Loan Party, except, in each case, to the extent such Erroneous Payment is, and solely with respect to the amount of such Erroneous Payment that is, comprised of funds received by the Administrative Agent from the Borrower or any other Loan Party used to make such Erroneous Payment.

(f) To the extent permitted by applicable law, no Payment Recipient shall assert any right or claim to an Erroneous Payment, and hereby waives, and is deemed to waive, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by the Administrative Agent for the return of any Erroneous Payment received, including without limitation waiver of any defense based on “discharge for value” or any similar doctrine

(g) Each party’s obligations, agreements and waivers under this Section 8.11 shall survive the resignation or replacement of the Administrative Agent, any transfer of rights or obligations by, or the replacement of, a Lender or Issuing Bank, the termination of the Commitments and/or the repayment, satisfaction or discharge of all Obligations (or any portion thereof) under any Loan Document.

#### 8.12. Other Terms.

(a) The Administrative Agent and Sustainability Structuring Agent shall be entitled to take any action or refuse to take any action which the Administrative Agent or Sustainability Structuring Agent regards as necessary for the Administrative Agent or Sustainability Structuring Agent to comply with any applicable law, regulation or court order.

(b) Notwithstanding anything to the contrary set forth herein, each reference to any discretion of the Administrative Agent or Sustainability Structuring Agent herein or to any action that is required to be satisfactory to any Administrative Agent or the Sustainability Structuring Agent or determined by any Administrative Agent or Sustainability Structuring Agent, shall be deemed to refer to the Administrative Agent or Sustainability Structuring Agent taking direction from the Lenders or the Required Lenders with respect to such discretion or approval, as applicable.

8.13. Enforcement by the Administrative Agent. All rights of action under this Agreement and under the Notes hereunder may be enforced by the Administrative Agent and any suit or proceeding instituted by the Administrative Agent in furtherance of such enforcement shall be brought in its name as Administrative Agent without the necessity of joining as plaintiffs or defendants any other Lenders or Issuing Banks, and the recovery of any judgment shall be for the benefit of Lenders and Issuing Banks subject to the expenses of the Administrative Agent.

8.14. Withholding Tax. Each Lender and Issuing Bank shall severally indemnify the Administrative Agent, within 10 days after demand therefor, for (i) any Non-Excluded Taxes or Other Taxes attributable to such Lender or Issuing Bank (but only to the extent that the Borrower has not already indemnified the Administrative Agent for such Non-Excluded Taxes or Other Taxes and without limiting the obligation of the Borrower to do so), (ii) any Taxes attributable to such Lender or Issuing Bank's failure to comply with the provisions of Section 9.6(c) relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender or Issuing Bank, in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender or Issuing Bank by the Administrative Agent shall be conclusive absent manifest error. Each Lender and Issuing Bank hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender and Issuing Bank under this Agreement or any other Loan Document against any amount due to the Administrative Agent under this Section 8.14. The agreements in this Section 8.14 shall survive the resignation and/or replacement of the Administrative Agent, any assignment of rights by, or the replacement of, a Lender or Issuing Bank, the termination of this Agreement and the repayment, satisfaction or discharge of all other Obligations.

8.15. Certain ERISA Matters. (a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent, the Sustainability Structuring Agent and each Arranger and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that at least one of the following is and will be true:

(i) such Lender is not using "plan assets" (within the meaning of Section 3(42) of ERISA or otherwise) of one or more Benefit Plans with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Documentary Credits, 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 Documentary Credits, 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 Documentary Credits, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Documentary Credits, 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 Documentary Credits, the Commitments and this Agreement, or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

(b) In addition, unless sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or such Lender has provided another representation, warranty and covenant in accordance with sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of the Administrative Agent and Sustainability Structuring Agent, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that the Administrative Agent and Sustainability Structuring Agent are not fiduciaries 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 Documentary Credits, the Commitments and this Agreement (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Loan Document or any documents related hereto or thereto).

## SECTION 9

### Miscellaneous

#### 9.1. Amendments and Waivers.

(a) Subject to Section 2.25(f), none of this Agreement, any Note, any other Loan Document, nor any terms hereof or thereof may be amended, supplemented or modified except in accordance with the provisions of this Section 9.1. The Required Lenders and each Loan Party party to the relevant Loan Documents may, or, with the written consent of the Required Lenders, the Administrative Agent and each Loan Party party to the relevant Loan Document may, from time to time, (I) enter into written amendments, supplements or modifications hereto or to the other Loan Documents for the purpose of adding any provisions to this Agreement or the other Loan Documents or changing in any manner the rights of the Lenders or of the Loan Parties hereunder or thereunder or (II) waive, on such terms and conditions as the Required Lenders or the Administrative Agent, as the case may be, may specify in such instrument, any of the requirements of this Agreement or the other Loan Documents or any Default or Event of Default and its consequences; provided, however, that no such waiver and no such amendment, supplement or modification shall (A)(i) forgive the principal amount or extend the final scheduled date of maturity of any Loan, (ii) reduce the stated rate of any interest or fee payable hereunder (including, for the avoidance of doubt, the Sustainability Margin Adjustment and Sustainability Commitment Fee Adjustment) (except in connection with the waiver of applicability of any

post-default increase in interest rates (which waiver shall be effective with the consent of the Required Lenders)) or extend the scheduled date of any payment thereof, (iii) increase the amount or extend the expiration date of any Lender's Commitment (it being understood that a waiver of any Event of Default or Default shall not be deemed to be an increase in the amount of or extension of the expiration date of any Lender's Commitments), (iv) release all or substantially all of the Guarantors (except as expressly permitted by the Loan Documents, including in accordance with Section 9.14) or (v) amend, modify or waive any provision of Section 9.7(a), in each case without the written consent of each Lender directly affected thereby, (B) without the consent of all the Lenders, (i) amend, modify or waive any provision of this Section 9.1(a) or any other provision of any Section hereof expressly requiring the consent of all the Lenders (except, in either case, for technical amendments with respect to additional extensions of credit pursuant to this Agreement which afford protections to such additional extensions of credit of the type provided to the Commitments on the Closing Date), or (ii) reduce the percentage specified in or otherwise change the definition of Required Lenders (it being understood that, with the consent of the Required Lenders or as otherwise permitted hereunder, additional extensions of credit pursuant to this Agreement may be included in the determination of the Required Lenders on substantially the same basis as the extensions of Commitments are included on the Closing Date), or (iii) change Section 2.14 in a manner that would alter the pro rata sharing of payments required thereby (other than as permitted thereby or by Section 9.1(b)), or (iv) extend any Documentary Credit beyond the Revolving Maturity Date, or to modify Section 2.4(c) in any way which would permit the same (C) amend, modify or waive any provision of Section 8 or any other provision of this Agreement or the other Loan Documents, which affects, the rights, duties or obligations of the Administrative Agent without the written consent of the Administrative Agent and (D) require consent of any Person to an amendment to this Agreement made pursuant to Section 2.23 other than the Borrower and each Lender participating in the respective Extension; provided further that no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent or Issuing Banks hereunder without the prior written consent of the Administrative Agent and Issuing Banks. Any such waiver and any such amendment, supplement or modification shall apply equally to each of the Lenders and shall be binding upon the Loan Parties, the Lenders, the Administrative Agent and all future holders of the Loans. In the case of any waiver, the Loan Parties, the Lenders and the Administrative Agent shall be restored to their former position and rights hereunder and under any other Loan Documents, and any Default or Event of Default waived shall be deemed to have not occurred or to be cured and not continuing, as the parties may agree; but no such waiver shall extend to any subsequent or other Default or Event of Default, or impair any right consequent thereon. Notwithstanding anything to the contrary contained in this Section 9.1, any amendment, supplement or modification related to Section 2.25, Section 5.2(d) and Schedule 1.3 (and any component definitions thereof related to sustainability provisions) shall require, in addition to the other requirements set forth in this Agreement, the consent of the Sustainability Structuring Agent.

(b) Notwithstanding anything to the contrary contained in this Section 9.1, if the Administrative 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 Administrative 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 ten (10) Business Days following receipt of notice thereof. Notwithstanding anything to the contrary in this Agreement or the other Loan Documents, the Administrative Agent is hereby irrevocably authorized by each Lender and Issuing Bank (and each such Lender and Issuing Bank expressly consents), without any further action or the consent of any other party to any Loan Document, to make any technical amendments to the Guarantee Agreement to correct any cross-references therein to any provision of this Agreement that may be necessary in order to properly reflect the amendments made to this Agreement.

(c) Notwithstanding anything to the contrary contained in the Loan Documents, the Loans of any Lender that is at the time a Defaulting Lender shall not have any voting or approval rights under the Loan Documents and shall be excluded in determining whether all Lenders, all affected Lenders or the Required Lenders have taken or may take any action hereunder (including any consent to any amendment or waiver pursuant to this Section 9.1); provided that any waiver, amendment or modification (i) requiring the consent of all Lenders or (ii) each affected Lender that affects any Defaulting Lender more adversely than other affected Lenders shall require the consent of each Defaulting Lender.

9.2. Notices.

(a) All notices, requests and demands to or upon the respective parties hereto to be effective shall be in writing (including by telecopy), and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when received, addressed as follows in the case of the Loan Parties and the Administrative Agent, and as set forth in the administrative questionnaire delivered to the Administrative Agent in the case of the Lenders and Issuing Banks, or to such other address as may be hereafter notified by the respective parties hereto and any future parties:

The Borrower: Micron Technology, Inc.

8000 S. Federal Way Boise, ID 83716-9632  
Attention: General Counsel

with copies (which shall not constitute notice) to:

Wilson Sonsini Goodrich & Rosati  
650 Page Mill Road  
Palo Alto, CA 94304  
Attention: Erik Franks  
Email: efranks@wsgr.com  
Telecopier No.: 650-493-6811

The Administrative Agent: HSBC Bank USA, National Association

as Administrative Agent  
452 Fifth Avenue  
New York, NY, 10018  
Attention: Loan Agency  
Email: ctlany.loanagency@us.hsbc.com

with copies (which shall not constitute notice) to:

Simpson Thacher & Bartlett LLP  
425 Lexington Ave  
New York, NY 10017  
Attention: Justin M. Lungstrum  
Telecopier No.: 212-455-2502

The Sustainability Structuring Agent: Credit Agricole Corporate and Investment Bank

1301 Avenue of the Americas  
New York, NY, 10019  
Attn: Fanny Charrier

Telephone: 212-261-3931  
Email: SB.US.Loans@ca-cib.com

with copies (which shall not constitute notice) to:

Simpson Thacher & Bartlett LLP  
425 Lexington Ave  
New York, NY 10017  
Attention: Justin M. Lungstrum  
Telecopier No.: 212-455-2502

(b) Notices and other communications to the Lenders, the Sustainability Structuring Agent and Issuing Banks hereunder may be delivered or furnished by electronic communications (including e-mail and Internet or intranet websites or other information platform) (the “Platform”) pursuant to procedures approved by the Administrative Agent; provided that the foregoing shall not apply to notices pursuant to Sections 2.2, 2.4, 2.6, 2.7(e), 2.10, 2.11, 2.12, 2.14, 2.17 and 2.23(d) unless otherwise agreed by the Administrative Agent and the applicable Lender or the applicable Issuing Bank. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications. Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender’s receipt of an acknowledgement from the intended recipient (such as by the “return receipt requested” function, as available, return e-mail or other written acknowledgement), provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(c) Each of the Loan Parties understands that the distribution of material through an electronic medium is not necessarily secure and that there are confidentiality and other risks associated with such distribution and agrees and assumes the risks associated with such electronic distribution, except to the extent caused by the willful misconduct or gross negligence of the Administrative Agent or Sustainability Structuring Agent, as determined by a final, non-appealable judgment of a court of competent jurisdiction.

(d) The Platform and any Approved Electronic Communications are provided “as is” and “as available”. None of the Agent or any of their respective officers, directors, employees, agents, advisors or representatives warrant the accuracy, adequacy, or completeness of the Approved Electronic Communications or the Platform and each expressly disclaims liability for errors or omissions in the Platform and the Approved Electronic Communications. No warranty of any kind, express, implied or statutory, including any warranty of merchantability, fitness for a particular purpose, non-infringement of third party rights or freedom from viruses or other code defects is made by any of the Agent or the Sustainability Structuring Agent or any of their respective officers, directors, employees, agents, advisors or representatives in connection with the Platform or the Approved Electronic Communications. In no event shall the Agent or the Sustainability Structuring Agent have any liability to the Borrower, any Lender, Issue or any other person or entity for damages of any kind, including direct or indirect, special, incidental or consequential damages, losses or expenses (whether in tort, contract or otherwise) arising out of the Borrower’s or the Administrative Agent’s Transmission of Communications through the internet or the approved electronic platform except where such liabilities result from the Agent or Sustainability Structuring Agent’s bad faith, willful misconduct, gross



negligence or material breach as determined in a final, nonappealable judgment by a court of competent jurisdiction.

(e) Each of the Loan Parties, the Lenders, Issuing Banks and the Agent agree that Administrative Agent may, but shall not be obligated to, store any Approved Electronic Communications on the Platform in accordance with the Administrative Agent's customary document retention procedures and policies.

9.3. No Waiver; Cumulative Remedies. No failure to exercise and no delay in exercising, on the part of the Administrative Agent, any Lender or any Issuing Bank, any right, remedy, power or privilege hereunder or under the other Loan Documents shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

9.4. Survival of Representations and Warranties. All representations and warranties made hereunder, in the other Loan Documents and in any document, certificate or statement delivered pursuant hereto or in connection herewith shall survive the execution and delivery of this Agreement and the making of the Loans and the other extensions of credit hereunder.

9.5. Payment of Expenses. The Borrower agrees (a) to pay or reimburse each of the Administrative Agent and the Sustainability Structuring Agent for all its reasonable out-of-pocket costs and expenses reasonably incurred in connection with (i) the development, negotiation, preparation, execution and delivery of this Agreement, the Notes and any other documents prepared in connection herewith or therewith, including any amendment, supplement or modification to any of the foregoing and (ii) the consummation and administration of the transactions contemplated hereby and thereby, and the reasonable fees and disbursements of one counsel to the Administrative Agent, the Sustainability Structuring Agent and the Arrangers, taken as a whole (and to the extent necessary, one local counsel in each relevant jurisdiction for all such entities, taken as a whole and, solely in the case of an actual or potential conflict of interest, one additional local counsel in each relevant jurisdiction to the affected entities similarly situated, taken as a whole), and security interest filing and recording fees and expenses, (b) to pay or reimburse the Administrative Agent, the Sustainability Structuring Agent, each Lender and each Issuing Bank for all its reasonable costs and expenses reasonably incurred in connection with the enforcement or preservation of any rights under this Agreement, the Notes, the other Loan Documents and any such other documents following the occurrence and during the continuance of an Event of Default, including without limitation, the reasonable fees and disbursements of one counsel to the Administrative Agent, the Sustainability Structuring Agent, the Lenders and Issuing Banks and each of their respective affiliates, taken as a whole (other than during an Event of Default, in which case, the Administrative Agent shall be entitled to its own counsel separate from the Sustainability Structuring Agent, the Lenders and the Issuing Banks) (and, to the extent reasonably necessary, one local counsel in each relevant jurisdiction for all such entities, taken as a whole, and, solely in the case of an actual or potential conflict of interest, one additional local counsel in each relevant jurisdiction to the affected entities similarly situated, taken as a whole, and (c) to pay, and indemnify and hold harmless each Lender, each Arranger, the Sustainability Structuring Agent, the Administrative Agent, each Issuing Bank and each of their respective Affiliates, directors, officers, employees, representatives, partners, advisors and agents (each, an "Indemnitee") from and against any and all other liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever with respect to the execution, delivery, enforcement, performance, preservation of rights and administration of this Agreement, the Notes, the Documentary Credits, the other Loan Documents or the use of the proceeds of the Loans or Documentary Credits or any of the foregoing (including any refusal by an Issuing Bank to honor a demand for payment under a Documentary Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Documentary Credit) in connection with (i) the violation of,

noncompliance with or liability under, any Environmental Law (including environmental claims and liabilities), (ii) consummation of the transactions contemplated thereby; or (iii) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Borrower, and regardless of whether any Indemnatee is a party thereto and the reasonable fees and expenses of one legal counsel for the Indemnitees taken as a whole in connection with claims, actions or proceedings by any Indemnatee against any Loan Party under any Loan Document (all the foregoing in this clause (c), collectively, the “indemnified liabilities”), provided that the Borrower shall have no obligation hereunder to any Indemnatee with respect to indemnified liabilities to the extent determined by the final non-appealable judgment of a court of competent jurisdiction to have resulted from the bad faith, gross negligence or willful misconduct of such Indemnatee or any of such Indemnatee’s Related Persons; provided, further, that the Borrower shall in no event be responsible for consequential, indirect, special or punitive damages to any Indemnatee pursuant to this Section 9.5 except such consequential, indirect, special or punitive damages required to be paid by such Indemnatee in respect of any indemnified liabilities. Without limiting the foregoing, and to the extent permitted by applicable law, the Borrower agrees not to assert and to cause its Subsidiaries not to assert, and hereby waives and agrees to cause its Subsidiaries to waive, all rights for contribution or any other rights of recovery with respect to all claims, demands, penalties, fines, liabilities, settlements, damages, costs and expenses of whatever kind or nature, under or related to Environmental Laws, that any of them might have by statute or otherwise against any Indemnatee. To the extent permitted by applicable law, no party to this agreement shall assert, and each Loan Party hereby waives, on behalf of itself and its Subsidiaries, any claim against any Indemnatee and its affiliates, directors, officers, employees, attorneys, representatives, agents or sub-agents, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) (whether or not the claim therefor is based on contract, tort or duty imposed by any applicable legal requirement) arising out of, in connection with, as a result of, or in any way related to, this Agreement or any Loan Document or any agreement or instrument contemplated hereby or thereby or referred to herein or therein, the transactions contemplated hereby or thereby, any Loan or the use of the proceeds thereof or any act or omission or event occurring in connection therewith, and the each Loan Party hereby waives, releases and agrees, on behalf of itself and each of its respective Subsidiaries, not to sue upon any such claim or any such damages, whether or not accrued and whether or not known or suspected to exist in its favor. No Indemnatee referred to in clause above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with the Agreement or the other Loan Documents or the transactions contemplated thereby. All amounts due under this Section 9.5 shall be payable not later than 10 days after written demand therefor. The agreements in this Section shall survive the termination of this Agreement and repayment of the Loans and all other amounts payable hereunder. This Section 9.5 shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

9.6. Successors and Assigns; Participations.

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted, except that (i) unless otherwise permitted by Section 6.3 hereof, the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender and Issuing Bank (and any attempted assignment or transfer by the Borrower without such consent shall be null and void) and (ii) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section.

(b) (i) Subject to the conditions set forth in paragraph (b)(ii) below, any Lender may assign to one or more assignees (each, an “Assignee”) all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitments and the Loans at the time owing to it) with the prior written consent of:

(A) the Borrower (such consent not to be unreasonably withheld, delayed or conditioned), provided that no consent of the Borrower shall be required for an assignment to a Lender, a depository institution affiliate of a Lender having access to discount window credit of the Federal Reserve (as defined below) or, if an Event of Default under Section 7.1(a) or (b) has occurred and is continuing, any other Person;

(B) the Administrative Agent (such consent not to be unreasonably withheld, delayed or conditioned), provided that no consent of the Administrative Agent shall be required for an assignment to a Lender, an affiliate of a Lender or an Approved Fund; and

(C) each Issuing Bank (such consent not to be unreasonably withheld, delayed or conditioned), provided that no consent of the Issuing Banks shall be required for an assignment to a Lender, an affiliate of a Lender or an Approved Fund.

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

(A) except in the case of an assignment to a Lender, an affiliate of a Lender or an Approved Fund or an assignment of the entire remaining amount of the assigning Lender's Commitments or Loans, the amount of the Commitments or Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Acceptance with respect to such assignment is delivered to the Administrative Agent) shall not be less than \$5,000,000 unless each of the Borrower and the Administrative Agent otherwise consent, provided that (1) no such consent of the Borrower shall be required if an Event of Default under Section 7.1(a) or (b) has occurred and is continuing and (2) such amounts shall be aggregated in respect of each Lender and its affiliates or Approved Funds, if any;

(B) (1) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Acceptance, together with a processing and recordation fee of \$3,500 (although the Borrower shall not be responsible for the payment of the recordation fee unless the Borrower has chosen to replace a Lender pursuant to Section 2.22) and (2) the assigning Lender shall have paid in full any amounts owing by it to the Administrative Agent;

(C) the Assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an administrative questionnaire in which the Assignee designates one or more credit contacts to whom all syndicate-level information (which may contain material non-public information about the Borrower and its Affiliates and their related parties or their respective securities) will be made available and who may receive such information in accordance with the assignee's compliance procedures and applicable laws, including federal and state securities laws;

(D) any partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to any single Class of Loans and related Commitments, except that this clause (D) shall not prohibit any Lender from assigning all or a portion of its rights and obligations among separate Classes on a non- pro rata basis; and

(E) none of the Loan Parties, their respective Affiliates, any natural person or a Defaulting Lender shall be an Assignee hereunder.

For the purposes of this Section 9.6, “Approved Fund” means any Person (other than a natural person) that is engaged in making, purchasing, holding or investing in bank loans and similar extensions of credit in the ordinary course of its business and that is administered or managed by (a) a Lender, (b) an affiliate of a Lender or (c) an entity or an affiliate of an entity that administers or manages a Lender.

(iii) Subject to acceptance and recording thereof pursuant to paragraph (b)(iv) below, from and after the effective date specified in each Assignment and Acceptance the Assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Acceptance, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Acceptance, be released from its obligations under this Agreement (and, in the case of an Assignment and Acceptance covering all of the assigning Lender’s rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 2.15, 2.16, 2.17 and 9.5 for the period of time in which it was a Lender hereunder. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 9.6 shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (c) of this Section.

(iv) The Administrative Agent, acting solely for this purpose as an agent of the Borrower, shall maintain at one of its offices a copy of each Assignment and Acceptance delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amount (and interest amounts) of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the “Register”). The entries in the Register shall be conclusive (absent manifest error), and the Borrower, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower or any Lender at any reasonable time and from time to time upon reasonable prior notice. Any assignment shall be effective only upon appropriate entries with respect thereto being made in the Register.

(v) Upon its receipt of an Assignment and Acceptance (executed via an electronic settlement system acceptable to the Administrative Agent (or, if previously agreed with the Administrative Agent, manually)), by a transferor Lender and an Assignee, as the case may be (and, in the case of an Assignee that is not then a Lender, by the Administrative Agent and the Borrower to the extent required under this Section 9.6), together with payment to the Administrative Agent by the transferor Lender or the Assignee of a recordation and processing fee of \$3,500 (which fee may be waived or reduced in the sole discretion of the Administrative Agent), the Administrative Agent shall (i) promptly accept such Assignment and Acceptance, (ii) on the effective date of such transfer determined pursuant thereto record the information contained therein in the Register and (iii) give notice of such acceptance and recordation to the transferor Lender, the Assignee and the Borrower.

(c) Any Lender may, without the consent of or notice to the Borrower, the Administrative Agent or any Issuing Bank, sell participations to one or more banks or other entities (a “Participant”) in all or a portion of such Lender’s rights and obligations under this Agreement (including all or a portion of its Loans owing to it); provided that (A) such Lender’s obligations under this Agreement shall remain unchanged, (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, (C) the Borrower, the Administrative Agent and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender’s rights and obligations under this Agreement and (D) none of the Loan Parties, their respective Affiliates, any natural person or a Defaulting Lender shall be a Participant hereunder. Any agreement pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and the other Loan Documents and to

approve any amendment, modification or waiver of any provision of this Agreement and any other Loan Document or to otherwise exercise its voting righting rights under this Agreement and any other Loan Document; provided that such agreement may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver that (1) requires the consent of each Lender directly affected thereby pursuant to the proviso to the second sentence of Section 9.1(a) and (2) directly affects such Participant. Subject to paragraph (c)(i) of this Section, the Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.15, 2.16 and 2.17 (subject to the requirements and limitations of such sections and Sections 2.18 and 2.22 and it being understood that the documentation required under Section 2.16(e) shall be delivered solely to the participating Lender) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 9.7(b) as though it were a Lender, provided such Participant shall be subject to Section 9.7(a) as though it were a Lender.

(i) A Participant shall not be entitled to receive any greater payment under Section 2.15, 2.16 or 2.17 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, except to the extent that any entitlement to a greater payment results from a change in any Requirement of Law arising after such Participant became a Participant.

(ii) Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each participant and the principal amounts (and related interest amounts) of each participant's interest in the Loans or other obligations under this Agreement (the "Participant Register"). The entries in a Participant Register shall be conclusive, absent manifest error, and such Lender shall treat each person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. No Lender shall have any obligation to disclose all or any portion of a Participant Register to any Person (including the identity of any Participant or any information relating to a Participant's interest in any Loans) except to the extent that such disclosure is necessary to establish that such Loan is in registered form under Section 5f.103(c) of the United States Treasury Regulations or, if different, under Sections 871(h) or 881(c) of the Code.

(d) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank, and this Section shall not apply to any such pledge or assignment of a security interest; provided that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or Assignee for such Lender as a party hereto.

(e) Subject to Section 9.15, the Borrower authorizes each Lender to disclose to any Transferee and any prospective Transferee (in each case which agrees to comply with the provisions of Section 9.15 or confidentiality requirements no less restrictive on such prospective transferee than those set forth in Section 9.15) any and all financial information in such Lender's possession concerning the Borrower and its Affiliates which has been delivered to such Lender by or on behalf of the Borrower pursuant to this Agreement or any other Loan Document or which has been delivered to such Lender by or on behalf of the Borrower in connection with such Lender's credit evaluation of the Borrower and its Affiliates prior to becoming a party to this Agreement.

#### 9.7. Adjustments; Setoff.

(a) Except to the extent that this Agreement, any other Loan Document or a court order expressly provides or permits for payments to be allocated to a particular Lender or Issuing Bank or to the Lenders and

Issuing Banks, if any Lender or Issuing Bank (a “Benefited Lender”) shall receive any payment of all or part of the Obligations owing to it (other than in connection with an assignment or participation made pursuant to Section 9.6), or receive any collateral in respect thereof (whether voluntarily or involuntarily, by setoff or otherwise), in a greater proportion than any such payment to or collateral received by any other Lender or Issuing Bank, if any, in respect of the Obligations owing to such other Lender or Issuing Bank, such Benefited Lender shall purchase for cash from the other Lenders and Issuing Banks a participating interest in such portion of the Obligations owing to each such other Lender and Issuing Bank, or shall provide such other Lenders and Issuing Banks with the benefits of any such collateral, as shall be necessary to cause such Benefited Lender to share the excess payment or benefits of such collateral ratably with each of the Lenders and Issuing Banks; provided that if all or any portion of such excess payment or benefits is thereafter recovered from such Benefited Lender, such purchase shall be rescinded, and the purchase price and benefits returned, to the extent of such recovery, but without interest. Notwithstanding anything to the contrary contained in this Section 9.7(a), no extension of Loans that is permitted under Section 2.23 shall constitute a payment of any of such Loans for purposes of this Section 9.7.

(b) In addition to any rights and remedies of the Lenders and Issuing Banks provided by law, each Lender and Issuing Bank shall have the right, unless otherwise agreed in writing by such Lender or Issuing Bank with the Borrower, without notice to the Borrower, any such notice being expressly waived by the Borrower to the extent permitted by applicable law, upon any Obligations becoming due and payable by the Borrower (whether at the stated maturity, by acceleration or otherwise), to apply to the payment of such Obligations, by setoff or otherwise, any and all deposits (general or special, time or demand, provisional or final), in any currency, and any other credits, indebtedness or claims, in any currency, in each case whether direct or indirect, absolute or contingent, matured or unmatured, at any time held or owing by such Lender, such Issuing Bank, any affiliate thereof or any of their respective branches or agencies to or for the credit or the account of the Borrower. Each Lender and Issuing Bank agrees promptly to notify the Borrower and the Administrative Agent after any such application made by such Lender or Issuing Bank, provided that the failure to give such notice shall not affect the validity of such application.

9.8. Counterparts. This Agreement may be executed by one or more of the parties to this Agreement on any number of separate counterparts, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. Delivery of an executed signature page of this Agreement by facsimile or email transmission shall be effective as delivery of a manually executed counterpart hereof. The words “execution”, “signed”, “signature” and words of like import in this Agreement or in any other Loan Document shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act or any other similar state laws based on the Uniform Electronic Transactions Act.

9.9. Severability. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

9.10. Integration. This Agreement and the other Loan Documents represent the entire agreement of the Borrower, the Administrative Agent and the Lenders with respect to the subject matter hereof and thereof, and there are no promises, undertakings, representations or warranties by the Administrative Agent or any Lender relative to the subject matter hereof not expressly set forth or referred to herein or in the other Loan Documents.

9.11. GOVERNING LAW. THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES UNDER THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

9.12. Submission To Jurisdiction; Waivers.

(a) Subject to clause (b)(iii) of this Section 9.12, each party hereto hereby irrevocably and unconditionally submits for itself and its property in any legal action or proceeding relating to this Agreement and the other Loan Documents to which it is a party, or for recognition and enforcement of any judgment in respect thereof, to the exclusive general jurisdiction of the courts of the State of New York, the courts of the United States for the Southern District of New York, and appellate courts from any thereof, in each case that are located in the Borough of Manhattan, the City of New York;

(b) The Borrower hereby irrevocably and unconditionally:

(i) agrees that any such action or proceeding shall be brought in such courts and waives any objection that it may now or hereafter have to the venue of any such action or proceeding in any such court or that such action or proceeding was brought in an inconvenient court and agrees not to plead or claim the same;

(ii) agrees that service of process in any such action or proceeding may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, to the Borrower at its address set forth in Section 9.2 or at such other address of which the Administrative Agent shall have been notified pursuant thereto;

(iii) agrees that nothing herein shall affect the right to effect service of process in any other manner permitted by law or shall limit the right of any Agent, any Arranger or any Lender to sue in any other jurisdiction; and

(iv) waives, to the maximum extent not prohibited by law, any right it may have to claim or recover in any legal action or proceeding referred to in this Section any special, exemplary, punitive or consequential damages.

9.13. Acknowledgements. The Borrower hereby acknowledges that:

(a) it has been advised by counsel in the negotiation, execution and delivery of this Agreement and the other Loan Documents;

(b) notwithstanding the provisions of this Agreement or any of the other Loan Documents, the Arrangers shall have no powers, duties, responsibilities or liabilities with respect to this Agreement and the other Loan Documents;

(c) the Agent, the Arrangers, the Lenders, the Issuing Banks and their Affiliates may have economic interests that conflict with those of the Borrower; and

(d) no joint venture is created hereby or by the other Loan Documents or otherwise exists by virtue of the transactions contemplated hereby among the Lenders, among the Issuing Banks or among the Borrower and the Lenders

9.14. Guarantors; Release of Guarantors.

(a) The Borrower may, at any time after the Closing Date, upon prior written notice to the Administrative Agent, cause any of its Subsidiaries to become a Guarantor by causing such Subsidiary to execute and deliver to the Administrative Agent a Subsidiary Guaranty, with respect to such Subsidiary, all in form and substance reasonably satisfactory to the Administrative Agent.

(b) Notwithstanding anything to the contrary contained herein or in any other Loan Document, the Administrative Agent is hereby irrevocably authorized by each Lender and Issuing Bank (and each such Lender and Issuing Bank hereby expressly consents) (without requirement of notice to or consent of any Lender or Issuing Bank except as expressly required by Section 9.1(a)), and the Administrative Agent hereby agrees with the Borrower, to take any action reasonably requested by the Borrower to effect the release of any Guarantor from its guarantee obligations (i) to the extent necessary to permit consummation of any transaction not prohibited by any Loan Document or that has been consented to in accordance with Section 9.1(a), including, in each case and without limitation, any sale, transfer or other disposition of any Guarantor (other than to the Borrower or another Guarantor), and (ii) under the circumstances described in paragraph (c) below (and, upon the consummation of any such transaction in preceding clause (i) or (ii), such Guarantor shall be released from its obligations hereunder).

(c) Notwithstanding anything to the contrary contained herein or in any other Loan Document, the Lenders and Issuing Banks hereby agree, and the Administrative Agent is hereby irrevocably authorized by each Lender and Issuing Bank (without requirement of notice to or consent of any Lender or Issuing Bank) to take any action required by the Borrower having the effect of releasing a Guarantor from its guarantee obligations hereunder if (i) all or substantially all of the assets of such Guarantor have been sold or otherwise disposed of (including by way of merger or consolidation) to a Person that is not a Borrower or a Guarantor or (ii) such Guarantor has been liquidated or dissolved.

(d) The Guarantee of the Obligations by any Guarantor will terminate upon:

(i) a sale or other disposition (including by way of consolidation or merger) of the Capital Stock of such Guarantor such that such Guarantor is no longer a Restricted Subsidiary of the Borrower; and

(ii) if such Guarantor was not required to Guarantee the Obligations, but did so at its option, the request by such Guarantor of release at any time; provided that after giving effect to such release the Borrower would be in compliance with the covenant set forth in Section 6.1.

The Administrative Agent will execute any documents reasonably required in order to evidence the release of any Guarantor from its obligations under its Guarantee pursuant to the foregoing.

9.15. Confidentiality. Each Agent, each Arranger, each Lender, each Issuing Bank agrees to keep confidential all non-public information provided to it by any Loan Party, the Administrative Agent or any Lender pursuant to or in connection with this Agreement; provided that nothing herein shall prevent any Agent, any Arranger, any Lender or Issuing Bank from disclosing any such information (a) to the Administrative Agent, any other Lender or any affiliate thereof (so long as such affiliate agrees to be bound by the provisions of this Section 9.15), (b) subject to an agreement to comply with provisions no less restrictive than this Section 9.15, or to any actual or prospective Transferee (or any professional advisor to such counterparty), (c) to its employees, directors, officers, agents, attorneys, accountants, partners and other professional advisors (including insurance brokers) or those of any of its affiliates, (d) upon the request or demand, or in accordance with the requirements (including reporting requirements), of any Governmental Authority having jurisdiction over such Lender, provided that to the extent permitted by law, such Lender shall promptly notify the applicable Loan Party of such disclosure (except with respect to any audit or examination conducted by bank accountants or any governmental bank authority exercising examination or



regulatory authority), in response to any order of any court or other Governmental Authority or as may otherwise be required pursuant to any Requirement of Law or other legal process, provided that to the extent permitted by law, such Lender shall promptly notify the applicable Loan Party of such disclosure (except with respect to any audit or examination conducted by bank accountants or any governmental bank authority exercising examination or regulatory authority), (e) if requested or required to do so in connection with any litigation or similar proceeding; provided that to the extent permitted by law, such Lender shall promptly notify the applicable Loan Party of such disclosure, (f) to the extent such information has been independently developed by such Lender or that has been publicly disclosed other than in breach of this Agreement, (g) to the National Association of Insurance Commissioners or any similar organization or any nationally recognized rating agency that requires access to information about a Lender's investment portfolio in connection with ratings issued with respect to such Lender, (h) in connection with the exercise of any remedy hereunder or under any other Loan Document and (i) any other disclosure with the written consent of the Borrower.

Each Lender acknowledges that all information, including requests for waivers and amendments, furnished by the Borrower or the Administrative Agent pursuant to, or in the course of administering this Agreement or the other Loan Documents, will be syndicate-level information, which may (except as provided in the following paragraph) contain material non-public information concerning the Borrower and its Affiliates and their related parties or their respective securities. Accordingly, each Lender confirms to the Borrower and the Administrative Agent that (i) it has developed compliance procedures regarding the use of material non-public information, (ii) it has identified in its administrative questionnaire a credit contact who may receive information that may contain material non-public information in accordance with its compliance procedures and applicable law, including federal and state securities laws and (iii) it will handle such material non-public information in accordance with those procedures and applicable law, including federal and state securities laws.

The Borrower acknowledges that certain of the Lenders may be "public-side" Lenders (Lenders that do not wish to receive material non-public information with respect to the Borrower, its subsidiaries or their securities) (each, a "Public Lender") and, if documents required to be delivered pursuant to Section 5.1 or 5.2 or otherwise are being distributed through the Platform, the Borrower agrees to designate those documents or other information that are suitable for delivery to the Public Lenders as such. Any document that the Borrower has indicated contains non-public information shall not be posted on that portion of the Platform designated for such Public Lenders. If the Borrower has not indicated whether a document delivered pursuant to Section 5.1 or 5.2 contains non-public information, the Administrative Agent reserves the right to post such document or notice solely on that portion of the Platform designated for Lenders who wish to receive material nonpublic information with respect to the Borrower, its Subsidiaries and their securities. The Borrower acknowledges and agrees that copies of the Loan Documents may be distributed to Public Lenders (unless the Borrower promptly notifies the Administrative Agent that any such document contains material non-public information with respect to the Borrower or its securities).

9.16. WAIVERS OF JURY TRIAL. THE BORROWER, THE ADMINISTRATIVE AGENT, THE SUSTAINABILITY STRUCTURING AGENT, THE LENDERS AND THE ISSUING BANKS HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AND FOR ANY COUNTERCLAIM THEREIN.

9.17. Patriot Act. Each Lender that is subject to the requirements of the Patriot Act hereby notifies each Loan Party that pursuant to the requirements of the Patriot Act, it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of such Loan Party and other information that will allow such Lender to identify such Loan Party in accordance with the Patriot Act. The Borrower shall, and shall cause each of its Subsidiaries to, provide, to the extent commercially reasonable, such information and take such actions as are reasonably requested by each Lender and the Administrative Agent to maintain compliance with the Patriot Act.

9.18. No Fiduciary Duty. Each Agent, each Lender, the Arrangers, the Issuing Banks and their respective Affiliates (collectively, solely for purposes of this paragraph, the “Lenders”) may have economic interests that conflict with those of the Borrower, its stockholders and/or its affiliates. The Borrower agrees that nothing in the Loan Documents or otherwise will be deemed to create an advisory, fiduciary or agency relationship or fiduciary or other implied duty between any Lender, on the one hand, and the Borrower, its stockholders or its affiliates, on the other. The Borrower acknowledges and agrees that (i) the transactions contemplated by the Loan Documents (including the exercise of rights and remedies hereunder and thereunder) are arm’s-length commercial transactions between the Lenders, on the one hand, and the Borrower, on the other, and (ii) in connection therewith and with the process leading thereto, (x) no Lender has assumed an advisory or fiduciary responsibility in favor of the Borrower, its stockholders or its affiliates with respect to the transactions contemplated hereby (or the exercise of rights or remedies with respect thereto) or the process leading thereto (irrespective of whether any Lender has advised, is currently advising or will advise the Borrower, its stockholders or its affiliates on other matters) or any other obligation to the Borrower except the obligations expressly set forth in the Loan Documents and (y) each Lender is acting solely as principal and not as the agent or fiduciary of the Borrower, its management, stockholders, creditors or any other Person. The Borrower acknowledges and agrees that the Borrower has consulted its own legal and financial advisors to the extent it deemed appropriate and that it is responsible for making its own independent judgment with respect to such transactions and the process leading thereto. The Borrower agrees that it will not claim that any Lender has rendered advisory services of any nature or respect, or owes a fiduciary or similar duty to the Borrower, in connection with such transaction or the process leading thereto. None of the Arrangers identified on the cover page or signature pages of this Agreement shall have any rights, powers, obligations, liabilities, responsibilities or duties under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as a Lender hereunder. Without limiting any other provision of this Article, none of such Arrangers in their respective capacities as such shall have or be deemed to have any fiduciary relationship with any Lender, the Administrative Agent or any other Person by reason of this Agreement or any other Loan Document.

9.19. Acknowledgement and Consent to Bail-In of Affected Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Affected Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an Affected Financial Institution; and

(b) the effects of any Bail-in Action on any such liability, including, if applicable:

(1) a reduction in full or in part or cancellation of any such liability;

(2) 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

(3) 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.

9.20. Interest Rate Limitations. Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Loan or participation in any payment or disbursement made by an Issuing Bank pursuant to a Documentary Credit, together with all Charges, shall exceed the maximum lawful rate (the “Maximum Rate”) which may be contracted for, charged, taken, received or reserved by the Lender holding such Loan or participation in accordance with applicable law, the rate of interest payable in respect of such Loan or participation hereunder, together with all Charges payable in respect thereof, shall be limited to the Maximum Rate and, to the extent lawful, the interest and Charges that would have been payable in respect of such Loan or participation but were not payable as a result of the operation of this Section 9.20 shall be cumulated and the interest and Charges payable to such Lender in respect of other Loans or participations or periods shall be increased (but not above the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the Federal Funds Effective Rate to the date of repayment, shall have been received by such Lender.

9.21. Existing Credit Agreement. In connection with the termination of the Existing Credit Agreement, the Borrower’s repayment of outstanding eurodollar loans under the Existing Credit Agreement is on a day that is not the last day of an Interest Period (as defined in the Existing Credit Agreement). Each Lender that is a party to the Existing Credit Agreement hereby waives its rights to indemnification and payment under clause (c) of the first sentence of Section 2.20 of the Existing Credit Agreement.

IN WITNESS HEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and the year first written.

**BORROWER:**

**MICRON TECHNOLOGY, INC.**

By: /s/ Gregory Routin  
Name: Gregory Routin  
Title: Treasurer

[Signature Page to Micron Technology, Inc. Revolving Credit Agreement]

**HSBC BANK USA, NATIONAL ASSOCIATION,  
as Administrative Agent**

By: /s/ Jackson Hui  
Name: Jackson Hui  
Title: Vice President

[Signature Page to Micron Technology, Inc. Revolving Credit Agreement]

**HSBC BANK USA, NATIONAL ASSOCIATION,  
as Issuing Bank and a Lender**

By: /s/ Eric Seltenrich  
Name: Eric Seltenrich  
Title: Managing Director

**BNP PARIBAS,  
as a Lender and as an Issuing Bank**

By: /s/ Brendan Heneghan  
Name: Brendan Heneghan  
Title: Director

By: /s/ Nicolas Doche  
Name: Nicolas Doche  
Title: Vice President

**CREDIT AGRICOLE CORPORATE AND  
INVESTMENT BANK,  
as Sustainability Structuring Agent, a Lender and Issuing Bank**

By: /s/ Jill Wong  
Name: Jill Wong  
Title: Director

By: /s/ Gordon Yip  
Name: Gordon Yip  
Title: Director

**DBS Bank Ltd.,  
as a Lender**

By: /s/ Terence Yong  
Name: Terence Yong  
Title: Managing Director

**Industrial and Commercial Bank of China Ltd., New York Branch,  
as a Lender**

By: /s/ Tony Huang  
Name: Tony Huang  
Title: Director

By: /s/ Yuanyuan Peng  
Name: Yuanyuan Peng  
Title: Executive Director

**Mizuho Bank, Ltd,  
as a Lender and as an Issuing Bank**

By: /s/ Tracy Rahn  
Name: Tracy Rahn  
Title: Executive Director

**MUFG Bank, Ltd.  
as a Lender and as an Issuing Bank**

By: /s/ Lillian Kim  
Name: Lillian Kim  
Title: Director

**WELLS FARGO BANK, NATIONAL ASSOCIATION  
as a Lender and as Issuing Bank**

By: /s/ Jesse Mason  
Name: Jesse Mason  
Title: Director

**Australia and New Zealand Banking Group Limited, as a Lender**

By: /s/ Cynthia Dioquino  
Name: Cynthia Dioquino  
Title: Associate Director

**Bank of America, N.A.,  
as a Lender**

By: /s/ Shyam P. Gondha  
Name: Shyam P. Gondha  
Title: Vice President

**The Bank of Nova Scotia,  
as a Lender**

By: /s/ Khrystyna Manko  
Name: Khrystyna Manko  
Title: Director

**BARCLAYS BANK PLC,  
as a Lender**

By: /s/ Gill Skala  
Name: Gill Skala  
Title: Director  
Executed in New York



**CITIBANK, N.A.,  
as a Lender**

By: /s/ Sean Klimchalk  
Name: Sean Klimchalk  
Title: Vice President

**Credit Suisse AG, New York Branch,  
as a Lender**

By: /s/ Doreen Barr  
Name: Doreen Barr  
Title: Authorized Signatory

By: /s/ Andrew Griffin  
Name: Andrew Griffin  
Title: Authorized Signatory

**GOLDMAN SACHS BANK USA,  
as a Lender**

By: /s/ Kevin Raisch  
Name: Kevin Raisch  
Title: Authorized Signatory

**JPMORGAN CHASE BANK, N.A.,  
as a Lender**

By: /s/ Timothy Lee  
Name: Timothy Lee  
Title: Executive Director

**MORGAN STANLEY BANK, N.A.,  
as a Lender**

By: /s/ Michael King  
Name: Michael King  
Title: Authorized Signatory

**Oversea-Chinese Banking Corporation Limited, Los Angeles Agency, as a  
Lender**

By: /s/ Charles Ong  
Name: Charles Ong  
Title: General Manager

**Royal Bank of Canada,  
as a Lender**

By: /s/ Nicholas Heslip  
Name: Nicholas Heslip  
Title: Authorized Signatory

**The Toronto-Dominion Bank, New York Branch,  
as a Lender**

By: /s/ Michael Borowiecki  
Name: Michael Borowiecki  
Title: Authorized Signatory

**U.S. Bank National Association,  
as a Lender**

By: /s/ Lukas Coleman  
Name: Lukas Coleman  
Title: Vice President

TERM LOAN CREDIT AGREEMENT

among

MICRON TECHNOLOGY, INC.,

as Borrower

and

THE LENDERS PARTY HERETO,

and

WELLS FARGO BANK, NATIONAL ASSOCIATION,

as Administrative Agent

Dated as of May 14, 2021

OVERSEA-CHINESE BANKING CORPORATION LIMITED, LOS ANGELES AGENCY,

as Syndication Agent

THE TORONTO-DOMINION BANK, NEW YORK BRANCH

THE BANK OF NOVA SCOTIA,

as Documentation Agents

WELLS FARGO SECURITIES, LLC

as Sole Bookrunner

and

as Sole Lead Arranger

CREDIT AGRICOLE CORPORATE AND INVESTMENT BANK

as Sustainability Structuring Agent

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## **SCHEDULES**

- Schedule 1.1 Term Commitment Amounts
- Schedule 1.2 Unrestricted Subsidiaries
- Schedule 1.3 Sustainability Performance Thresholds

## **EXHIBITS**

- Exhibit A Form of Closing Certificate for the Borrower
- Exhibit B Form of Borrowing Request
- Exhibit C Form of Compliance Certificate
- Exhibit D Form of Assignment and Acceptance
- Exhibit E-1 Form of United States Tax Compliance Certificate (For Non-U.S. Lenders That Are Not Partnerships For U.S. Federal Income Tax Purposes)
- Exhibit E-2 Form of United States Tax Compliance Certificate (For Non-U.S. Lenders That Are Partnerships For U.S. Federal Income Tax Purposes)
- Exhibit E-3 Form of United States Tax Compliance Certificate (For Non-U.S. Participants That Are Not Partnerships For U.S. Federal Income Tax Purposes)
- Exhibit E-4 Form of United States Tax Compliance Certificate (For Non-U.S. Participants That Are Partnerships For U.S. Federal Income Tax Purposes)
- Exhibit F Form of Notice of Continuation/Conversion
- Exhibit G Form of Acceptance and Prepayment Notice
- Exhibit H Form of Sustainability Pricing Certificate

THIS TERM LOAN CREDIT AGREEMENT, dated as of May 14, 2021, among MICRON TECHNOLOGY, INC., a Delaware corporation (the “Borrower”), WELLS FARGO BANK, NATIONAL ASSOCIATION (“Wells Fargo”), as administrative agent (in such capacity and including any successors in such capacity, the “Administrative Agent” or the “Agent”), the other agents party hereto and each of the financial institutions from time to time party hereto (collectively, the “Lenders”).

# W I T N E S S E T H:

WHEREAS, the Borrower intends to use the Term Loans for general corporate purposes.

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

## SECTION 1 Definitions

1.1. Defined Terms. As used in this Agreement, the following terms shall have the meanings specified below:

“2018 GHG Emissions Intensity Baseline”: (a) the sum of the Borrower and its Subsidiaries’ (i) total Scope 1 Emissions plus (ii) Scope 2 Emissions for the calendar year ended December 31, 2018 divided by (b) production units for the calendar year ended December 31, 2018.

“Administrative Agent”: the meaning set forth in the preamble to this Agreement.

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

“Affiliate”: 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. For purposes of this definition, “control” of a Person means the power, directly or indirectly, to direct or cause the direction of the management and policies of such Person whether through the ownership of voting securities, by contract or otherwise.

“Agent”: the meaning set forth in the preamble to this Agreement.

“Agreement”: this Term Loan Credit Agreement, as the same may be amended, restated, amended and restated, supplemented or otherwise modified from time to time.

“Anti-Corruption Laws”: means all laws, rules and regulations of any jurisdiction applicable to the Borrower or any of its Subsidiaries from time to time concerning or relating to bribery or corruption, including, without limitation, the Foreign Corrupt Practices Act of 1977, as amended.

“Applicable Margin”: with respect to the Term Loans, for any day, with respect to any Eurodollar Loan or any Base Rate Loan, as the case may be, the applicable rate per annum set forth below under the caption “Eurodollar Spread” or “Base Rate Spread”, as the case may be, corresponding to the applicable Corporate Ratings from the Rating Agencies on such date:

Level:	Pricing	Corporate Ratings:	Eurodollar Spread	Base Rate Spread
1	Level	≥ BBB+ / Baa1 / BBB+	0.625%	0.00%

2	Level	BBB / Baa2 / BBB	0.75%	0.00%
3	Level	BBB- / Baa3 / BBB-	0.875%	0.00%
4	Level	BB+ / Ba1 / BB+	1.125%	0.125%
5	Level	≤ BB / Ba2 / BB	1.375%	0.375%

For purposes of the foregoing, (i) if only one Corporate Rating is in effect, the Applicable Margin shall be determined by reference to such available Corporate Rating, (i) if two or three Corporate Ratings are in effect, the Applicable Margin shall be determined by reference to the highest of the two or three, as applicable, Corporate Ratings unless the other Corporate Rating(s) are more than one notch lower than the highest Corporate Rating, in which case, the Applicable Margin shall be one notch lower than such highest Corporate Rating; (iii) if no Corporate Rating is in effect, the Applicable Margin shall be Level 5; and (iv) if the Corporate Ratings established by the relevant Rating Agencies shall be changed (other than as a result of a change in the rating system of any relevant Rating Agency), such change shall be effective as of the date on which it is first announced by the applicable rating agency, irrespective of when notice of such change shall have been furnished by the Borrower to the Administrative Agent. Within five Business Days of any change in a Corporate Rating, the Borrower shall use reasonable best efforts to notify Administrative Agent in writing (which may be by facsimile or email transmission) of such new Corporate Rating and the date of such change.

Each change in the Applicable Margin shall apply during the period commencing on the effective date of such change and ending on the date immediately preceding the effective date of the next Corporate Rating change.

Subject to Section 2.25(d), the Applicable Margin shall be adjusted on each Sustainability Adjustment Date based upon the Sustainability Margin Adjustment (to be calculated and applied as set forth in the definition thereof and in Section 2.25(a)); provided that in no event shall the Applicable Margin be less than 0.00%.

“Approved Electronic Communication”: any notice, demand, communication, information, document or other material that any Loan Party provides to the Administrative Agent pursuant to any Loan Document or the transactions contemplated therein which is distributed to the Agent or to the Lenders by means of electronic communications pursuant to Section 9.2(b).

“Approved Fund”: as defined in Section 9.6(b)(ii).

“Arranger”: the Lead Arranger.

“Assignee”: as defined in Section 9.6(b)(i).

“Assignment and Acceptance”: an assignment and acceptance entered into by a Lender and an Assignee and accepted by the Administrative Agent to the extent required pursuant to Section 9.6, substantially in the form of Exhibit D hereto.

“Attributable Debt”: in connection with a sale and lease-back transaction the lesser of: (1) the fair value of the assets subject to such transaction, as determined in good faith by a Responsible Officer of the



Borrower; and (2) the present value of the minimum rental payments called for during the terms of the lease (including any period for which such lease has been extended), determined in accordance with GAAP, discounted at a rate that, at the inception of the lease, the lessee would have incurred to borrow over a similar term the funds necessary to purchase the leased assets.

“Available Tenor”: as of any date of determination and with respect to the then-current Benchmark, as applicable, any tenor for such Benchmark or payment period for interest calculated with reference to such Benchmark, as applicable, that is or may be used for determining the length of an Interest Period pursuant to this Agreement 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 2.10(e).

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

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

“Bankruptcy Code”: the United States Bankruptcy Code, codified as Title 11, U.S. Code §101-1330, as amended.

“Base Rate”: for any day, a rate per annum equal to the greatest of (a) the Prime Rate in effect on such day, (b) the NYFRB Rate in effect on such day plus ½ of 1% and (c) Eurodollar Rate for a one month Interest Period on such day (or if such day is not a Business Day, the immediately preceding Business Day) plus 1%. Any change in the Base Rate due to a change in the Prime Rate, the NYFRB Rate or the Eurodollar Rate shall be effective from and including the effective date of such change in the Prime Rate, the NYFRB Rate or the Eurodollar Rate, respectively. If the Base Rate is being used as an alternate rate of interest pursuant to Section 2.10 hereof, then the Base Rate shall be the greater of clauses (a) and (b) above and shall be determined without reference to clause (c) above. For the avoidance of doubt, if the Base Rate as so determined would be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

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

“Base Rate Term Borrowing”: a Borrowing of Term Loans that are Base Rate Loans.

“Benchmark”: initially, LIBOR; provided that if a Benchmark Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date have occurred with respect to LIBOR or the then-current Benchmark, then “Benchmark” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to Section 2.10(b).

“Benchmark Replacement”: for any Available Tenor, the first alternative set forth in the order below that can be determined by the Administrative Agent for the applicable Benchmark Replacement Date:

- (1) the sum of: (a) Term SOFR and (b) the related Benchmark Replacement Adjustment;
- (2) the sum of: (a) Daily Simple SOFR and (b) the related Benchmark Replacement Adjustment;

(3) the sum of: (a) the alternate benchmark rate that has been selected by the Administrative Agent and the Borrower as the replacement for the then-current Benchmark for the applicable Corresponding Tenor giving due consideration to (i) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement for the then-current Benchmark for U.S. dollar-denominated syndicated credit facilities at such time and (b) the related Benchmark Replacement Adjustment;

provided that, in the case of clause (1), the Unadjusted Benchmark Replacement is displayed on a screen or other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion. If the Benchmark Replacement as determined pursuant to clause (1), (2) or (3) above would be less than the Floor, the Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Loan Documents.

“Benchmark Replacement Adjustment”: with respect to any replacement of the then current Benchmark with an Unadjusted Benchmark Replacement for any applicable Interest Period and Available Tenor for any setting of such Unadjusted Benchmark Replacement:

(1) for purposes of clauses (1) and (2) of the definition of “Benchmark Replacement,” the first alternative set forth in the order below that can be determined by the Administrative Agent:

(a) the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) as of the Reference Time such Benchmark Replacement is first set for such Interest Period that has been selected or recommended by the Relevant Governmental Body for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for the applicable Corresponding Tenor;

(b) the spread adjustment (which may be a positive or negative value or zero) as of the Reference Time such Benchmark Replacement is first set for such Interest Period that would apply to the fallback rate for a derivative transaction referencing the ISDA Definitions to be effective upon an index cessation event with respect to such Benchmark for the applicable Corresponding Tenor; and

(2) for purposes of clause (3) of the definition of “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 Administrative Agent and the Borrower for the applicable Corresponding Tenor giving due consideration to (i) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body on the applicable Benchmark Replacement Date and/or (ii) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for U.S. dollar denominated syndicated credit facilities; provided that, in the case of clause (1) above, such adjustment is displayed on a screen or other information service that publishes such Benchmark Replacement Adjustment from time to time as selected by the Administrative Agent in its reasonable discretion.

“Benchmark Replacement Conforming Changes”: with respect to any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “Base Rate,” the definition of “Business Day,” the definition of “Interest Period,” timing and frequency of determining rates

and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, length of lookback periods, the applicability of breakage provisions, and other technical, administrative or operational matters) that the Administrative Agent reasonably decides may be appropriate to reflect the adoption and implementation of such Benchmark Replacement and to permit the administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Administrative Agent determines that no market practice for the administration of such Benchmark Replacement exists, in such other manner of administration as the Administrative Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

“Benchmark Replacement Date”: the earliest to occur of the following events with respect to the then-current Benchmark:

(1) in the case of clause (1) or (2) of the definition of “Benchmark Transition Event,” the later of (a) the date of the public statement or publication of information referenced therein and (b) 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);

(2) in the case of clause (3) of the definition of “Benchmark Transition Event,” the date of the public statement or publication of information referenced therein; or

(3) in the case of an Early Opt-in Election, the sixth (6th) Business Day after the date notice of such Early Opt-in Election is provided to the Lenders, so long as the Administrative Agent has not received, by 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Early Opt-in Election is provided to the Lenders, written notice of objection to such Early Opt-in Election from Lenders comprising the Required Lenders.

For the avoidance of doubt, (i) if the event giving rise to the Benchmark Replacement Date occurs on the same day as, but earlier than, the Reference Time in respect of any determination, the Benchmark Replacement Date will be deemed to have occurred prior to the Reference Time for such determination and (ii) the “Benchmark Replacement Date” will be deemed to have occurred in the case of clause (1) or (2) 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”: with respect to any Benchmark, the occurrence of one or more of the following events with respect to the then-current Benchmark:

(1) 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);

(2) 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 thereof), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component thereof) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component thereof), which states that the administrator of such Benchmark (or such component thereof) 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

(3) 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) announcing that all Available Tenors of such Benchmark (or such component thereof) are no longer representative.

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”: the period (if any) (x) beginning at the time that a Benchmark Replacement Date pursuant to clauses (1) or (2) of that definition 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 this Section titled “Benchmark Replacement Setting” and (y) 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 2.10.

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

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

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

“Benefited Lender”: the meaning set forth in Section 9.7(a).

“Board of Directors”: the board of directors of the Borrower or any committee thereof duly authorized to act on behalf of such board.

“Board of Governors”: the Board of Governors of the Federal Reserve System of the United States or any Governmental Authority which succeeds to the powers and functions thereof.

“Borrower”: the meaning set forth in the preamble to this Agreement.

“Borrowing”: Term Loans of the same Type, made, converted or continued on the same date and, in the case of Eurodollar Loans, as to which a single Interest Period is in effect.

“Borrowing Date”: the Business Day specified in a Borrowing Request as a date on which the Borrower requests the making of Term Loans hereunder.

“Borrowing Request”: a request by the Borrower for a Borrowing in accordance with Section 2.3, which shall be substantially in the form of Exhibit B or any other form approved by the Administrative Agent.

“Business Day”: any day other than a Legal Holiday.

“Capital Stock”: any and all shares of stock of a corporation, partnership interests or other equivalent interests (however designated, whether voting or non-voting) in such Person’s equity, entitling the holder to receive a share of the profits and losses, and a distribution of assets, after liabilities, of such Person.

“Captive Insurance Subsidiary”: any Restricted Subsidiary of the Borrower that is subject to regulation as an insurance company (or any Restricted Subsidiary thereof).

“CFC”: any controlled foreign corporation within the meaning of Section 957 of the Code.

“Change of Control”: any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act), other than the Borrower, its Subsidiaries or any employee benefit plan of the Borrower or its Subsidiaries, has filed a Schedule 13D or Schedule TO (or any successor schedule, form or report) pursuant to the Exchange Act disclosing that such person has become the direct or indirect “beneficial owner” (as such term is used in Rules 13d-3 and 13d-5 under the Exchange Act) of more than 50% of the Voting Stock of the Borrower, unless such beneficial ownership (a) arises solely as a result of a revocable proxy delivered in response to a proxy or consent solicitation made pursuant to the applicable rules and regulations under the Exchange Act, and (b) is not also then reportable on Schedule 13D (or any successor schedule under the Exchange Act, except that a person will be deemed to have beneficial ownership of all shares that such person has the right to acquire irrespective of whether that right is exercisable immediately or only after the passage of time); provided, however, that a transaction will not be deemed to involve a Change of Control if (a) the Borrower becomes a direct or indirect wholly owned subsidiary of a holding company, and (b) (i) the direct or indirect holders of the Voting Stock of such holding company immediately following that transaction are substantially the same as the holders of the Borrower’s Voting Stock immediately prior to that transaction or (ii) immediately following that transaction no “person” or “group” (other than a holding company satisfying the requirements of this sentence) is the beneficial owner, directly or indirectly, of more than 50% of the Voting Stock of such holding company.

“Charges”: any charge, expense, cost, accrual or reserve of any kind.

“Closing Date”: the date on which the conditions precedent set forth in Section 4.1 shall have been satisfied or waived, which date is May 14, 2021.

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

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

“Compliance Certificate”: a compliance certificate to be delivered pursuant to Section 5.2(a), substantially in the form of Exhibit C.

“Consolidated EBITDA”: with respect to any Person for any Measurement Period, the sum of, without duplication, the amounts for such period, taken as a single accounting period, of (1) Consolidated Net

Income; excluding (to the extent deducted or otherwise excluded in calculating Consolidated Net Income in such Measurement Period), the following amounts (or, to the extent attributable to a non-wholly owned consolidated entity, a portion of the following amounts proportionate to the Borrower's allocable interest in such entity): (2) Consolidated Non-cash Charges; (3)(A) extraordinary Charges and (B) unusual or nonrecurring Charges, in each case, to the extent not of a type described in clause (2), (4) Consolidated Interest Expense; (5) Consolidated Income Tax Expense; (6) restructuring expenses and charges; (7) any expenses or charges related to any equity offering, Investment, recapitalization or incurrence of Indebtedness not prohibited under this Agreement (whether or not successful) or related to the entry into this Agreement; and (8) any charges, expenses or costs incurred in connection or associated with mergers, acquisitions or divestitures after the Closing Date.

Consolidated EBITDA shall be calculated after giving effect on a pro forma basis for the applicable Measurement Period to any asset sales or other dispositions or acquisitions, investment, mergers, consolidations and discontinued operations (as determined in accordance with GAAP) by such Person and its Consolidated Subsidiaries (1) that have occurred during such Measurement Period or at any time subsequent to the last day of such Measurement Period and on or prior to the date of the transaction in respect of which Consolidated EBITDA is being determined and (2) that the Borrower determines in good faith are outside the ordinary course of business, in each case as if such asset sale or other disposition or acquisition, investment, merger, consolidation or disposed operation occurred on the first day of such Measurement Period. For purposes of this definition, pro forma calculations shall be made in accordance with Article 11 of Regulation S-X under the Securities Act; provided that such pro forma calculations may include operating expense reductions for such period resulting from the transaction which is being given pro forma effect that are reasonably identifiable and factually supportable and have been realized or for which the steps necessary for realization have been taken or have been identified and are reasonably expected to be taken within one year following any such transaction (which operating expense reductions are reasonably expected to be sustainable); provided that, the Borrower shall not be required to give pro forma effect to any transaction that it does not in good faith deem material. Such pro forma calculations shall be made in good faith by a responsible financial or accounting officer of the Borrower.

"Consolidated Income Tax Expense": with respect to any Person for any period, the provision for (or benefit of) federal, state, local and foreign income taxes of such Person and its Consolidated Subsidiaries for such period as determined on a consolidated basis in accordance with GAAP, including any penalties and interest related to such taxes or arising from any tax examinations, to the extent the same were deducted (or added back, in the case of income tax benefit) in computing Consolidated Net Income.

"Consolidated Interest Expense": with respect to any Person, for any period, (a) the sum of all interest expense (including imputed interest charges with respect to finance lease obligations) of such Person and its Consolidated Subsidiaries payable in cash for such period determined on a consolidated basis in accordance with GAAP but excluding (i) any non-cash interest expense attributable to the movement in the mark to market valuation of hedging obligations or other derivative instruments pursuant to GAAP, amortization of deferred financing fees, debt issuance costs, commissions, fees and expenses, (ii) any expensing of bridge, commitment and other financing fees, (iii) any annual administrative or other agency fees, (iv) any premiums, fees or other charges incurred in connection with the refinancing, incurrence, purchase or redemption of Indebtedness, (v) any amortization of debt discounts, including discounts on convertible notes, and (vi) amortization of other costs, including imputed interest charges on liabilities other than finance lease obligations and premiums and discounts on investments, minus (b) interest income of such Person and its Consolidated Subsidiaries for such period determined on a consolidated basis in accordance with GAAP.

"Consolidated Net Income": with respect to any Person, for any period, the consolidated net income (or loss) of such Person and its Consolidated Subsidiaries, after deduction of net income (or loss) attributable to non-controlling interests, for such period as determined in accordance with GAAP, adjusted, to the extent

included in calculating such net income, by excluding, without duplication, the following (or, to the extent attributable to a non-wholly owned consolidated entity, a portion of the following amounts proportionate to the Borrower's allocable interest in such entity): (1) all extraordinary, unusual or nonrecurring gains or losses (net of fees and expense relating to the transaction giving rise thereto); (2) gains or losses in respect of any asset impairments, write-offs or sales (net of fees and expenses relating to the transaction giving rise thereto); (3) any expenses, losses or charges incurred related to lower of cost or market write-downs for work in process or finished goods inventories; (4) any expenses, losses or charges incurred related to excess or obsolete inventories; (5) the net income (loss) from any disposed or discontinued operations or any net gains or losses on disposed or discontinued operations; (6) any gain or loss realized as a result of the cumulative effect of a change in accounting principles; (7) any net gains or losses attributable to the early extinguishment or conversion of Indebtedness, derivative instruments, embedded derivatives or other similar obligations; (8) equity in net income (loss) of equity method investees; (9) gains, losses, income and expenses resulting from the application of fair value accounting to derivative instruments; and (10) gains or losses resulting from currency fluctuations. In addition, to the extent not already included in Consolidated Net Income of such Person and its Consolidated Subsidiaries, the amount of proceeds received from business interruption insurance and reimbursements of any expenses or charges that are covered by indemnification or other reimbursement provisions in connection with any investment or sale, conveyance, transfer or disposition of assets not prohibited under this Agreement.

**"Consolidated Net Tangible Assets"**: with respect to any Person, the total amount of assets of such Person and its Consolidated Subsidiaries after deducting therefrom (a) all current liabilities of such Person and its Consolidated Subsidiaries (excluding (i) the current portion of long-term debt and the portion of any convertible debt classified as "current" despite having a stated maturity more than 12 months from the date as of which the amount thereof is being computed and (ii) any liabilities which are by their terms renewable or extendible at the option of the obligor thereon to a date more than 12 months from the date as of which the amount thereof is being computed) and (b) all goodwill, trade names, trademarks, patents, unamortized debt discount and expense and any other like intangibles of such Person and its Consolidated Subsidiaries, all as set forth on the consolidated balance sheet of such Person for the most recently completed fiscal quarter for which financial statements have been filed with the SEC and computed in accordance with GAAP.

**"Consolidated Non-cash Charges"**: with respect to any Person for any period determined on a consolidated basis in accordance with GAAP, the aggregate depreciation; amortization (including amortization of goodwill, other intangibles, deferred financing fees, debt issuance costs, commissions, fees and expenses); non-cash compensation expense incurred in connection with the issuance of Equity Interests to any director, officer, employee or consultant of such Person or any Consolidated Subsidiary; and other non-cash expenses of such Person and its Subsidiaries reducing Consolidated Net Income of such Person and its Consolidated Subsidiaries for such period (excluding any such charge which requires an accrual of or a reserve for cash charges for any future period).

**"Consolidated Subsidiaries"**: as of any date of determination and with respect to any Person, those Subsidiaries of that Person whose financial data is, in accordance with GAAP, reflected in that Person's consolidated financial statements.

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

**"Copyrights"**: (i) all copyrights, database rights, design rights, mask works and works of authorship arising under the laws of the United States, any other country or any political subdivision thereof, whether registered or unregistered and whether published or unpublished, all registrations and recordings thereof, and

all applications in connection therewith, including, without limitation, all registrations, recordings and applications in the United States Copyright Office, and (ii) the right to obtain all renewals thereof.

“Copyright Licenses”: any written agreement naming the Borrower or any Guarantor as a party, granting any right under any Copyright, including, without limitation, the grant of rights to reproduce, prepare derivative works based upon, perform, display, manufacture, distribute, exploit and sell materials derived from any Copyright.

“Corporate Rating”: the Borrower’s “corporate rating” or “corporate family rating” from S&P or Moody’s or Fitch, respectively, including any successor term for such rating adopted by such rating agency.

“Corresponding Tenor”: with respect to any Available Tenor means, as applicable, either a tenor (including overnight) or an interest payment period having approximately the same length (disregarding business day adjustment) as such Available Tenor.

“Daily Simple SOFR”: for any day, SOFR, with the conventions for this rate (which will include a lookback) being established by the Administrative Agent in accordance with the conventions for this rate selected or recommended by the Relevant Governmental Body for determining “Daily Simple SOFR” for syndicated business loans; provided, that if the Administrative Agent decides that any such convention is not administratively feasible for the Administrative Agent, then the Administrative Agent may establish another convention in its reasonable discretion.

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

“Default”: any of the events specified in Section 7.1, whether or not any requirement for the giving of notice, the expiration of applicable cure or grace periods, or both, has been satisfied.

“Defaulting Lender”: means any Lender that (a) has failed to (i) fund all or any portion of its Term Loans within one Business Day of the date such Term Loans were required to be funded hereunder unless such Lender notifies the Administrative Agent and the Borrower in writing that such failure is the result of such Lender’s determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in writing) has not been satisfied, or (ii) pay to the Administrative Agent or any other Lender any other amount required to be paid by it hereunder within one Business Day of the date when due, (b) has notified the Borrower and the Administrative Agent in writing that it does not intend to comply with its funding obligations hereunder (unless such writing relates to such Lender’s obligation to fund a Term Loan hereunder and states that such position is based on such Lender’s determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing) cannot be satisfied), (c) has failed, within two Business Days after written request by the Administrative Agent or the Borrower, to confirm in writing to the Administrative Agent and the Borrower that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and the Borrower), or (d) has, or has a direct or indirect parent company that has, after the Closing Date, (i) become the subject to any bankruptcy event, (ii) had appointed for it a receiver, liquidator, examiner, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity or (iii) become the subject of a Bail-In Action; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or



acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent in consultation with the Borrower that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 2.24(b)) upon delivery of written notice of such determination to the Borrower and each Lender.

“Documentation Agents”: The Toronto-Dominion Bank, New York Branch, The Bank of Nova Scotia and any successors thereto.

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

“Early Opt-in Election”: if the then-current Benchmark is LIBOR, the occurrence of:

(1) a notification by the Administrative Agent to (or the request by the Borrower to the Administrative Agent to notify) each of the other parties hereto that at least five currently outstanding U.S. dollar-denominated syndicated credit facilities at such time contain (as a result of amendment or as originally executed) a SOFR-based rate (including SOFR, a term SOFR or any other rate based upon SOFR) as a benchmark rate (and such syndicated credit facilities are identified in such notice and are publicly available for review), and

(2) the joint election by the Administrative Agent and the Borrower to trigger a fallback from LIBOR and the provision by the Administrative Agent of written notice of such election to the Lenders.

“EEA Financial Institution”: (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

“EEA Member Country”: any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

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

“Engagement Letter”: that certain engagement letter dated April 14, 2021 among the Borrower and the Arranger.

“Environmental Laws”: any and all applicable foreign, federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees, legally binding requirements of any Governmental Authority or other Requirements of Law (including common law) regulating, relating to or imposing liability or standards of conduct concerning protection of the environment or of human health (to the extent related to exposure to Materials of Environmental Concern), as now or may at any time hereafter be in effect.

“Equity Interests”: all Capital Stock and all warrants or options with respect to, or other rights to purchase, Capital Stock, but excluding Indebtedness convertible into or exchangeable for equity.

“ERISA”: the Employee Retirement Income Security Act of 1974, as amended from time to time, and the regulations promulgated and rulings issued thereunder.

“ERISA Event”: (a) any Reportable Event; (b) the failure by any Plan to satisfy the minimum funding standards (within the meaning of Section 412 of the Code or Section 302 of ERISA) applicable to such Plan, whether or not waived in accordance with Section 412(c) of the Code or Section 302(c) of ERISA; (c) the filing pursuant to Section 412(d) of the Code or Section 303(d) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan; (d) the incurrence by the Borrower or any of its ERISA Affiliates of any liability under Title IV of ERISA with respect to the termination of any Plan; (e) the receipt by the Borrower or any ERISA Affiliate from the PBGC or a plan administrator of any notice relating to an intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan; (f) the incurrence by the Borrower or any of its ERISA Affiliates of any liability with respect to the withdrawal or partial withdrawal from any Plan or Multiemployer Plan; or (g) the receipt by the Borrower or any Commonly Controlled Entity of any notice, or the receipt by any Multiemployer Plan from the Borrower or any Commonly Controlled Entity of any notice, concerning the imposition of withdrawal liability under ERISA or a determination that a Multiemployer Plan is, or is expected to be, Insolvent, within the meaning of Title IV of ERISA.

“Erroneous Payment”: the meaning assigned to it in Section 8.11(a).

“Erroneous Payment Deficiency Assignment”: the meaning assigned to it in Section 8.11(d).

“Erroneous Payment Return Deficiency”: the meaning assigned to it in Section 8.11(d).

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

“Eurocurrency Reserve Requirements”: for any day as applied to a Eurodollar Loan, the aggregate (without duplication) of the maximum rates (expressed as a decimal fraction) of reserve requirements in effect on such day (including basic, supplemental, marginal and emergency reserves) under any regulations of the Board of Governors or other Governmental Authority having jurisdiction with respect thereto dealing with reserve requirements prescribed for eurocurrency funding (currently referred to as “Eurocurrency Liabilities” in Regulation D of the Board of Governors) maintained by a member bank of the Federal Reserve System.

“Eurodollar Base Rate”: with respect to each day during each Interest Period pertaining to a Eurodollar Loan, the rate per annum equal to the London Interbank Offered Rate (“LIBOR”) (or a comparable or successor rate which rate is approved by the Administrative Agent), as published on the applicable Bloomberg screen page (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time) at approximately 11:00 A.M. (London time) on the date that is two Business Days prior to the beginning of the relevant Interest Period for deposits in Dollars for a period equal to such Interest Period; provided that, to the extent that an interest rate is not ascertainable pursuant to the foregoing provisions of this definition, the “Eurodollar Base Rate” shall be the interest rate per annum determined by the Administrative Agent to be the average of the rates per annum at which deposits in Dollars are offered for such relevant Interest Period to major banks in the London interbank market in London, England by the Administrative Agent at approximately 11:00 a.m. (London time) on the date that is two Business Days prior to the beginning of such Interest Period.

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

“Eurodollar Rate”: with respect to each day during each Interest Period pertaining to a Eurodollar Loan, a rate per annum determined for such day in accordance with the following formula (rounded upward to the nearest 1/100th of 1%):

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

; provided that in no event shall the Eurodollar Rate be less than 0.00%.

“Eurodollar Term Borrowing”: a Borrowing of Term Loans that are Eurodollar Loans.

“Event of Default”: any of the events specified in Section 7.1, provided that any requirement for the giving of notice, the lapse of time, or both, has been satisfied.

“Exchange Act”: the Securities Exchange Act of 1934, as amended, or any successor statute or statutes thereto.

“Excluded Taxes”: those Taxes referenced in Section 2.16(a)(i) through 2.16(a)(v).

“Existing Credit Agreement”: the Credit Agreement, dated as July 3, 2018, as amended from time to time, among the Borrower, the lenders from time to time parties thereto and JPMorgan Chase Bank, N.A., as administrative agent.

“FATCA”: Sections 1471 through 1474 of the Code as in existence on the date hereof (and any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future Treasury regulations thereunder or published administrative guidance implementing such Sections, any agreement entered into pursuant to current Section 1471(b)(1) of the Code (or any amended or successor version described above) and any intergovernmental agreements (and related legislation or official administrative guidance) implementing the foregoing.

“Federal Funds Effective Rate”: for any day, the rate calculated by the NYFRB based on such day’s federal funds transactions by depository institutions, as determined in such manner as the NYFRB shall set forth on its public website from time to time, and published on the next succeeding Business Day by the NYFRB as the effective federal funds rate, provided that if the Federal Funds Effective Rate as so determined would be less than zero, such rate shall be deemed to zero for the purposes of this Agreement.

“Fees”: collectively, the fees pursuant to Engagement Letter and Section 2.19, the fees referred to in Section 9.5 and any other fees payable by any Loan Party pursuant to this Agreement or any other Loan Document.

“Floor”: the benchmark rate floor, if any, provided in this Agreement initially (as of the execution of this Agreement, the modification, amendment or renewal of this Agreement or otherwise) with respect to LIBOR.

“Financial Officer”: the Chief Financial Officer, Principal Accounting Officer, Controller or Treasurer of the Borrower.

“Fitch”: Fitch, Inc. and any successor to its rating agency business.

“Foreign Subsidiary”: with respect to any Person, any Subsidiary of such Person other than one that is organized or existing under the laws of the United States, any state thereof or the District of Columbia.

“FSHCO”: with respect to any Person, any Subsidiary substantially all the assets of which consist of Equity Interests of, and/or intercompany debt obligations owed or treated as owed by, one or more (i) CFCs and/or (ii) Subsidiaries described in this definition.

“Funding Office”: the office of the Administrative Agent specified in Section 9.2(a) or such other office as may be specified from time to time by the Administrative Agent as its funding office by written notice to the Borrower and the Lenders.

“GAAP”: generally accepted accounting principles in the United States set forth in the statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as have been approved by a significant segment of the accounting profession, which are in effect as of the date of determination.

“GHG Emissions”: a Key Performance Indicator measured by GHG Emissions Intensity Reduction.

“GHG Emissions Intensity”: (a) the sum of the Borrower and its Subsidiaries’ (i) total Scope 1 Emissions plus (ii) Scope 2 Emissions for any calendar year divided by (b) production units for such calendar year.

“GHG Emissions Intensity Applicable Margin Adjustment Amount”: with respect to GHG Emissions for any calendar year, (a) positive 1.67 basis points if the GHG Emissions Intensity Reduction as set forth in the Sustainability Pricing Certificate is greater than the Partially Successful Completion Threshold for such calendar year, (b) zero basis points if the GHG Emissions Intensity Reduction as set forth in the Sustainability Pricing Certificate is greater than the Successful Completion Threshold and is less than or equal to the Partially Successful Completion Threshold for such calendar year; and (c) negative 1.67 basis points if the GHG Emissions Intensity Reduction as set forth in the Sustainability Pricing Certificate is equal to or less than the Successful Completion Threshold for such calendar year.

“GHG Emissions Intensity Reduction”: expressed as a percentage, (a) the sum of (i) GHG Emissions Intensity minus (ii) 2018 GHG Emissions Intensity Baseline divided by (b) the 2018 GHG Emissions Intensity Baseline.

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

“Guarantee”: any obligation, contingent or otherwise, of any Person directly or indirectly guaranteeing any Indebtedness of any other Person; provided that (1) obligations pursuant to commercial transactions on arm’s-length terms entered into in the ordinary course of business that are not primarily for the purpose of guaranteeing any Indebtedness of another Person shall not constitute a Guarantee, and (2) for avoidance of doubt, an agreement or arrangement or series of related agreements or arrangements providing for or in connection with the purchase or sale of assets, securities, services or rights that is entered into in connection with the business of the Borrower or any Subsidiary (including any consent or acknowledgement of assignment, including any assignment of payment obligations, warranties, indemnities, performance guarantees and related obligations, and related waivers), shall not constitute a Guarantee, *provided* that payment obligations, warranties, indemnities, performance guarantees and related obligations provided for

under such agreements or arrangements are limited to payments for assets, securities, services and rights and other ancillary obligations customary in such transactions. The term “Guarantee” used as a verb has a corresponding meaning.

“Guarantor”: any Subsidiary that is a party to a Subsidiary Guaranty, and its successors and assigns, in each case, until the Guarantee of such Person under the Subsidiary Guaranty has been released in accordance with the provisions of this Agreement or the Subsidiary Guaranty.

“Indebtedness”: indebtedness for borrowed money. For the avoidance of doubt, Indebtedness with respect to a Person only includes indebtedness for the repayment of money provided to such Person, and does not include any other kind of indebtedness or obligation notwithstanding that such other indebtedness or obligation may be evidenced by a note, bond, debenture or other similar instrument, may be in the nature of a financing transaction, or may be an obligation that under GAAP is classified as “debt” or another type of liability, whether required to be reflected on the balance sheet of the obligor or otherwise.

The amount of any Indebtedness outstanding as of any date will be:

- (1) the accreted value of the Indebtedness, in the case of any Indebtedness that does not require the current payment of interest;
- (2) the principal amount of the Indebtedness, in the case of any other Indebtedness;
- (3) in respect of Indebtedness of another Person secured by a Lien on the assets of the specified Person (and not otherwise Guaranteed by the specified Person), the lesser of: (a) the fair value (as determined in good faith by a Responsible Officer of the Borrower) of such assets at the date of determination; and (b) the principal amount of the Indebtedness of the other Person;
- (4) in respect of any Indebtedness of another Person Guaranteed by the specified Person or one or more of such Persons, the lesser of: (a) the principal amount of such Indebtedness of such other Person and (b) the maximum amount of such Indebtedness payable under the Guarantee or Guarantees (without duplication in the case of one or more Guarantees of the same Indebtedness by Restricted Subsidiaries); and
- (5) in the case of obligations under any sale and lease-back transaction that are included in any calculation of Indebtedness pursuant to this Agreement (whether or not Indebtedness), an amount calculated in accordance with clause (2) of the definition of Attributable Debt.

In no event will the amount of any Indebtedness (including Guarantees of such Indebtedness) be required to be included in the calculation of Indebtedness more than once despite the fact more than one Person is liable with respect to such Indebtedness and despite the fact that such Indebtedness is secured by the assets of more than one Person (for example, and for avoidance of doubt, in the case where more than one Restricted Subsidiary has Guaranteed or otherwise become liable for such Indebtedness or in the case where there are Liens on assets of one or more of the Borrower and its Restricted Subsidiaries securing such Indebtedness or one or more Guarantees thereof, the amount of Indebtedness so Guaranteed or secured shall only be included once in the calculation of Indebtedness). In addition, accrual of interest and accretion or amortization of original issue discount will not be deemed to be an incurrence of Indebtedness for any purpose hereunder. For the avoidance of doubt, the inclusion of specific obligations in Section 6.1 or the definition of Permitted Liens or the inclusion of Attributable Debt in any calculation of Indebtedness shall not create any implication that any such obligations constitute Indebtedness.

“indemnified liabilities”: the meaning set forth in Section 9.5.

“Indemnatee”: the meaning set forth in Section 9.5.

“Initial KPI Metrics Report”: an annual report setting forth each KPI Metric for the calendar year ended December 31, 2020, of which all data and information in such Initial KPI Metrics Report has been made publicly available by the Borrower via the Borrower’s annual report on environmental, social and governance issues.

“Insolvency”: with respect to any Multiemployer Plan, the condition that such Plan is insolvent within the meaning of Section 4245 of ERISA.

“Insolvent”: pertaining to a condition of Insolvency.

“Intellectual Property”: the collective reference to all rights, priorities and privileges relating to intellectual property, whether arising under United States, multinational or foreign laws or otherwise, including, without limitation, the Copyrights, the Copyright Licenses, the Patents, the Patent Licenses, the Trademarks and the Trademark Licenses, trade secrets, and any transferable rights to sue at law or in equity for any infringement or other impairment thereof, including the right to receive all proceeds and damages therefrom.

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

“Interest Period”: as to any Eurodollar Loan, each period commencing on the last day of the next preceding Interest Period applicable to such Eurodollar Loan and ending one, three or six (or, if agreed to by all relevant Lenders, twelve) months thereafter, as selected by the Borrower by irrevocable notice to the Administrative Agent not later than 10:00 A.M., New York City time, on the date that is three (3) Business Days prior to the last day of the then current Interest Period with respect thereto; provided that, all of the foregoing provisions relating to Interest Periods are subject to the following:

- (i) if any Interest Period would otherwise end on a day that is not a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless the result of such extension would be to carry such Interest Period into another calendar month in which event such Interest Period shall end on the immediately preceding Business Day;
- (ii) the Borrower may not select an Interest Period that would extend beyond the Term Loan Maturity Date; and
- (iii) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of a calendar month.

“Investment”: any direct or indirect loan, advance (or other extension of credit) or capital contribution to (by means of any transfer of cash or other property or assets to another Person or any other payments for property or services for the account or use of another Person) another Person, including, without limitation, the following: (1) the purchase or acquisition of any Capital Stock or other evidence of beneficial ownership

in another Person; and (2) the purchase, acquisition or Guarantee of the Indebtedness or other liability of another Person.

“ISDA Definitions”: the 2006 ISDA Definitions published by the International Swaps and Derivatives Association, Inc. or any successor thereto, as amended or supplemented from time to time, or any successor definitional booklet for interest rate derivatives published from time to time by the International Swaps and Derivatives Association, Inc. or such successor thereto.

“Joint Venture”: with respect to any Person, any partnership, corporation or other entity in which up to and including 50% of the Equity Interests is owned, directly or indirectly, by such Person and/or one or more of its Subsidiaries.

“Key Performance Indicators”: each of GHG Emissions, RBA Audit Score and Waste.

“KPI Metrics”: means each of GHG Emission Intensity Reduction, the RBA Audit Score Average and Waste Diversion.

“KPI Metrics Auditor”: any auditing or consulting firm designated from time to time by the Borrower (or any replacement auditor thereof as designated from time to time by the Borrower); provided, that any such KPI Metrics Auditor (a) shall be (i) a nationally recognized auditing firm, (ii) a nationally recognized assurance provider or (iii) an independent consultant with experience with environmental, social and governance research and assurance services, and (b) shall apply auditing standards and methodology that (i) are consistent with then generally accepted industry standards or (ii) if not so consistent, are proposed by the Borrower and notified to the Administrative Agent, the Sustainability Structuring Agent and the Lenders, so long as the Lenders constituting the Required Lenders do not object to such changes within five Business Days after written notice thereof.

“KPI Metrics Report”: an annual report audited by the KPI Metrics Auditor that sets forth the calculations for each KPI Metric for the applicable calendar year (except, for the avoidance of doubt, the calendar year ended December 31, 2020); provided that all data and information set forth in such KPI Metrics Report shall also be set forth in the Borrower’s publicly available annual report on environmental, social and governance issues, beginning with the publicly available annual report covering calendar year 2021.

“Lead Arranger”: Wells Fargo Securities, LLC.

“Legal Holiday”: a Saturday, a Sunday or a day on which banking institutions in the City of New York or at a place of payment are authorized by law, regulation or executive order to remain closed. If a payment date is a Legal Holiday at a place of payment, payment may be made at that place on the next succeeding day that is not a Legal Holiday.

“Lenders”: the meaning set forth in the preamble to this Agreement.

“Lien”: any lien, security interest, mortgage, charge or similar encumbrance, provided, however, that in no event shall either (i) any legal or equitable encumbrances deemed to exist by reason of a negative pledge or (ii) an operating lease or a non-exclusive license be deemed to constitute a Lien.

“Loan Documents”: this Agreement, any Subsidiary Guaranty, and, after execution and delivery thereof pursuant to the terms of this Agreement, each Note, and any amendment, waiver, supplement or other modification to any of the foregoing.

“Loan Parties”: the Borrower and any Guarantors.

**“Material Adverse Effect”**: a material adverse effect on (a) the business, financial condition, results of operations or properties of the Borrower and its Subsidiaries taken as a whole, (b) the ability of the Loan Parties taken as a whole, to perform their obligations under the Loan Documents, (c) the validity or enforceability of the Loan Documents taken as a whole or (d) the material rights and remedies available to, or conferred upon, the Lenders and the Administrative Agent under the other Loan Documents, taken as a whole.

**“Material Subsidiary”**: each Restricted Subsidiary that, as of the last day of the fiscal quarter of the Borrower most recently ended for which financial statements are available, had total assets (based on book value after intercompany eliminations) as of the end of such quarter in excess of \$200,000,000 or that is designated by the Borrower as a “Material Subsidiary.”

**“Materials of Environmental Concern”**: any gasoline or petroleum (including crude oil or any fraction thereof) or petroleum products, or asbestos, or polychlorinated biphenyls or any other chemicals, substances, materials, wastes, pollutants or contaminants in any form, regulated under any Environmental Law.

**“Maximum Adjustment”**: the meaning set forth in Section 2.25(b).

**“Maximum Rate”**: the meaning set forth in Section 9.20.

**“Measurement Period”**: at any date of determination, the most recently completed four fiscal quarters of the Borrower for which financial statements have been filed with the SEC.

**“Moody’s”**: Moody’s Investors Service, Inc. and any successor to its rating agency business.

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

**“Non-Excluded Taxes”**: the meaning set forth in Section 2.16(a).

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

**“NYFRB”**: the Federal Reserve Bank of New York.

**“NYFRB Rate”**: for any day, the greater of (a) the Federal Funds Effective Rate in effect on such day and (b) the Overnight Bank Funding Rate in effect on such day (or for any day that is not a Business Day, for the immediately preceding Business Day); provided that if none of such rates are published for any day that is a Business Day, the term “NYFRB Rate” means the rate for a federal funds transaction quoted at 11:00 a.m. on such day received by the Administrative Agent from a federal funds broker of recognized standing selected by it; provided, further, that if any of the aforesaid rates as so determined would be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

**“Obligations”**: the unpaid principal of and interest on (including interest accruing after the maturity of the Term Loans and interest accruing after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding, relating to the Borrower, whether or not a claim for post-filing or post-petition interest is allowed in such proceeding) the Term Loans and all other obligations and liabilities of the Borrower to the Administrative Agent or to any Lender, whether direct or indirect, absolute or contingent, due or to become due, or now existing or hereafter incurred, which may arise under, out of, or in connection with, this Agreement, any other Loan Document or any other document made, delivered or given in connection herewith or therewith, whether on account of principal, interest, reimbursement obligations, fees, indemnities, costs, expenses (including all fees, charges and disbursements of counsel to the



Administrative Agent or to any Lender that are required to be paid by the Borrower pursuant hereto) or otherwise.

“Other Taxes”: all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes arising from any payment made hereunder or under any other Loan Document or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement or any other Loan Document, except any such Taxes imposed with respect to an assignment (other than an assignment pursuant to Section 2.22 (Replacement of Lenders)) as a result of the Administrative Agent, Lender or assignee having a present or former connection with the applicable taxing jurisdiction (other than any such connection arising solely from the Administrative Agent or such Lender or assignee having executed, delivered, become a party to, or performed its obligations or received a payment under, or enforced, and/or engaged in any activities contemplated with respect to this Agreement or any other Loan Document).

“Overnight Bank Funding Rate”: for any day, the rate comprised of both overnight federal funds and overnight Eurodollar borrowings by U.S.-managed banking offices of depository institutions, as such composite rate shall be determined by the NYFRB as set forth on its public website from time to time, and published on the next succeeding Business Day by the NYFRB as an overnight bank funding rate.

“Partially Successful Completion Threshold”: with respect to each calendar year, the number or percentage set forth in Schedule 1.3 (Sustainability Performance Thresholds) in the row labeled “Partially Successful Completion Threshold” for the applicable Key Performance Indicator for the applicable calendar year.

“Participant”: the meaning set forth in Section 9.6(c).

“Participant Register”: the meaning set forth in Section 9.6(c)(ii).

“Patents”: (i) all letters patent and patent rights of the United States, any other country or any political subdivision thereof, all reissues, reexaminations, and extensions thereof, (ii) all applications for letters patent of the United States or any other country and all divisionals, continuations and continuations-in-part thereof, and (iii) all rights to obtain any reissues or extensions of the foregoing.

“Patent License”: all agreements, whether written or oral, providing for the grant by or to Borrower or any Guarantor of any right to make, have made, manufacture, use, sell, offer to sell, have sold, import or export any invention covered in whole or in part by a Patent.

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

“Payment Notice”: the meaning assigned to it in Section 8.11(b).

“Payment Recipient”: the meaning assigned to it in Section 8.11(a).

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

“Permitted Liens”:

(1) Liens existing as of the Closing Date or arising thereafter pursuant to related agreements existing as of the Closing Date;

(2) Liens on property given to secure all or any part of the payment of or financing of all or any part of the purchase price thereof, or the cost of development, operation, construction, alteration, repair or improvement of all or any part thereof; provided that such Liens shall be given (or given pursuant to firm commitment financing arrangements obtained within such period) within 18 months (or in the case of Liens securing any Indebtedness supported by an export credit agency, 24 months) after the later of (i) the acquisition of such property and/or the completion of any such development, operation, construction, alteration, repair or improvement, whichever is later and (ii) the placing into commercial operation of such property after the acquisition or completion of any such development, operation, construction, alteration, repair or improvement and shall attach solely to the property acquired, or constructed, altered or repaired and any improvements then or thereafter placed thereon and the capital stock of any Person formed to acquire such property, and any proceeds thereof, accessions thereto and insurance proceeds thereof;

(3) Liens existing on any property at the time of acquisition of such property or Liens existing on assets of a Person and its Restricted Subsidiaries prior to the time such Person becomes a Restricted Subsidiary (or arising thereafter pursuant to contractual commitments entered into prior to acquiring such property) (including acquisition through merger or consolidation) or at the time of such acquisition (or arising thereafter pursuant to contractual commitments entered into prior to such Person becoming a Restricted Subsidiary) by the Borrower or any Restricted Subsidiary of the Borrower; provided that such Liens do not extend to other assets of the Borrower or its other Restricted Subsidiaries;

(4) (a) Liens on the Equity Interests of any Person, including any Joint Venture, and its Restricted Subsidiaries which, when such Liens arise, concurrently becomes a Restricted Subsidiary or Liens on all or substantially all of the assets of such Person, including any Joint Venture, and its Subsidiaries arising in connection with the purchase or acquisition thereof or of an interest therein by the Borrower or a Subsidiary and (b) Liens on Equity Interests in any Joint Venture of the Borrower or any of its Subsidiaries, or in any Subsidiary of the Borrower that owns an Equity Interest in a Joint Venture to secure Indebtedness contributed or advanced solely to that Joint Venture; provided that, in the case of each of the preceding clauses (a) and (b), such Liens do not extend to other assets of the Borrower or its other Restricted Subsidiaries;

(5) Liens securing Indebtedness of up to 5.0% of Consolidated Net Tangible Assets to any strategic partner of the Borrower and/or one or more of its Restricted Subsidiaries incurred in connection with joint technology efforts between such partner and the Borrower and/or one or more of its Subsidiaries and/or the financing of manufacturing of products;

(6) Liens in favor of the Borrower or a Restricted Subsidiary of the Borrower;

(7) Liens imposed by law, such as carriers', warehousemen's and mechanic's Liens and other similar Liens arising in the ordinary course of business, Liens in connection with legal proceedings and Liens arising solely by virtue of any statutory, common law or contractual provision relating to banker's Liens, rights of set-off or similar rights and remedies as to securities accounts, deposit accounts or other funds maintained with a creditor depository institution;

(8) Liens for taxes, assessments or other governmental charges not yet overdue for a period of more than 30 days or subject to penalties for non-payment or which are being contested in good faith by appropriate proceedings and for which adequate reserves with respect thereto are maintained on the books of the Borrower or the affected Restricted Subsidiary, as the case may be, in accordance with GAAP;

(9) Liens to secure the performance of bids, trade or commercial contracts, government contracts, purchase, construction, sales and servicing contracts (including utility contracts), leases, statutory obligations, surety, stay, customs and appeal bonds, performance bonds and other obligations of a like nature, in each case in the ordinary course of business, deposits as security for contested taxes, import or customs duties, liabilities to insurance carriers or for the payment of rent, and Liens to secure letters of credit, Guarantees, bonds or other sureties given in connection with the foregoing obligations or in connection with workers' compensation, unemployment insurance or other types of social security or similar laws and regulations;

(10) Liens in favor of any customer arising in respect of and not exceeding the amount of performance deposits and partial, progress, advance or other payments by the customer for goods produced or services rendered (or to be produced or rendered) to that customer and consignment arrangements (whether as consignor or consignee) or similar arrangements for the sale or purchase of goods;

(11) Liens upon specific items of inventory or other goods, documents of title and proceeds of any Person securing such Person's obligation in respect of letters of credit or banker's acceptances issued or created in the ordinary course of business for the account of such Person to facilitate the purchase, shipment, or storage of such inventory or other goods;

(12) Liens and deposits securing netting services, business credit card programs, overdraft protection and other treasury, depository and cash management services or incurred in connection with any automated clearing-house transfers of funds or other fund transfer or payment processing services;

(13) Liens on, and consisting of, deposits made by the Borrower to discharge or defease any other Indebtedness;

(14) Liens on insurance policies and the proceeds thereof (i) incurred in connection with the financing of insurance premiums or (ii) with respect to any Subsidiary that is not a Restricted Subsidiary to the extent of such Subsidiary's interest as an insured under such policies;

(15) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods and Liens deemed to exist in connection with Investments in repurchase agreements;

(16) Liens securing Indebtedness or other obligations in an aggregate amount, together with all other Indebtedness and other obligations secured by Liens pursuant to this clause (16), not to exceed \$100,000,000 at any one time outstanding; or

(17) any extension, renewal, substitution or replacement (or successive extensions, renewals, substitutions or replacements), in whole or in part, of any Lien referred to in this clause (17) or the preceding clauses (1) through (16), or any Liens that secure an extension, renewal, replacement, refinancing or refunding (including any successive extensions, renewals, replacements, refinancings or refundings) of any Indebtedness within 12 months of the maturity, retirement or other repayment or prepayment of the Indebtedness (including any such repayment pursuant to amortization obligations with respect to such Indebtedness) being extended, renewed, substituted, replaced, refinanced or refunded, which Indebtedness is or was secured by a Lien referred to in this clause (17) or the preceding clauses (1) through (16).

For the avoidance of doubt, the inclusion of specific Liens in the definition of Permitted Liens shall not create any implication that the obligations secured by such Liens constitute Indebtedness. Terms used in the foregoing definition of Permitted Liens that are defined in the UCC, including the terms accounts, consignee, consignment, consignor, deposit accounts, goods, inventory, securities accounts, security interest and proceeds shall have the meanings set forth in the UCC.

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

“Plan”: at a particular time, any employee benefit plan that is covered by ERISA and in respect of which the Borrower or a Commonly Controlled Entity is (or, if such plan were terminated at such time, would under Section 4069 of ERISA be deemed to be) an “employer” as defined in Section 3(5) of ERISA.

“Plan Asset Regulations”: 29 CFR § 2510.3-101 *et seq.*, as modified by Section 3(42) of ERISA, as amended from time to time.

“Platform”: the meaning set forth in Section 9.2(b).

“Prime Rate”: 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 Administrative Agent) or any similar release by the Federal Reserve Board (as determined by the Administrative Agent). Each change in the Prime Rate shall be effective from and including the date such change is publicly announced or quoted as being effective.

“Property”: with respect to any Person, all of such Person’s interests in any kind of property, assets (including the capital stock in and other securities of any other Person) or revenues.

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

“Public Lender”: the meaning set forth in Section 9.15.

“Qualified Acquisition”: any acquisition (directly or through the acquisition of equity interests) of all or substantially all or any significant portion of the assets of a Person, an operating unit, division or line of business, or other bulk purchase transaction not prohibited under this Agreement so long as (i) the consideration, which shall be cash consideration and/or other non-equity consideration (including any assumed liabilities), equals or exceeds \$400,000,000 and (ii) that the Borrower notifies the Administrative Agent in writing at least five Business Days (or such shorter period as may be reasonably acceptable to the Administrative Agent) prior to the consummation of such acquisition that such acquisition shall be a “Qualified Acquisition” for purposes of this Agreement along with a certificate signed by a Responsible Officer of the Borrower setting forth a calculation of (x) the Total Leverage Ratio immediately prior to such Qualified Acquisition and (y) the Total Leverage Ratio after giving pro forma effect to such Qualified Acquisition; provided that if the Borrower publicly announces such Qualified Acquisition later than five Business Days prior to consummation of the Qualified Acquisition, the Borrower shall deliver such notice (and certificate, if applicable) on the date of announcement.

“Rating Agencies”: each of Moody’s, S&P and Fitch.

“RBA Audit Score”: a Key Performance Indicator measured by RBA Audit Score Average.

“RBA Audit Score Average”: the average of the Responsible Business Alliance (RBA) Validated Assessment Program (VAP) audit scores received by the manufacturing locations of the Borrower and its Subsidiaries at the applicable calendar year end.

“RBA Audit Score Average Applicable Margin Adjustment Amount”: with respect to RBA Audit Score for any calendar year, (a) positive 1.67 basis points if the RBA Audit Score Average as set forth in the Sustainability Pricing Certificate is less than the Partially Successful Completion Threshold for such calendar year, (b) zero basis points if the RBA Audit Score Average as set forth in the Sustainability Pricing Certificate is less than the Successful Completion Threshold and is greater than or equal to the Partially Successful Completion Threshold for such calendar year; and (c) negative 1.67 basis points if the RBA Audit Score Average as set forth in the Sustainability Pricing Certificate is equal to or greater than the Successful Completion Threshold for such calendar year.

“Reference Time” with respect to any setting of the then-current Benchmark means (1) if such Benchmark is LIBOR, 11:00 a.m. (London time) on the day that is two London banking days preceding the date of such setting, and (2) if such Benchmark is not LIBOR, the time determined by the Administrative Agent in its reasonable discretion.

“Refinancing” shall mean the repayment, repurchase, redemption, defeasance or other discharge of the Existing Credit Agreement and the termination and release of any security interests and guarantees in connection therewith.

“Regulatory Change” with respect to each calendar year and in relation to any Key Performance Indicator, a policy change, on which the Borrower and its Subsidiaries has no recourse or ability to act upon, which affects, significantly, whether positively and / or negatively, one or more of the KPI Metrics.

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

“Register”: the meaning set forth in Section 9.6(b)(iv).

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

“Related Persons”: with respect to any Indemnitee, any Affiliate of such Indemnitee and any officer, director, employee, representative or agent of such Indemnitee or Affiliate thereof, in each case that has provided any services in connection with the transactions contemplated under this Agreement and the other Loan Documents.

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

“Required Lenders”: at any time, Lenders holding more than 50% of the aggregate unpaid principal amount of the Term Loans then outstanding and unused Term Commitments; provided that whenever there are one or more Defaulting Lenders, the total outstanding Term Loans and unused Term Commitments of each Defaulting Lender shall be excluded for purposes of making any determination of Required Lenders.

“Requirement of Law”: as to any Person, the certificate of incorporation and bylaws or other organizational or governing documents of such Person, and any law, treaty, rule or regulation or

determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

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

“Responsible Officer”: the chief executive officer, any president, any vice president, the chief financial officer, the treasurer, any assistant treasurer, the secretary or any assistant secretary of the Borrower.

“Restricted Subsidiary”: each Subsidiary of the Borrower, (i) at least 80% of the Voting Stock of which is owned by the Borrower or one or more Subsidiaries of which at least 80% of the Voting Stock is owned directly or indirectly by the Borrower and (ii) is not an Unrestricted Subsidiary, provided that, for purposes of clause (i), any Voting Stock owned by a Subsidiary of the Borrower that is not a Restricted Subsidiary based on the foregoing clause shall be excluded.

“S&P”: Standard & Poor’s Ratings Services, and any successor to its rating agency business.

“Sanctioned Country”: at any time, a country, region or territory which is itself the subject or target of any Sanctions (at the time of this Agreement, Crimea, Cuba, Iran, North Korea and Syria).

“Sanctioned Person”: at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the U.S. Department of State, by the United Nations Security Council, the European Union, any European Union member state, Her Majesty’s Treasury of the United Kingdom or other relevant sanctions authority, (b) any Person operating, organized or resident in a Sanctioned Country, (c) any Person owned or controlled by any such Person or Persons described in the foregoing clauses (a) or (b), or (d) any Person otherwise the subject of any Sanctions.

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

“Scope 1 Emissions”: emissions represented in metric tons CO<sub>2</sub>e from the Borrower and its Subsidiaries’ direct operations, including the manufacturing process, onsite combustion and refrigeration and cooling, with such emissions data collected and calculated in alignment with the Greenhouse Gas Protocol: A Corporate Accounting and Reporting Standard (Revised Edition).

“Scope 2 Emissions”: emissions represented in metric tons CO<sub>2</sub>e from purchased electricity consumed by the Borrower and its Subsidiaries, with such emissions data collected and calculated in alignment with the Greenhouse Gas Protocol: A Corporate Accounting and Reporting Standard (Revised Edition).

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

“Securities Act”: the Securities Act of 1933, as amended, or any successor statute or statutes thereto.

“Significant Subsidiary”: any Subsidiary that is a “significant subsidiary” of the Borrower as defined under clauses (1) or (2) of Rule 1-02(w) of Regulation S-X under the Exchange Act; provided that references to “10 percent” in clauses (1) and (2) of such definition shall be replaced with “20 percent”.

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

“SOFR”: with respect to any Business Day, a rate per annum equal to the secured overnight financing rate for such Business Day published by the SOFR Administrator on the SOFR Administrator’s Website at approximately 8:00 a.m. (New York City time) on the immediately succeeding Business Day.

“SOFR Administrator”: the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

“SOFR Administrator’s Website”: 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.

“Solvent”: when used with respect to any Person and its Subsidiaries, means that, as of any date of determination, (a) the amount of the “present fair saleable value” of the assets of such Person and its Subsidiaries on a consolidated basis will, as of such date, exceed the amount of all “liabilities of such Person and its Subsidiaries on a consolidated basis, contingent or otherwise”, as of such date, as such quoted terms are determined in accordance with applicable federal and state laws governing determinations of the insolvency of debtors, (b) the present fair saleable value of the assets of such Person and its Subsidiaries will, as of such date, be greater than the amount that will be required to pay the probable liability of such Person and its Subsidiaries on a consolidated basis on its debts as such debts become absolute and matured, (c) such Person and its Subsidiaries on a consolidated basis will not have, as of such date, an unreasonably small amount of capital with which to conduct their business, and (d) such Person and its Subsidiaries will be able to pay their debts as they mature. For purposes of this definition, (i) “debt” means liability on a “claim”, and (ii) “claim” means any (x) right to payment, whether or not such a right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured or (y) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured or unmatured, disputed, undisputed, secured or unsecured.

“Stated Maturity”: October 30, 2024.

“Subsidiary”: with respect to any specified Person:

(1) any corporation, association or other business entity of which more than 50% of the total voting power of shares of Capital Stock entitled (without regard to the occurrence of any contingency and after giving effect to any voting agreement or stockholders’ agreement that effectively transfers voting power) to vote in the election of directors, managers or trustees of the corporation, association or other business entity is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person (or a combination thereof); and

(2) any partnership (a) the sole general partner or the managing general partner of which is such Person or a Subsidiary of such Person or (b) the only general partners of which are that Person or one or more Subsidiaries of that Person (or any combination thereof).

“Subsidiary Guaranty”: a guarantee agreement between a Subsidiary and Administrative Agent providing for a Guarantee of the Obligations by such Subsidiary, in such form as the Administrative Agent, the Borrower and such Subsidiary shall deem appropriate.

“Successful Completion Threshold” with respect to each calendar year, the number or percentage set forth in Schedule 1.3 (Sustainability Performance Thresholds) in the row labeled “Successful Completion Threshold” for the applicable Key Performance Indicator for the applicable calendar year.

“Sustainability Adjustment Date”: the date that is five Business Days following receipt from the Administrative Agent of the Sustainability Pricing Certificate in accordance with Section 5.2(d) for the applicable calendar year or the date that is 180 days after the end of the applicable calendar year if the Borrower fails to or elects not to deliver a Sustainability Pricing Certificate for such calendar year.

“Sustainability Applicable Rate Adjustment”: at any date, the applicable rate per annum determined in accordance with the Sustainability Margin Adjustment.

“Sustainability Margin Adjustment”: with respect to any calendar year, an amount (whether positive, negative or zero), equal to the sum of (a) GHG Emissions Intensity Applicable Margin Adjustment Amount, plus (b) the RBA Audit Score Average Applicable Margin Adjustment Amount, plus (c) Waste Diversion Applicable Margin Adjustment Amount, in each case for such calendar year.

“Sustainability Performance Thresholds”: the Borrower’s objectives to improve or maintain over a certain level the KPI Metric of each of the Key Performance Indicators as reflected in the Sustainability Pricing Certificate, and specified in Schedule 1.3 (Sustainability Performance Thresholds).

“Sustainability Pricing Certificate”: a certificate signed by a duly elected Responsible Officer of the Borrower which shall be delivered by the Borrower once per calendar year to the Administrative Agent and Sustainability Structuring Agent pursuant to Section 5.2(d) substantially in the form of Exhibit I attaching (a) true and correct copies of the KPI Metrics Report for the immediately preceding calendar year and setting forth the Sustainability Margin Adjustment and (b) a review report of the KPI Metrics Auditor confirming that the KPI Auditor is not aware of any material modifications that should be made to such computations in order for them to be presented in all material respects in conformity with the applicable reporting criteria.

“Sustainability Pricing Certificate Inaccuracy”: as defined in Section 2.25(d).

“Sustainability Structuring Agent”: Credit Agricole Corporate and Investment Bank or any successor thereto.

“Syndication Agent”: Oversea-Chinese Banking Corporation Limited, Los Angeles Agency or any successors thereto.

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

“Term Loan”: the meaning set forth in Section 2.1.

“Term Commitment”: with respect to each Lender, the obligation of such Lender, if any, to make Term Loans in an aggregate principal amount not to exceed the amount set forth opposite its name on Schedule 1.1 annexed hereto under the heading “Term Commitment Amounts”.



“Term Loan Maturity Date”: the earlier to occur of (a) the Stated Maturity and (b) the acceleration of the Term Loans.

“Term Percentage”: as to any Lender at any time, the percentage which such Lender’s Term Commitment then constitutes of the aggregate Term Commitments (or, at any time after the making of the Term Loans on the Closing Date, the percentage which the aggregate principal amount of such Lender’s Term Loans then outstanding constitutes of the aggregate principal amount of all Term Loans then outstanding).

“Term SOFR”: for the applicable Corresponding Tenor as of the applicable Reference Time, the forward-looking term rate based on SOFR that has been selected or recommended by the Relevant Governmental Body.

“Total Leverage Ratio”: as of the date of determination thereof, the ratio of Indebtedness of the Borrower and its Consolidated Subsidiaries as of such date to Consolidated EBITDA of the Borrower for such Measurement Period.

“Trademarks”: (i) all trademarks, service marks, trade names, corporate names, company names, business names, fictitious business names, trade styles, service marks, logos, domain names, and other source or business identifiers, and all goodwill associated therewith, all registrations and recordings thereof, and all applications in connection therewith (other than “intent to use” applications), whether in the United States Patent and Trademark Office or in any similar office or agency of the United States, any state thereof or any other country or any political subdivision thereof, or otherwise, and all common-law rights related thereto, and (ii) the right to obtain all renewals thereof.

“Trademark License”: any agreement, whether written or oral, providing for the grant by or to Borrower or any Guarantor of any right to use any Trademark.

“Transferee”: any Assignee or Participant.

“Type”: when used in reference to any Term Loan or Borrowing, refers to whether the rate of interest on such Term Loan, or on the Term Loans comprising such Borrowing, is determined by reference to the Base Rate or the Eurodollar Rate.

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

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

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

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

“United States”: the United States of America.

“Unrestricted Subsidiary”: (1) any Subsidiary of the Borrower listed on Schedule 1.2, (2) any Subsidiary of the Borrower designated by the Borrower as an Unrestricted Subsidiary pursuant to Section 5.7

subsequent to the Closing Date, until such Person ceases to be an Unrestricted Subsidiary of the Borrower in accordance with Section 5.7 and (3) any Subsidiary of an Unrestricted Subsidiary.

“Voting Stock”: all classes of capital stock or other interests (including partnership interests) of a Person then outstanding and normally entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof.

“Waste”: a Key Performance Indicator measured by Waste Diversion.

“Waste Diversion”: for each calendar year, expressed as a percentage, the Borrower and its Subsidiaries’ (i) hazardous and non-hazardous waste represented in kilograms diverted from landfill through on-site reuse, off-site reuse, recycling, composting, and recovery (including incineration with energy recovery) divided by (ii) total waste represented in kilograms.

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

“Waste Diversion Applicable Margin Adjustment Amount”: with respect to Waste for any calendar year, (a) positive 1.67 basis points if the Waste Diversion as set forth in the Sustainability Pricing Certificate is less than the Partially Successful Completion Threshold for such calendar year, (b) zero basis points if the Waste Diversion as set forth in the Sustainability Pricing Certificate is less than the Successful Completion Threshold and is greater than or equal to the Partially Successful Completion Threshold for such calendar year; and (c) negative 1.67 basis points if the Waste Diversion as set forth in the Sustainability Pricing Certificate is equal to or greater than the Successful Completion Threshold for such calendar year.

## 1.2. Other Definitional Provisions.

(a) Unless otherwise specified therein, all terms defined in this Agreement shall have the defined meanings when used in the other Loan Documents or any certificate or other document made or delivered pursuant hereto or thereto.

(b) As used herein and in the other Loan Documents, and any certificate or other document made or delivered pursuant hereto or thereto, (i) the words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”, (ii) the word “incur” shall be construed to mean incur, create, issue, assume, become liable in respect of or suffer to exist (and the words “incurred” and “incurrence” shall have correlative meanings) and (iii) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, Capital Stock, securities, revenues, accounts, leasehold interests and contract rights.

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

(d) The meanings given to terms defined herein shall be equally applicable to both the singular and plural forms of such terms. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. References to agreements or other Contractual Obligations shall, unless otherwise specified, be deemed to refer to such agreements or Contractual Obligations as amended, supplemented, restated or otherwise modified from time to time to the extent permitted herein.

Except as otherwise provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP.

1.3. Delivery of Notices. Any reference to a delivery or notice date that is not a Business Day shall be deemed to mean the next succeeding day that is a Business Day.

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

## SECTION 2 The Credits

2.1. Term Commitments. Subject to the terms and conditions hereof, each Lender severally agrees to make term loans in Dollars (a "Term Loan") to the Borrower on the Closing Date in an amount equal to the amount of the Term Commitment of such Lender. The Term Loans may from time to time be Eurodollar Loans or Base Rate Loans, as determined by the Borrower and notified to the Administrative Agent in accordance with Sections 2.2 and 2.12.

2.2. Term Loans. Each Lender at its option may make any Eurodollar Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Term Loan by designating such branch or Affiliate as its lending office; *provided* that any exercise of such option shall not affect the obligation of the Borrower to repay such Term Loan in accordance with the terms of this Agreement.

2.3. Requests for Term Loan Borrowings. The Borrower shall give the Administrative Agent irrevocable notice substantially in the form of Exhibit B hereto (which notice must be received by the Administrative Agent (a) in the case of a Eurodollar Borrowing, not later than 1:00 p.m., New York City time two (2) Business Days prior to the proposed Borrowing, or (b) in the case of a Base Rate Borrowing, not later than 12:00 p.m., New York City time, on the date of the proposed Borrowing (which shall be a Business Day)) requesting that the applicable Lenders make the Term Loans on the requested Borrowing Date. Each such Borrowing Request shall be irrevocable and shall be signed by a Responsible Officer of the Borrower. Each such Borrowing Request shall specify the following information:

- (i) the aggregate amount of the requested Borrowing;
- (ii) the Borrowing Date;
- (iii) whether such Borrowing is to be a Base Rate Borrowing or a Eurodollar Borrowing;
- (iv) in the case of a Eurodollar Borrowing, the initial Interest Period to be applicable thereto, which shall be a period contemplated by the definition of the term "Interest Period"; and

(v) the location and number of the Borrower's account to which funds are to be disbursed, which shall comply with the requirements of Section 2.5.

If no election as to the Type of Term Loan Borrowing is specified, then the requested Term Loan Borrowing shall be a Base Rate Borrowing. If no Interest Period is specified with respect to any requested Eurodollar Term Loan Borrowing, then the Borrower shall be deemed to have selected an Interest Period of one month's duration. Promptly following receipt of a Borrowing Request in accordance with this Section, the Administrative Agent shall advise each Lender of the details thereof and of the amount of such Lender's Term Loan to be made as part of the requested Borrowing.

2.4. [Reserved].

2.5. Funding of Term Loan Borrowings.

(a) Each Lender shall make each Term Loan to be made by it hereunder on the proposed date thereof by wire transfer of immediately available funds by 2:00 p.m., New York City time, to the account of the Administrative Agent most recently designated by it for such purpose by notice to the Lenders. The Administrative Agent will make such Term Loans available to the Borrower by promptly crediting the amounts so received, in like funds, to an account of the Borrower maintained at a financial institution reasonably acceptable to the Administrative Agent and designated by the Borrower in the applicable Borrowing Request.

(b) Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing that such Lender will not make available to the Administrative Agent such Lender's Term Loan to be made as part of the requested Borrowing, the Administrative Agent may assume that such Lender has made such Term Loan available on such date in accordance with paragraph (a) of this Section and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its Term Loan available to the Administrative Agent, then the applicable Lender and the Borrower severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at (i) in the case of such Lender, the greater of the NYFRB Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation or (ii) in the case of the Borrower, the interest rate applicable to Base Rate Loans. If such Lender pays such amount to the Administrative Agent, then such amount shall constitute such Lender's Term Loan included in such Borrowing.

2.6. Termination and Reduction of Term Commitments. Unless previously terminated, the Term Commitments shall terminate upon the making of the Term Loans on the Closing Date.

2.7. Repayment of Term Loans; Evidence of Debt.

(a) The Borrower hereby unconditionally promises to pay the Administrative Agent for the account of each Lender the then unpaid principal amount of each Term Loan made by such Lender on the Term Loan Maturity Date.

(b) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing Indebtedness of the Borrower to such Lender resulting from each Term Loan of such Lender from time to time, including the amounts of principal and interest payable and paid to such Lender from time to time under this Agreement.

(c) The Administrative Agent shall, in respect of this Agreement, record in the Register, with separate sub-accounts for each Lender, (i) the amount and Borrowing Date of each Term Loan made hereunder, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder and (iii) both the amount of any payment received by the Administrative Agent hereunder from the Borrower and each Lender's share thereof.

(d) The entries made in the Register and the accounts of each Lender maintained pursuant to Sections 2.7(b) and (c) shall, to the extent permitted by applicable law, be prima facie evidence of the existence and amounts of the obligations of the Borrower therein recorded absent manifest error; provided, however, that the failure of any Lender or the Administrative Agent to maintain the Register or any such account, or any error therein, shall not in any manner affect the obligation of the Borrower to repay (with applicable interest) the Term Loans made to the Borrower by such Lender in accordance with the terms of this Agreement.

(e) If so requested after the Closing Date by any Lender by written notice to the Borrower (with a copy to the Administrative Agent), the Borrower will execute and deliver to such Lender, promptly after the Borrower's receipt of such notice, a Note to evidence such Lender's Term Loans in form and substance reasonably satisfactory to the Lender and the Borrower.

## 2.8. Interest Rates and Payment Dates.

(a) Each Eurodollar Loan shall bear interest for each day during each Interest Period with respect thereto at a rate per annum equal to the Eurodollar Rate determined for such Interest Period plus the Applicable Margin.

(b) Each Base Rate Loan shall bear interest at a rate per annum equal to the Base Rate from time to time plus the Applicable Margin.

(c) Notwithstanding the foregoing, upon the occurrence and during the continuance of an Event of Default under Section 7.1(a) or (b), at any time after the date on which any principal amount of any Term Loan is due and payable (whether on the maturity date therefor, upon acceleration or otherwise), or after any other monetary Obligation of the Borrower or any other Loan Party shall have become due and payable, and, in each case, for so long as such overdue Obligation remains unpaid, the Borrower shall pay, but only to the extent permitted by law, interest (after as well as before judgment) on such unpaid overdue amounts at a rate per annum equal to (i) in the case of overdue principal on any Term Loan, the rate of interest that otherwise would be applicable to such Term Loan plus 2% per annum and (ii) in the case of overdue interest, fees, and other monetary Obligations, the rate then applicable to Base Rate Loans plus 2% per annum.

(d) Interest shall be payable in arrears on each Interest Payment Date; provided that interest accruing pursuant to paragraph (c) of this Section shall be payable from time to time on demand.

## 2.9. Computation of Interest and Fees.

(a) Interest and fees payable pursuant hereto shall be calculated on the basis of a 360-day year for the actual days elapsed, except that, with respect to Base Rate Loans, when the Base Rate is based on the Prime Rate the interest thereon shall be calculated on the basis of a 365- (or 366-, as the case may be) day year for the actual days elapsed. The Administrative Agent shall as soon as practicable notify the Borrower and the Lenders of each determination of a Eurodollar Rate. Any change in the interest rate on a Term Loan resulting from a change in the Base Rate or the Eurocurrency Reserve Requirements shall become effective as of the opening of business on the day on which such change becomes effective. The Administrative Agent

shall as soon as practicable notify the Borrower and the Lenders of the effective date and the amount of each such change in interest rate.

(b) Each determination of an interest rate by the Administrative Agent pursuant to any provision of this Agreement shall be conclusive and binding on the Borrower and the Lenders in the absence of manifest error.

(c) If, as a result of any restatement of public disclosure, inaccuracy in any certificate delivered or similar miscalculation of the KPI Metrics and an increase in the Applicable Margins for such period would result from proper calculations based thereon, the Borrower shall retroactively be obligated to pay (or, after the occurrence of an actual or deemed entry of an order for relief with respect to the Borrower Debtor Relief Laws, automatically and without further action by the Administrative Agent or any Lender), an amount equal to the excess of the amount of interest and fees that should have been paid for such period over the amount of interest and fees actually paid for such period.

2.10. Benchmark Replacement Setting.

(a) Subject to clauses (b), (c), (d), (e) and (f) of this Section 2.10, if prior to the first day of any Interest Period:

(i) the Administrative Agent shall have reasonably determined (which determination shall be conclusive and binding upon the Borrower) that, by reason of circumstances affecting the relevant market, adequate and reasonable means do not exist for ascertaining the Eurodollar Rate for such Interest Period, or

(ii) the Administrative Agent shall have received notice from the Required Lenders that the Eurodollar Rate determined or to be determined for such Interest Period in good faith by such Required Lenders will not adequately and fairly reflect the cost to such Lenders (as conclusively certified by such Lenders) of making or maintaining their affected Term Loans during such Interest Period,

the Administrative Agent shall give telecopy or telephonic notice thereof to the Borrower and the relevant Lenders as soon as practicable thereafter. If such notice is given (x) any Eurodollar Loans hereunder requested to be made on the first day of such Interest Period shall be made as Base Rate Loans, (y) any Term Loans hereunder that were to have been converted on the first day of such Interest Period to Eurodollar Loans shall be continued as Base Rate Loans and (z) any outstanding Eurodollar Loans hereunder shall be converted, on the last day of the then-current Interest Period, to Base Rate Loans;

provided that if the circumstances giving rise to such notice shall cease or otherwise become inapplicable to such Required Lenders, then such Required Lenders shall promptly give notice of such change in circumstances to the Administrative Agent and the Borrower. Until such notice has been withdrawn by the Administrative Agent, no further Eurodollar Loans hereunder shall be made or continued as such, nor shall the Borrower have the right to convert Term Loans hereunder to Eurodollar Loans.

(b) Benchmark Replacement. Notwithstanding anything to the contrary herein or in any other Loan Document, if a Benchmark Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date have occurred prior to the Reference Time in respect of any setting of the then-current Benchmark, then (x) if a Benchmark Replacement is determined in accordance with clause (1) or (2) 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 (y) if a Benchmark Replacement is determined in accordance with clause (3) 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 date notice of such Benchmark Replacement is provided to the Lenders without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document so long as the Administrative Agent has not received, by such time, written notice of objection to such Benchmark Replacement from Lenders comprising the Required Lenders.

(c) Benchmark Replacement Conforming Changes. In connection with the implementation of a Benchmark Replacement, the Administrative Agent will have the right to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document.

(d) Notices; Standards for Decisions and Determinations. The Administrative Agent will promptly notify the Borrower and the Lenders of (i) any occurrence of a Benchmark Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date, (ii) the implementation of any Benchmark Replacement, (iii) the effectiveness of any Benchmark Replacement Conforming Changes, (iv) the removal or reinstatement of any tenor of a Benchmark pursuant to clause (e) below and (v) the commencement or conclusion of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Administrative Agent or, if applicable, any Lender (or group of Lenders) pursuant to this Section titled “Benchmark Replacement Setting,” 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 titled “Benchmark Replacement Setting.”

(e) 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 or LIBOR) 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 Administrative Agent in its reasonable discretion or (B) 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 or will be no longer representative, then the Administrative Agent may modify the definition of “Interest Period” for any Benchmark settings at or after such time to remove such unavailable or non-representative 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 or will no longer be representative for a Benchmark (including a Benchmark Replacement), then the Administrative Agent may modify the definition of “Interest Period” for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(f) Benchmark Unavailability Period. Upon the Borrower’s receipt of notice of the commencement of a Benchmark Unavailability Period, the Borrower may revoke any request for a Eurodollar Borrowing of, conversion to or continuation of Eurodollar Loans to be made, converted or continued during any Benchmark Unavailability Period and, failing that, the Borrower will be deemed to have converted any such request into a request for a Borrowing of or conversion to Base Rate Loans. During any Benchmark Unavailability Period or at any time that a 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.

The Administrative Agent does not warrant or accept any responsibility for, and shall not have any liability in respect of (a) the monitoring, determination or verification of the unavailability or cessation of LIBOR (or other applicable Benchmark), (b) the administration of, submission of or any other matter related to the reference rate or any spread adjustment, any component definition thereof or rates referenced in the definition thereof or any alternative, comparable or successor rate or adjustment thereto (including any then-current Benchmark, any Benchmark Replacement or any Benchmark Replacement Adjustment), including whether the composition or characteristics of any such alternative, comparable or successor rate or adjustment (including any Benchmark Replacement or any Benchmark Replacement Adjustment) will be similar to, or produce the same value of economic equivalence of, reference rate, any other Benchmark or any Benchmark Replacement Adjustment, or (b) the effect, implementation or composition of any Benchmark Replacement Conforming Changes.

#### 2.11. Prepayment of Term Loans.

(a) Subject to the provisos below, the Borrower may at any time and from time to time prepay the Term Loans, in whole or in part, without premium or penalty, upon irrevocable notice, which shall be in substantially the form attached hereto as Exhibit G, delivered to the Administrative Agent prior to 10:00 A.M., New York City time on the same Business Day, which notice shall specify the date and amount of prepayment and whether the prepayment is of Eurodollar Loans or Base Rate Loans; provided that if a Eurodollar Loan is prepaid on any day other than the last day of the Interest Period applicable thereto, the Borrower shall also pay any amounts owing pursuant to Section 2.17. Upon receipt of any such notice of prepayment, the Administrative Agent shall notify each relevant Lender thereof on the date of receipt of such notice. If any such notice is given, the amount specified in such notice shall be due and payable on the date specified therein, together with (except in the case of prepayments of Term Loans maintained as Base Rate Loans) accrued interest to such date on the amount prepaid. Partial prepayments shall be in an aggregate principal amount of \$1,000,000 or a whole multiple of \$1,000,000 in excess thereof (or, if less, the then outstanding principal amount of Term Loans). The application of any prepayment pursuant to this Section 2.11(a) shall be made, first, to Base Rate Loans of the respective Lenders (and of the respective tranche, if there are multiple tranches) and, second, to Eurodollar Loans of the respective Lenders (and of the respective tranche, if there are multiple tranches). A notice of prepayment of all outstanding Term Loans pursuant to this Section 2.11(a) may state that such notice is conditioned upon the effectiveness of other credit facilities, securities offerings or other transactions, the proceeds of which will be used to refinance in full this Agreement, in which case such notice may be revoked by the Borrower (by notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied.

#### 2.12. Conversion and Continuation Options.

(a) The Borrower may elect from time to time to convert Eurodollar Loans to Base Rate Loans by giving the Administrative Agent prior irrevocable notice, in substantially the form attached hereto as Exhibit F, of such election no later than 12:00 Noon, New York City time, on the Business Day preceding the proposed conversion date, provided that any such conversion of Eurodollar Loans may only be made on the last day of an Interest Period with respect thereto. The Borrower may elect from time to time to convert Base Rate Loans to Eurodollar Loans by giving the Administrative Agent prior irrevocable notice of such election no later than 12:00 Noon, New York City time, on the third (3rd) Business Day preceding the proposed conversion date (which notice shall specify the length of the initial Interest Period therefor), provided that no Base Rate Loan may be converted into a Eurodollar Loan when any Event of Default has occurred and is continuing and the Administrative Agent or the Required Lenders have determined in its or their sole



discretion not to permit such conversions. Upon receipt of any such notice, the Administrative Agent shall promptly notify each relevant Lender thereof.

(b) Subject to the final sentence of this Section 2.12(b), any Eurodollar Loan may be continued as such upon the expiration of the then current Interest Period with respect thereto by the Borrower giving irrevocable notice no later than 12:00 Noon, New York City time, on the third (3rd) Business Day preceding the proposed continuation date to the Administrative Agent, in substantially the form attached hereto as Exhibit F, in accordance with the applicable provisions of the term “Interest Period” set forth in Section 1.1, of the length of the next Interest Period to be applicable to such Term Loans, provided that no Eurodollar Loan may be continued as such when any Event of Default has occurred and is continuing and the Administrative Agent has or the Required Lenders have determined in its or their sole discretion not to permit such continuations, and provided, further, that if the Borrower shall fail to give any required notice as described above in this paragraph or if such continuation is not permitted pursuant to the preceding proviso such Eurodollar Loans shall be automatically converted to Base Rate Loans on the last day of such then expiring Interest Period. Upon receipt of any such notice, the Administrative Agent shall promptly notify each relevant Lender thereof. The Borrower may provide in a Borrowing Request that, for each Interest Period ending on and after June 14, 2021, the Borrower elects for the then outstanding principal amount of the Term Loans to be automatically continued for an Interest Period of one month and such Borrowing Request shall constitute notice of continuation as required under this Section 2.12(b); provided that (i) the Borrower agrees that if prior to the time of any such continuation any Event of Default has occurred and is continuing or will (immediately after giving effect to such continuation) occur and be continuing, it will immediately notify the Administrative Agent and (ii) prior to the time of any such automatic continuation, unless the Administrative Agent receives written notice to the contrary from the Borrower, the Borrower shall be deemed to certify that no Event of Default has occurred or is continuing

2.13. Limitations on Eurodollar Tranches. Notwithstanding anything to the contrary in this Agreement, all borrowings, conversions and continuations of Eurodollar Loans and all selections of Interest Periods shall be in such amounts and be made pursuant to such elections so that no more than ten different Interest Periods of Term Loans be outstanding at any one time (unless a greater number of Interest Periods is permitted by the Administrative Agent).

2.14. Pro Rata Treatment, etc.

(a) Except as otherwise provided herein, the Term Loan Borrowing on the Closing Date shall be made pro rata among the Lenders.

(b) Except as otherwise provided herein, each payment (including each prepayment) by the Borrower on account of principal or interest of the Term Loans shall be made pro rata according to the respective outstanding principal amounts of such Term Loans then held by the applicable Lenders.

(c) All payments by the Borrower hereunder and under the Notes shall be made in Dollars in immediately available funds without setoff or counterclaim at the Funding Office of the Administrative Agent by 2:00 P.M., New York City time, on the date on which such payment shall be due, provided that if any payment hereunder would become due and payable on a day other than a Business Day such payment shall become due and payable on the next succeeding Business Day and, with respect to payments of principal, interest thereon shall be payable at the then applicable rate during such extension. Interest in respect of any Term Loan hereunder shall accrue from and including the date of such Term Loan to but excluding the date on which such Term Loan is paid in full.

(d) Unless the Administrative Agent shall have been notified in writing by the Borrower prior to the date of any payment due to be made by the Borrower hereunder that the Borrower will not make such

payment to the Administrative Agent, the Administrative Agent may assume that the Borrower is making such payment, and the Administrative Agent may, but shall not be required to, in reliance upon such assumption, make available to the Lenders their respective pro rata shares of a corresponding amount. If such payment is not made to the Administrative Agent by the Borrower within three (3) Business Days after such due date, the Administrative Agent shall be entitled to recover, on demand, from each Lender to which any amount which was made available pursuant to the preceding sentence, such amount with interest thereon at the rate per annum equal to the daily average Federal Funds Effective Rate. Nothing herein shall be deemed to limit the rights of the Administrative Agent or any Lender against the Borrower.

2.15. Requirements of Law.

(a) If the adoption of or any change in any Requirement of Law or in the interpretation or application thereof or compliance by any Lender with any request or directive (whether or not having the force of law) from any central bank or other Governmental Authority, in each case, made subsequent to the Closing Date (including, but not limited to, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and, in each case, all requests, rules, guidelines or directives thereunder or issued in connection therewith and (ii) all requests, rules, guidelines, requirements and directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign Governmental Authorities, in each case pursuant to Basel III):

(i) shall subject the Administrative Agent, any Lender to any Tax of any kind whatsoever with respect to this Agreement or any Eurodollar Loan made by it (except for Non-Excluded Taxes or Other Taxes covered by Section 2.16 and any Excluded Taxes);

(ii) shall impose, modify or hold applicable any reserve, special deposit, compulsory loan or similar requirement against assets held by, deposits or other liabilities in or for the account of, advances, loans or other extensions of credit by, or any other acquisition of funds by, any office of such Lender that is not otherwise included in the determination of the Eurodollar Rate; or

(iii) shall impose on any such Lender or the London interbank market (by reasons of such Lender's participation in the London interbank market) any other condition, cost or expense (other than Taxes) affecting this Agreement or Term Loans made by such Lender;

and the result of any of the foregoing is to increase the cost to such Lender, by an amount that such Lender deems to be material, of making, converting into, continuing or maintaining Eurodollar Loans, or to reduce any amount receivable hereunder in respect thereof, then, in any such case, the Borrower shall promptly pay such Lender, upon its demand, any additional amounts necessary to compensate such Lender for such increased cost or reduced amount receivable. If any Lender becomes entitled to claim any additional amounts pursuant to this paragraph, it shall promptly notify the Borrower (with a copy to the Administrative Agent) of the event by reason of which it has become so entitled.

(b) If any Lender shall have determined that the adoption of or any change in any Requirement of Law regarding capital adequacy or liquidity requirements or in the interpretation or application thereof or compliance by such Lender or any corporation controlling such Lender with any request or directive regarding capital adequacy or liquidity requirements (whether or not having the force of law) from any Governmental Authority made subsequent to the Closing Date shall have the effect of reducing the rate of return on such Lender's or such corporation's capital as a consequence of its obligations hereunder to a level below that which such Lender or such corporation could have achieved but for such adoption, change or compliance (taking into consideration such Lender's or such corporation's policies with respect to capital adequacy or liquidity requirements) by an amount deemed by such Lender to be material, then from time to time, after submission by such Lender to the Borrower (with a copy to the Administrative Agent) of a written

request therefor, the Borrower shall pay to such Lender such additional amount or amounts as will compensate such Lender or such corporation for such reduction.

(c) A certificate as to any additional amounts payable pursuant to this Section submitted by any Lender to the Borrower (with a copy to the Administrative Agent) shall be conclusive in the absence of manifest error. Notwithstanding anything to the contrary in this Section 2.15, the Borrower shall not be required to compensate any Lender pursuant to this Section 2.15 for any amounts incurred more than 180 days prior to the date that such Lender notifies the Borrower of such Lender's intention to claim compensation therefor; provided that, if the circumstances giving rise to such claim have a retroactive effect, then such 180 days period shall be extended to include the period of such retroactive effect. The obligations of the Borrower pursuant to this Section 2.15 shall survive the termination of this Agreement and the payment of the Term Loans and all other amounts payable hereunder.

#### 2.16. Taxes.

(a) Unless required by applicable law (as determined in good faith by the applicable withholding agent), all payments by or on account of any obligation of any Loan Party hereunder or under any other Loan Document shall be made free and clear of, and without deduction or withholding for or on account of, any Taxes, excluding (i) Taxes imposed on or measured by net income (however denominated), gross receipts Taxes (imposed in lieu of net income Taxes) and franchise Taxes (imposed in lieu of net income Taxes) imposed on the Administrative Agent or any Lender as a result of such recipient (A) being organized or having its principal office in the applicable taxing jurisdiction, or in the case of any Lender, having its applicable lending office in such jurisdiction, or (B) having any other present or former connection with the applicable taxing jurisdiction (other than any such connection arising solely from the Administrative Agent or such Lender having executed, delivered, become a party to, or performed its obligations or received a payment under, or enforced, and/or engaged in any activities contemplated with respect to this Agreement or any other Loan Document); (ii) any Taxes in the nature of the branch profits tax within the meaning of Section 884 of the Code imposed by any jurisdiction described in clause (i) above; (iii) other than in the case of an assignee pursuant to a request by the Borrower under Section 2.22 hereof, any U.S. federal withholding tax except (A) to the extent such withholding tax results from a change in a Requirement of Law after the recipient became a party hereto or changed its lending office or (B) to the extent that such recipient's assignor (if any) was entitled immediately prior to such assignment or such recipient was entitled immediately prior to changing its lending office to receive additional amounts from any Loan Party with respect to such withholding tax pursuant to this Section 2.16(a); (iv) any withholding Tax that is attributable to the recipient's failure to comply with Section 2.16(e) hereof; and (v) any withholding Taxes imposed pursuant to FATCA. If any such non-excluded Taxes ("Non-Excluded Taxes") or Other Taxes are required by law to be withheld by the applicable withholding agent from any amounts payable to the Administrative Agent or any Lender hereunder, or under any other Loan Document: (x) the amounts so payable by the applicable Loan Party to the Administrative Agent or such Lender shall be increased to the extent necessary so that after all required deductions for Non-Excluded Taxes and Other Taxes (including deductions for Non-Excluded Taxes and Other Taxes applicable to additional sums payable under this Section 2.16) have been made, the Lender (or, in the case of any payment made to the Administrative Agent for its own account, the Administrative Agent) receives an amount equal to the sum it would have received had no such deduction or withholding for Non-Excluded Taxes and Other Taxes been made, (y) the applicable withholding agent shall make such deductions, and (z) the applicable withholding agent shall timely pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law.

Notwithstanding anything to the contrary contained in this Section 2.16(a) or Section 2.16(b), unless the Administrative Agent or a Lender gives notice to the applicable Loan Party that such Loan Party is obligated to pay an amount under Section 2.16(a) or Section 2.16(b) within 180 days of the later of (x) the date the applicable party incurs the Taxes or (y) the date the applicable party has knowledge of its incurrence

of the Taxes, then such party shall not be entitled to be compensated for any penalties, interest or expenses relating to such Taxes, except to the extent such penalties, interest or expenses arise or accrue on or after the date that occurs 180 days prior to the date such party gives notice to the applicable Loan Party, but if the circumstances giving rise to such claim have a retroactive effect (e.g., in connection with the audit of a prior tax year), then such 180 day period shall be extended to include such period of retroactive effect.

(b) In addition, the relevant Loan Party shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law.

(c) Whenever any Taxes are payable by a Loan Party pursuant to this Section 2.16, as promptly as possible thereafter such Loan Party shall send to the Administrative Agent for its own account or for the account of the relevant Lender, as the case may be, a certified copy of an original official receipt received, if any, by the Borrower or other documentary evidence showing payment thereof.

(d) The Borrower shall indemnify the Administrative Agent and each Lender (within 10 days after demand therefor) for the full amount of any Non-Excluded Taxes or Other Taxes (including Non-Excluded Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section 2.16), and for any reasonable expenses arising therefrom or with respect thereto, that may become payable by the Administrative Agent or any Lender, whether or not such Non-Excluded Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority; provided that the Borrower shall not be obligated to indemnify the Administrative Agent or any Lender for any penalties, interest or expenses relating to Non-Excluded Taxes or Other Taxes to the extent that such penalties, interest or expenses are found by a final and nonappealable decision of a court of competent jurisdiction to have resulted from such party's gross negligence or willful misconduct. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(e) Each Lender shall, at such times as are reasonably requested by the Borrower or the Administrative Agent, provide the Borrower and the Administrative Agent with any documentation prescribed by law, or reasonably requested by the Borrower or the Administrative Agent, certifying as to any entitlement of such Lender to an exemption from, or reduction in, any withholding Tax with respect to any payments to be made to such Lender under the Loan Documents. In addition, each Lender shall, at such times as reasonably requested by the Borrower or the Administrative Agent, deliver such other documentation prescribed by applicable law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Each such Lender shall, whenever a lapse in time or change in circumstances renders any such documentation (including any documentation specifically referenced below) expired, obsolete or inaccurate in any material respect, or upon the reasonable request of the Borrower or the Administrative Agent, deliver promptly to the Borrower and the Administrative Agent updated or other appropriate documentation (including any new documentation reasonably requested by the applicable withholding agent) or promptly notify the Borrower and the Administrative Agent of its legal ineligibility to do so. Unless the applicable withholding agent has received forms or other documents satisfactory to it indicating that payments under any Loan Document to or for a Lender are not subject to withholding tax or are subject to such Tax at a rate reduced by an applicable tax treaty, the Borrower, Administrative Agent or other applicable withholding agent shall withhold amounts required to be withheld by applicable law from such payments at the applicable statutory rate. Each Lender hereby authorizes the Administrative Agent to deliver to the Borrower and to any successor Administrative Agent any documentation provided to the Administrative Agent pursuant to this Section 2.16(e).

Without limiting the generality of the foregoing:

(i) Each Lender that is a “United States person” (as defined in Section 7701(a)(30) of the Code) shall deliver to the Borrower and the Administrative Agent on or before the date on which it becomes a party to this Agreement two properly completed and duly signed original copies of Internal Revenue Service Form W-9 (or any successor form) certifying that such Lender is exempt from U.S. federal backup withholding.

(ii) Each Lender that is not a “United States person” (as defined in Section 7701(a)(30) of the Code) shall deliver to the Borrower and the Administrative Agent on or before the date on which it becomes a party to this Agreement whichever of the following is applicable:

(A) two duly completed copies of Internal Revenue Service Form W-8BEN or W-8BEN-E (or any successor forms) claiming eligibility for benefits of an income tax treaty to which the United States of America is a party,

(B) two duly completed copies of Internal Revenue Service Form W-8ECI (or any successor forms),

(C) in the case of a Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate, in substantially the form of Exhibit E (any such certificate a “United States Tax Compliance Certificate”), or any other form approved by the Administrative Agent, to the effect that such Lender is not (A) a “bank” within the meaning of Section 881(c)(3)(A) of the Code, (B) a “10 percent shareholder” of the Borrower within the meaning of Section 881(c)(3)(B) of the Code, or (C) a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Code, and that no payments in connection with the Loan Documents are effectively connected with such Lender’s conduct of a U.S. trade or business and (y) two duly completed copies of Internal Revenue Service Form W-8BEN or W-8BEN-E (or any successor forms),

(D) to the extent a Lender is not the beneficial owner (for example, where the Lender is a partnership, or is a Lender that has granted a participation), Internal Revenue Service Form W-8IMY (or any successor forms) of the Lender, accompanied by a Form W-8ECI, W-8BEN or W-8BEN-E, United States Tax Compliance Certificate, Form W-9, Form W-8IMY (or other successor forms) or any other required information 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 are claiming the portfolio interest exemption, the United States Tax Compliance Certificate shall be provided by such Lender on behalf of such direct or indirect partner(s)), or

(E) any other form prescribed by applicable requirements of U.S. federal income tax 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 requirements of law to permit the Borrower and the Administrative Agent to determine the withholding or deduction required to be made.

(iii) If a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the

Borrower or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their FATCA obligations, to determine whether such Lender has or has not complied with such Lender's FATCA obligations and to determine the amount, if any, to deduct and withhold from such payment. Solely for purposes of this clause (iii), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certificate or promptly notify the Loan Parties and the Administrative Agent in writing of its legal inability to do so. Notwithstanding any other provision of this clause (e), a Lender shall not be required to deliver any forms, documentation or other information that such Lender is not legally eligible to deliver.

(f) If the Administrative Agent or any Lender determines, in its sole discretion, that it has received a refund of any Non-Excluded Taxes or Other Taxes as to which it has been indemnified by a Loan Party or with respect to which a Loan Party has paid additional amounts pursuant to this Section 2.16, it shall pay over such refund the applicable Loan Party (but only to the extent of indemnity payments made, or additional amounts paid, by such Loan Party under this Section 2.16 with respect to the Non-Excluded Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of the Administrative Agent or such Lender, as the case may be, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund, net of any Taxes payable by the Administrative Agent or such Lender); provided that the applicable Loan Party, upon the request of the Administrative Agent or such Lender, agrees to repay the amount paid over to such Loan Party (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Administrative Agent or such Lender in the event the Administrative Agent or such Lender, as the case may be, is required to repay such refund to such Governmental Authority. This paragraph shall not be construed to require the Administrative Agent or any Lender to make available its tax returns (or any other information relating to its Taxes which it deems confidential) to the Borrower or any other Person.

(g) The agreements in this Section 2.16 shall survive the termination of this Agreement, any assignment by or replacement of a Lender, resignation of the Administrative Agent and the payment of the Term Loans and all other amounts payable hereunder or any other Loan Document.

(h) For the avoidance of doubt, any payments made by the Administrative Agent to any Lender shall be treated as payments made by the applicable Loan Party.

2.17. Indemnity. The Borrower agrees to indemnify each Lender for, and to hold each Lender harmless from, any loss or expense that such Lender may sustain or incur as a consequence of (a) default by the Borrower in making a borrowing of, conversion into or continuation of Eurodollar Loans after the Borrower has given a notice requesting the same in accordance with the provisions of this Agreement, (b) default by the Borrower in making any prepayment of or conversion from Eurodollar Loans after the Borrower has given a notice thereof in accordance with the provisions of this Agreement, or (c) the making of a prepayment or conversion of Eurodollar Loans on a day that is not the last day of an Interest Period with respect thereto. Such indemnification may include an amount equal to the excess, if any, of (i) the amount of interest that would have accrued on the amount so prepaid, or not so borrowed, converted or continued, for the period from the date of such prepayment or of such failure to borrow, convert or continue to the last day of such Interest Period (or, in the case of a failure to borrow, convert or continue, the Interest Period that would have commenced on the date of such failure) in each case at the applicable rate of interest for such Term Loans provided for herein (excluding, however, the Applicable Margin included therein, if any) over (ii) the amount of interest (as reasonably determined by such Lender) that would have accrued to such Lender

on such amount by placing such amount on deposit for a comparable period with leading banks in the interbank eurodollar market. A certificate as to any amounts payable pursuant to this Section submitted to the Borrower by any Lender shall be conclusive in the absence of manifest error. Notwithstanding anything to the contrary in this Section 2.17, the Borrower shall not be required to compensate a Lender pursuant to this Section 2.17 for any amounts incurred more than 180 days prior to the date that such Lender notifies the Borrower of such Lender's intention to claim compensation therefor; provided that, if the circumstances giving rise to such claim have a retroactive effect, then such 180 days period shall be extended to include the period of such retroactive effect. This covenant shall survive the termination of this Agreement and the payment of the Term Loans and all other amounts payable hereunder.

2.18. Change of Lending Office. Each Lender agrees that, upon the occurrence of any event giving rise to the operation of Section 2.15 or 2.16(a) with respect to such Lender, it will, if requested by the Borrower, use reasonable efforts (subject to overall policy considerations of such Lender) to designate another lending office for any Term Loans affected by such event with the object of avoiding the consequences of such event; provided that such designation is made on terms that, in the good faith judgment of such Lender, cause such Lender and its lending office(s) to suffer no economic, legal or regulatory disadvantage, and provided, further, that nothing in this Section shall affect or postpone any of the obligations of the Borrower or the rights of any Lender pursuant to Section 2.15 or 2.16(a).

2.19. Fees. The Borrower agrees to pay to the Administrative Agent (i) the fees in the amounts and on the dates as set forth in the Engagement Letter and (ii) for its own account, the annual administration fee separately agreed in writing between the Borrower and the Administrative Agent, and, in each case, to perform any other obligations contained therein.

2.20. Nature of Fees. All Fees shall be paid on the dates due, in immediately available funds, to the Administrative Agent (for the respective accounts of the Administrative Agent and the Lenders), as provided herein. Once paid, none of the Fees shall be refundable under any circumstances.

2.21. [Reserved].

2.22. Replacement of Lenders. The Borrower shall be permitted to replace any Lender that (a) requests reimbursement for amounts owing pursuant to Section 2.15, 2.16 or 2.17, and is unable to designate a different lending office in accordance with Section 2.18 so as to eliminate the continued need for payment of amounts owing pursuant to Sections 2.15, 2.16 or 2.17, or (b) does not consent to any proposed amendment, supplement, modification, consent or waiver of any provision of this Agreement or any other Loan Document that requires the consent of each of the Lenders or each of the Lenders affected thereby (so long as the consent of the Required Lenders (of all Term Loans) has been obtained), in each case with a replacement financial institution(s); provided that (i) such replacement does not conflict with any Requirement of Law, (ii) no Event of Default shall have occurred and be continuing at the time of such replacement, (iii) the replacement financial institution(s) shall purchase, at par, all Term Loans outstanding, Term Commitments and other amounts related thereto owing to such replaced Lender on or prior to the date of replacement, (iv) the Borrower shall be liable to such replaced Lender under Section 2.17 if any Eurodollar Loan owing to such replaced Lender shall be purchased other than on the last day of the Interest Period relating thereto, (v) the replacement financial institution(s) (if other than a then existing Lender or an affiliate thereof) shall be reasonably satisfactory to the Administrative Agent (such consent not to be unreasonably withheld, delayed or conditioned), (vi) the replaced Lender shall be obligated to make such replacement in accordance with the provisions of Section 9.6 (provided that the Borrower shall be obligated to pay the registration and processing fee referred to therein), (vii) until such time as such replacement shall be consummated, the Borrower shall pay all additional amounts (if any) required pursuant to Section 2.15, 2.16 or 2.17, as the case may be, and (viii) any such replacement shall not be deemed to be a waiver of any rights that the Borrower, the Administrative Agent or any other Lender shall have against the replaced Lender.

2.23. [Reserved].

2.24. Defaulting Lenders. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as such Lender is no longer a Defaulting Lender, to the extent permitted by applicable law:

(a) Waivers and Amendments. The Term Loans and Term Commitments of such Defaulting Lender shall not be included in determining whether the Required Lenders have taken or may take any action hereunder or under any other Loan Document (including any consent to any amendment, waiver or other modification pursuant to Section 9.1); provided that any amendment, waiver or other modification requiring the consent of all Lenders or all Lenders affected thereby shall, except as otherwise provided in Section 9.1, require the consent of such Defaulting Lender in accordance with the terms hereof.

(b) Defaulting Lender Waterfall. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender hereunder (whether voluntary, at maturity, pursuant to Article VII or otherwise) shall be applied at such time or times as may be determined by the Administrative Agent as follows: first, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder; second, as the Borrower may request (so long as no Default exists), to the funding of any Term Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; third, if so determined by the Administrative Agent and the Borrower, to be held in a deposit account and released pro rata in order to satisfy such Defaulting Lender's potential future funding obligations with respect to Term Loans under this Agreement; fourth, 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 such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; fifth, so long as no Default exists, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and sixth, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post cash collateral pursuant to this Section shall be deemed paid to and redirected by such Defaulting Lender, and such Defaulting Lender irrevocably consents hereto.

(c) Defaulting Lender Cure. If the Borrower and the Administrative Agent (unless the Administrative Agent is the Defaulting Lender) agree in writing that a Lender is no longer a Defaulting Lender, the Administrative Agent will so notify the applicable parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any cash collateral), that Lender will, to the extent applicable, purchase at par that portion of outstanding Term Loans of the other Lenders or take such other actions as the Administrative Agent (unless the Administrative Agent is the Defaulting Lender) may determine to be necessary to cause the Term Loans to be held pro rata by the Lenders in accordance with the relative amounts of their Term Commitments, whereupon such Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while that Lender was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to non-Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

2.25. Sustainability Adjustments.



(a) (A) The Sustainability Margin Adjustment shall be effective on the Sustainability Adjustment Date and (B) each change in the Applicable Margin resulting from a Sustainability Pricing Certificate shall be effective during the period commencing on and including the applicable Sustainability Adjustment Date and ending on the date immediately preceding the next such Sustainability Adjustment Date.

(b) For the avoidance of doubt, the Sustainability Pricing Certificate may be delivered only once in respect of any calendar year. It is further understood and agreed that the Applicable Margin will never be reduced or increased by more than 5.00 basis points pursuant to the Sustainability Margin Adjustment during any calendar year (the “Maximum Adjustment”). For the avoidance of doubt, any adjustment to the Applicable Margin due to a Sustainability Margin Adjustment in any calendar year shall not be cumulative year-over-year. Each applicable adjustment shall only apply until the date on which the next adjustment is due to take place.

(c) If the Borrower fails to provide the Administrative Agent with the Sustainability Pricing Certificate or one or more of the KPI Metrics for any calendar year within the timeframe indicated in Section 5.2(d), the Applicable Margin shall be increased by 1.67 basis points for each applicable Key Performance Indicator for which a KPI Metric has not been submitted, commencing on the day by which such Sustainability Pricing Certificate was required to have been delivered pursuant to the terms of Section 5.2(d) and continuing until the Borrower submits another Sustainability Pricing Certificate for the subsequent calendar year; provided that it is understood and agreed that the Applicable Margin will never be increased by more than the Maximum Adjustment.

(d) If (i)(A) the Borrower or any Lender becomes aware of any material inaccuracy in any Sustainability Applicable Rate Adjustment or any KPI Metric calculation as reported in a Sustainability Pricing Certificate (any such material inaccuracy, a “Sustainability Pricing Certificate Inaccuracy”) and, in the case of any Lender, such Lender delivers, not later than 10 Business Days after obtaining knowledge thereof, a written notice to the Administrative Agent and the Sustainability Structuring Agent describing such Sustainability Pricing Certificate Inaccuracy in reasonable detail (which description shall be promptly shared with each Lender and the Borrower), or (B) the Borrower and the Lenders agree that there was a Sustainability Pricing Certificate Inaccuracy at the time of delivery of a Sustainability Pricing Certificate, and (ii) a proper calculation of the Sustainability Applicable Rate Adjustments or the KPI Metrics would have resulted in an increase in the Applicable Margin for any applicable period, the Borrower shall pay to the Administrative Agent for the account of the Lenders promptly following written demand by the Administrative Agent (or, after the occurrence of an actual or deemed entry of an order for relief with respect to the Borrower under the Bankruptcy Code, automatically and without further action by the Administrative Agent, any Lender), but in any event within 10 Business Days after the Borrower has received written notice in reasonable detail of, or has agreed in writing that there was, a Sustainability Pricing Certificate Inaccuracy, an amount equal to the excess of (1) the amount of interest that should have been paid for such period over (2) the amount of interest actually paid for such period. If the Borrower becomes aware of any Sustainability Pricing Certificate Inaccuracy and, in connection therewith, if a proper calculation of the Sustainability Applicable Rate Adjustment or the KPI Metrics would have resulted in a decrease in the Applicable Margin for any period, then, upon receipt by the Administrative Agent of notice from the Borrower of such Sustainability Pricing Certificate Inaccuracy (which notice shall include corrections to the calculations of the Sustainability Applicable Rate Adjustment or the KPI Metrics, as applicable and be certified to by a Responsible Officer of the Borrower), commencing on the Business Day following receipt by the Administrative Agent of such notice, the Applicable Margin shall be adjusted to reflect the corrected calculations of the Sustainability Applicable Rate Adjustment or the KPI Metrics, as applicable. It is understood and agreed that any Sustainability Pricing Certificate Inaccuracy with respect to any applicable period shall not constitute a Default or Event of Default unless the Borrower fails to make a payment required by the foregoing terms of this Section 2.25(d) with respect to such Sustainability Pricing Certificate Inaccuracy following demand for payment by the Administrative Agent made in accordance with the

foregoing terms of this Section 2.25(d). Notwithstanding anything to the contrary herein, unless such amounts shall be due upon the occurrence of an actual or deemed entry of an order for relief with respect to the Borrower under the Bankruptcy Code, (a) any additional amounts required to be paid pursuant the immediately preceding paragraph shall not be due and payable until a written demand is made for such payment by the Administrative Agent in accordance with such paragraph, (b) any nonpayment of such additional amounts prior to or upon such demand for payment by Administrative Agent shall not constitute a Default or Event of Default (whether retroactively or otherwise) and (c) none of such additional amounts shall be deemed overdue prior to such a demand or shall accrue interest at the Default Rate prior to such a demand.

(e) Each party hereto hereby agrees that neither the Administrative Agent nor the Sustainability Structuring Agent shall have any responsibility for (or liability in respect of) reviewing, auditing or otherwise evaluating any calculation by the Borrower of any Sustainability Applicable Rate Adjustment (or any of the data or computations that are part of or related to any such calculation) set forth in the Initial KPI Metrics Report, any KPI Metrics Report or any Sustainability Pricing Certificate (and the Administrative Agent may rely conclusively on any such certificate, without further inquiry).

(f) In the event of a Regulatory Change in relation to any Key Performance Indicator, the Borrower and the Sustainability Structuring Agent shall negotiate in good faith, by no later than 60 days following such Regulatory Change any necessary amendment, modification or other supplement to Schedule 1.3 (Sustainability Performance Thresholds) (and any component definitions thereof). Such amendment, modification or other supplement, shall be consented to by the Administrative Agent, Sustainability Structuring Agent and the Borrower and will take effect so long as Lenders constituting Required Lenders do not object to such changes within five Business Days after notice of such proposed amendment, modification or other supplement. If the Borrower and the Structuring Sustainability Agent do not agree to any such amendment, modification or supplement following the 60 day period, then, upon the written agreement among the Sustainability Structuring Agent, the Borrower and the Administrative Agent, which will take effect so long as Lenders constituting Required Lenders do not object to such agreement within five Business Days after notice of such proposed agreement, the Sustainability Applicable Rate Adjustment shall cease to apply for the relevant Key Performance Indicator and, notwithstanding anything to the contrary herein, for all purposes hereunder, the Sustainability Applicable Rate Adjustment for such Key Performance Indicator shall be deemed to be zero. In the case such Key Performance Indicator no longer applies, the Borrower will then cease to refer to the applicable Key Performance Indicator in the Sustainability Pricing Certificate.

### SECTION 3

#### Representations and Warranties

The Borrower represents and warrant on the Closing Date to the Administrative Agent and each Lender as follows:

3.1. Existence; Compliance with Law. Each Loan Party (a) is duly organized, validly existing and (to the extent such concept is applicable) in good standing under the laws of the jurisdiction of its organization, (b) has the power and authority, and the legal right, to own and operate its property, to lease the property it operates as lessee and to conduct the business in which it is currently engaged, (c) is duly qualified as a foreign corporation or other organization and (to the extent such concept is applicable) in good standing under the laws of each jurisdiction where its ownership, lease or operation of property or the conduct of its business requires such qualification, and (d) is in compliance with all Requirements of Law, except, in the case of each of the foregoing clauses (a) through (d), to the extent that the failure to comply therewith would not, in the aggregate, reasonably be expected to have a Material Adverse Effect.

3.2. Power; Authorizations; Enforceable Obligations. Each Loan Party has the power and authority, and the legal right, to make, deliver and perform the Loan Documents to which it is a party and, in

the case of the Borrower, to obtain extensions of credit hereunder. Each Loan Party has taken all necessary organizational action to authorize the execution, delivery and performance of the Loan Documents to which it is a party and, in the case of the Borrower, to authorize the extensions of credit on the terms and conditions of this Agreement. No consent or authorization of, filing with, notice to or other act by or in respect of, any Governmental Authority is required in connection with the extensions of credit hereunder or with the execution, delivery, performance, validity or enforceability of this Agreement or any of the Loan Documents, except (i) that have been obtained or made and are in full force and effect and (ii) to the extent that the failure to obtain any such consent, authorization, filing, notice or other act would not, in the aggregate, reasonably be expected to have a Material Adverse Effect. Each Loan Document has been duly executed and delivered on behalf of each Loan Party party thereto. This Agreement constitutes, and each other Loan Document upon execution will constitute, a legal, valid and binding obligation of each Loan Party party thereto, enforceable against each such Loan Party in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general equitable principles (whether enforcement is sought by proceedings in equity or at law).

3.3. No Legal Bar. The execution, delivery and performance of this Agreement and the other Loan Documents, the borrowings hereunder and the use of the proceeds thereof (x) will not violate any Requirement of Law or any material Contractual Obligation of any Loan Party and (y) will not result in, or require, the creation or imposition of any Lien on any of their respective properties or revenues pursuant to any Requirement of Law or any such material Contractual Obligation except, in the case of each of the foregoing clauses (x) and (y), to the extent that the failure to comply therewith would not, in the aggregate, reasonably be expected to have a Material Adverse Effect.

3.4. Accuracy of Information. No statement or information contained in this Agreement, any other Loan Document, or any other document, certificate or statement, including, without limitation, with respect to the KPI Metrics and any reporting in connection therewith, furnished by or on behalf of any Loan Party to the Administrative Agent or the Lenders, or any of them, for use in connection with the transactions contemplated by this Agreement or the other Loan Documents, contained as of the Closing Date, taken as a whole and in light of the circumstances in which made, any untrue statement of a material fact or omitted to state a material fact necessary to make the statements contained herein or therein not materially misleading; provided that, with respect to projected financial information, each Loan Party represents only that such information was prepared in good faith based upon assumptions believed by them to be reasonable at the time delivered and, if such projected financial information was delivered prior to the Closing Date, as of the Closing Date, it being understood that any such projected financial information may vary from actual results and such variations could be material.

3.5. No Material Adverse Effect. Since the last day of the most recently ended fiscal year of the Borrower prior to the Closing Date there has been no development or event that has had or would reasonably be expected to have a Material Adverse Effect.

3.6. Title to Assets; Liens. The Borrower and its Restricted Subsidiaries have good and marketable title to, or a valid leasehold or easement interest in, all their other material property, taken as a whole, except for minor defects in title that do not interfere with their ability to conduct their business as currently conducted or as proposed to be conducted or to utilize such properties for their intended purposes, in each case, except as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, and none of such property is subject to any Lien except Liens permitted under Section 6.2.

3.7. Intellectual Property. The Borrower and its Restricted Subsidiaries own, or are licensed to use, all Intellectual Property material to the conduct of their businesses, and the use thereof by the Borrower and its Restricted Subsidiaries does not, to the knowledge of the Borrower, infringe upon, misappropriate or

otherwise violate the Intellectual Property rights of any other Person, in each case except where the failure to own or license Intellectual Property, or any infringement on Intellectual Property rights would not, in the aggregate, reasonably be expected to have a Material Adverse Effect.

3.8. Use of Proceeds. The proceeds of the Term Loans shall be utilized for the Refinancing and general corporate purposes.

3.9. Litigation. No litigation, investigation or proceeding of or before any arbitrator or Governmental Authority is pending or, to the knowledge of the Borrower, threatened (including “cease and desist” letters and invitations to take a patent license) by or against the Borrower or its Restricted Subsidiaries or against any of their respective properties, rights or revenues that, in the aggregate, would reasonably be expected to have a Material Adverse Effect.

3.10. Federal Reserve Regulations. No part of the proceeds of any Term Loan will be used for any purpose that violates the provisions of the Regulations of the Board of Governors. Neither the Borrower nor any of its Subsidiaries is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying any “margin stock.”

3.11. Solvency. The Borrower and its Subsidiaries, taken as a whole, are, and after giving effect to the incurrence of all Indebtedness and obligations being incurred in connection herewith will be, Solvent.

3.12. Taxes. Each of the Borrower and its Restricted Subsidiaries has filed or caused to be filed all federal and state income Tax and other Tax returns that are required to be filed, except if the failure to make any such filing would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, and has paid all Taxes shown to be due and payable on said returns or on any assessments made against it or any of its property and all other Taxes, fees or other charges imposed on it or any of its property by any Governmental Authority (other than any (x) the amount or validity of which are currently being contested in good faith by appropriate proceedings and with respect to which reserves in conformity with GAAP have been provided on the books of the relevant entity, or (y) those where the failure to pay, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect). There is no proposed Tax assessment or other claim against, and no Tax audit with respect to, the Borrower or its Restricted Subsidiaries that would reasonably be expected to, individually or in the aggregate, have a Material Adverse Effect.

3.13. ERISA. Except as, in the aggregate, does not or would not reasonably be expected to result in a Material Adverse Effect: neither a Reportable Event nor a failure to satisfy the minimum funding standard of Section 430 of the Code or Section 303 of ERISA, whether or not waived, with respect to a Plan has occurred during the five-year period prior to the date on which this representation is made or deemed made with respect to any Plan, and each Plan has complied in all respects with the applicable provisions of ERISA and the Code; no termination of a Single Employer Plan has occurred, and no Lien in favor of the PBGC or a Plan has arisen, during such five-year period; the present value of all accrued benefits under each Single Employer Plan (based on those assumptions used to fund such Plans) did not, as of the last annual valuation date prior to the date on which this representation is made or deemed made, exceed the value of the assets of such Plan allocable to such accrued benefits; neither the Borrower nor any Commonly Controlled Entity has had a complete or partial withdrawal from any Multiemployer Plan; to the knowledge of the Borrower after due inquiry, neither the Borrower nor any Commonly Controlled Entity would become subject to any liability under ERISA if the Borrower or any such Commonly Controlled Entity were to withdraw completely from any Multiemployer Plans as of the valuation date most closely preceding the date on which this representation is made or deemed made; and to the knowledge of the Borrower after due inquiry, no Multiemployer Plan is in “critical status” (within the meaning of Section 432 of the Code or Section 305 of ERISA) or Insolvent.

3.14. Environmental Matters; Hazardous Material. There has been no matter with respect to Environmental Laws or Materials of Environmental Concern which, in the aggregate, would reasonably be expected to have a Material Adverse Effect.

3.15. Investment Company Act; Other Regulations. Neither the Borrower nor any Restricted Subsidiary is required to register as an “investment company”, or a company “controlled” by an “investment company”, within the meaning of the Investment Company Act of 1940, as amended. Neither the Borrower nor any Restricted Subsidiary is subject to regulation under any Requirement of Law that limits its ability to incur Indebtedness under this Agreement and the other Loan Documents.

3.16. Labor Matters. Except as, in the aggregate, would not reasonably be expected to have a Material Adverse Effect: (a) there are no strikes or other labor disputes against the Borrower or any Restricted Subsidiary pending or, to the knowledge of the Borrower, threatened; (b) hours worked by and payment made to employees of each of the Borrower and its Restricted Subsidiaries have not been in violation of the Fair Labor Standards Act or any other applicable Requirement of Law dealing with such matters; and (c) all payments due from the Borrower and its Restricted Subsidiaries on account of employee health and welfare insurance have been paid or accrued as a liability on the books of the relevant entity.

3.17. Anti-Corruption Laws and Sanctions. The Borrower has implemented and maintains in effect policies and procedures designed to ensure compliance by the Borrower, its Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions, and the Borrower, its Subsidiaries and their respective officers and directors and to the knowledge of the Borrower its employees and agents, are in compliance with Anti-Corruption Laws and applicable Sanctions in all material respects. None of (a) the Borrower, any Subsidiary or any of their respective directors, officers or employees, or (b) to the knowledge of the Borrower, any agent of the Borrower or any Subsidiary that will act in any capacity in connection with or benefit from the credit facility established hereby, is a Sanctioned Person. No Borrowing, use of proceeds or other transaction contemplated by this Agreement will violate any Anti-Corruption Law or applicable Sanctions.

3.18. Affected Financial Institutions. No Loan Party is an Affected Financial Institution.

3.19. Disclosure. As of the Closing Date, to the best knowledge of the Borrower, the information included in the Beneficial Ownership Certification provided on or prior to the Closing Date to any Lender in connection with this Agreement is true and correct in all respects.

3.20. ERISA Event. No ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other such ERISA Events for which liability is reasonably expected to occur, would reasonably be expected to result in a Material Adverse Effect.

#### SECTION 4

##### Conditions Precedent

4.1. Conditions to the Closing Date. The obligations of the Lenders to make Term Loans hereunder shall not become effective until the date on which each of the following conditions is satisfied (or waived in accordance with Section 9.1):

(a) Loan Documents. The Administrative Agent shall have received counterparts hereof executed and delivered by the Borrower, the Administrative Agent, the Sustainability Structuring Agent, and each other Lender and Schedules to this Agreement.

(b) Corporate Documents and Proceedings. The Administrative Agent shall have received (i) a certificate of Borrower, dated the Closing Date, substantially in the form attached hereto as Exhibit A, with appropriate insertions and attachments, including the certificate of incorporation of Borrower, and (ii) a long form good standing certificate for Borrower from its jurisdiction of organization.

(c) No Material Adverse Effect. Since September 3, 2020, there has been no development or event that has had or would reasonably be expected to have a Material Adverse Effect.

(d) Officer's Certificate. The Administrative Agent shall have received a certificate, dated as of the Closing Date by a Responsible Officer of the Borrower, confirming compliance with the conditions set forth in Section 4.1(c), (k) and (l) (and covering all representations and warranties in Section 3).

(e) Solvency Certificate. The Administrative Agent shall have received a customary certificate from the chief financial officer of the Borrower in form and substance satisfactory to the Administrative Agent certifying as to the solvency of the Borrower and its Subsidiaries on a consolidated basis after giving effect to the transactions contemplated to occur on the Closing Date.

(f) Payment of Fees; Expenses. The Arrangers and the Administrative Agent shall have received all fees required to be paid, and all reasonable costs and expenses required to be paid and for which invoices have been presented (including the reasonable fees and expenses of legal counsel), on or before the Closing Date.

(g) Legal Opinion. The Administrative Agent shall have received a legal opinion from Wilson Sonsini Goodrich & Rosati P.C., counsel to the Borrower, in form and substance satisfactory to the Administrative Agent.

(h) Refinancing. Substantially simultaneously with the Closing Date, the Refinancing shall be consummated.

(i) Patriot Act and Beneficial Ownership Regulation. (i) The Administrative Agent shall have received, at least three (3) Business Days prior to the Closing Date, all documentation and information as is reasonably requested in writing by any Lender at least eight days prior to the Closing Date about the Borrower and its Subsidiaries that is required by U.S. Governmental Authorities under applicable "know your customer" and anti-money laundering rules and regulations, including without limitation, the Patriot Act and (ii) to the extent the Borrower qualifies as a "legal entity customer" under the Beneficial Ownership Regulation, at least five days prior to the Closing Date, any Lender that has requested, in a written notice to the Borrower at least 10 days prior to the Closing Date, a Beneficial Ownership Certification in relation to the Borrower shall have received such Beneficial Ownership Certification (provided that, upon the execution and delivery by such Lender of its signature page to this Agreement, the condition set forth in this clause (ii) shall be deemed to be satisfied).

(j) Initial KPI Metrics Report. The Administrative Agent shall have received the Initial KPI Metrics Report, of which all data and information in such Initial KPI Metrics Report has been made publicly available by the Borrower via the Borrower's annual report on environmental, social and governance issues.

(k) Representations and Warranties. All representations and warranties contained in this Agreement shall be true and correct in all material respects on and as of the Closing Date, with the same effect as if made on and as of such date (unless stated to relate to a specific earlier date, in which case, such representations and warranties shall be true and correct in all material respects as of such earlier date) (it being understood that any representation or warranty that is qualified as to materiality or Material Adverse Effect shall be correct in all respects).

- (l) No Default. No Default or Event of Default shall have occurred and be continuing.

SECTION 5  
Affirmative Covenants

Until the Term Commitments have expired or been terminated and the principal of and interest on each Term Loan and all fees payable hereunder shall have been paid in full, the Borrower covenants and agrees that:

5.1. Financial Statements, etc. The Borrower will furnish to the Administrative Agent (for distribution to the Lenders), within 15 days after the Borrower has filed the same with the SEC, copies of the quarterly and annual reports and the information, documents and reports (or copies of such portions of any of the foregoing as the SEC may prescribe) that the Borrower may be required to file with the SEC pursuant to Section 13 or 15(d) of the Exchange Act (other than confidential filings, documents subject to confidential treatment and correspondence with the SEC); provided that in each case the delivery of materials to the Administrative Agent by electronic means or filing of documents pursuant to the SEC's "EDGAR" system (or any successor electronic filing system) shall be deemed to be "furnished" with the Administrative Agent as of the time such documents are filed via the "EDGAR" system for purposes of this Section 5.1.

5.2. Compliance Certificate; Reporting.

(a) Promptly (and in any event within 5 Business Days) following delivery of the quarterly and annual financial statements provided for in Section 5.1 on Form 10-Q or 10-K, as applicable, a certificate of a Financial Officer of the Borrower substantially in the form of Exhibit C (y) stating no Default or Event of Default has occurred and is then continuing or, if a Default or Event of Default exists, a detailed description of the Default or Event of Default and all actions the Borrower is taking with respect to such Default or Event of Default and (z) containing calculations demonstrating the Borrower's compliance with the covenants set forth in Section 6.6.

(b) The Borrower will deliver to the Administrative Agent, forthwith upon any Responsible Officer becoming aware of any Default or Event of Default (which shall be no more than five (5) Business Days following the date on which the Responsible Officer becomes aware of such Default or Event of Default), an officer's certificate of a Responsible Officer of the Borrower specifying such Default or Event of Default and what action the Borrower is taking or proposes to take with respect thereto.

(c) Promptly following any request therefor, the Borrower will deliver information and documentation reasonably requested by the Administrative Agent or any Lender for purposes of compliance with applicable "know your customer" and anti-money laundering rules and regulations, including the Patriot Act and the Beneficial Ownership Regulation. Promptly following any request therefor, the Borrower shall provide written notice of any change in the list of beneficial owners identified in the most recent Beneficial Ownership Certification delivered to Administrative Agent or a Lender.

(d) as soon as available and in any event within 180 days following the end of each calendar year (commencing with the calendar year ending December 31, 2021, the Borrower will furnish to the Administrative Agent a Sustainability Pricing Certificate for the most recently-ended calendar year; provided, however, that for any calendar year the Borrower may elect not to deliver a Sustainability Pricing Certificate, and such election shall not constitute a Default or Event of Default under this Agreement (but such failure to so deliver a Sustainability Pricing Certificate by the end of such 180-day period shall result in the Sustainability Applicable Rate Adjustment being applied as set forth in Section 2.25(c)).

5.3. Maintenance of Existence. The Borrower and its Restricted Subsidiaries shall (i) preserve, renew and keep in full force and effect its organizational existence and (ii) take all reasonable action to maintain all rights, privileges and franchises reasonably necessary in the normal conduct of its business, except, in each case, (x) as otherwise permitted by Section 6.3 or (y) to the extent that failure to do so would not, in the aggregate, reasonably be expected to have a Material Adverse Effect.

5.4. Maintenance of Insurance. The Loan Parties will maintain insurance policies (or self-insurance) on all its property in at least such amounts and against at least such risks as are usually insured against by companies of a similar size engaged in the same or a similar business (after giving effect to any self-insurance which in the good faith judgment of management of the Borrower is reasonable and prudent in light of the size and nature of its business). Notwithstanding anything to the contrary herein, with respect to Foreign Subsidiaries that are Guarantors, the requirements of this Section 5.4 shall be deemed satisfied if the Borrower obtains insurance policies that are customary and appropriate for the applicable jurisdiction.

5.5. Use of Proceeds. The proceeds of the Term Loans will be used only for general corporate purposes. No part of the proceeds of any Term Loan will be used, whether directly or indirectly, for any purpose that entails a violation of any of the regulations of the Federal Reserve Board, including Regulations T, U and X.

5.6. Compliance with Laws. The Borrower will maintain in effect and enforce policies and procedures designed to ensure compliance by the Borrower, its Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions.

5.7. Designation of Subsidiaries. The Borrower may at any time by written notice to the Administrative Agent (i) designate any Restricted Subsidiary as an Unrestricted Subsidiary or (ii) designate any Unrestricted Subsidiary as a Restricted Subsidiary; provided that no Default or Event of Default shall have occurred and be continuing or would result therefrom.

## SECTION 6

### Negative Covenants

Until the Term Commitments have expired or been terminated and the principal of and interest on each Term Loan and all fees payable hereunder shall have been paid in full, the Borrower covenants and agrees that:

6.1. Limitation on Indebtedness. The Borrower will not permit any of its Restricted Subsidiaries to create, assume, incur, Guarantee or otherwise become liable for any Indebtedness, without causing such Restricted Subsidiary (excluding any Subsidiary that is not a Material Subsidiary) to become a Guarantor, other than:

(a) Indebtedness in respect of or under the Obligations or Guarantees thereof;

(b) Indebtedness of a Person existing at the time such Person is merged into or consolidated with or otherwise acquired by the Borrower or any Restricted Subsidiary of the Borrower or otherwise becomes a Restricted Subsidiary of the Borrower (or arising thereafter pursuant to contractual commitments entered into prior to such Person becoming a Restricted Subsidiary) or at the time of a sale, lease or other disposition of the properties and assets of such Person (or a division thereof) as an entirety or substantially as an entirety to any Restricted Subsidiary of the Borrower (or arising thereafter pursuant to contractual commitments entered into prior to such Person becoming a Restricted Subsidiary) and is assumed by such Subsidiary, other than



any increase in the amount of such Indebtedness (including any increase in the amount of such Indebtedness arising pursuant to contractual commitments entered into prior to such acquisition) incurred in contemplation thereof;

(c) Indebtedness owed to the Borrower or any Restricted Subsidiary;

(d) Indebtedness created, incurred, issued, assumed or Guaranteed to pay or finance the payment of all or any part of the purchase price or the cost of development, operation, construction, alteration, repair or improvement of property, assets or equipment acquired or developed, operated, constructed, altered, repaired or improved by a Restricted Subsidiary, and any related transactional fees, costs and expenses, provided such Indebtedness is created, incurred, issued, assumed or Guaranteed within 18 months (or in the case of any Indebtedness supported by an export credit agency, 24 months) after the later of (i) the acquisition or the completion of any such development, operation, construction, alteration, repair or improvement of such property, assets or equipment, whichever is later, or (ii) the placing into commercial operation of such property after the acquisition or completion of any such development, operation, construction, alteration, repair or improvement (or, in each case, is incurred pursuant to firm commitment financing arrangements obtained within such period), and, provided further, that the outstanding amount of such Indebtedness, without duplication, does not exceed 100% of the fair value of the property or equipment acquired or developed, operated, constructed, altered, repaired or improved at the time such Indebtedness is incurred;

(e) Indebtedness permitted to be secured by Liens permitted by clauses (5) or (6) of the definition of Permitted Lien (whether or not such Indebtedness is in fact secured by such Liens) and any Guarantees thereof;

(f) any extension, renewal, substitution, replacement, refinancing or refunding of Indebtedness that was permitted pursuant to Section 6.1(a), (b), (c), or (d) at the time such Indebtedness was created or incurred; provided that (1) any Indebtedness incurred to so extend, renew, substitute, replace, refinance or refund shall be incurred within 12 months of the maturity, retirement or other repayment or prepayment (including any such repayment pursuant to amortization obligations with respect to such Indebtedness), (2) the outstanding amount of the Indebtedness incurred to so extend, renew, substitute, replace, refinance or refund shall not exceed the outstanding amount of Indebtedness being extended, renewed, substituted, replaced, refinanced or refunded plus any premiums or fees (including tender premiums) or other reasonable amounts payable, plus the amount of fees, expenses and other costs incurred, in connection with any such extension, renewal, substitution, replacement, refinancing or refunding, (3) if the Indebtedness being extended, renewed, substituted, replaced, refinanced or refunded was secured by a Lien on Property, the Indebtedness incurred to so extend, renew, substitute, replace, refinance or refund may be secured by such Property, and (4) if the Indebtedness being extended, renewed, substituted, replaced, refinanced or refunded was not secured by a Lien on Property, the Indebtedness incurred to so extend, renew, substitute, replace, refinance or refund shall not be secured by Property; and

(g) other Indebtedness; provided that the aggregate principal amount of Indebtedness outstanding at any one time pursuant to this clause shall not exceed the sum of (i) the greater of (x) \$5,600,000,000 and (y) 15% of Consolidated Net Tangible Assets of the Borrower for the Measurement Period immediately preceding the date of such incurrence minus (ii) the aggregate principal amount of Indebtedness of the Borrower that is secured by a Lien under Section 6.2(b);

For purposes of this Section 6.1, in the event that any Indebtedness meets the criteria of more exceptions in this Section 6.1, the Borrower, in its sole discretion, will classify, and may reclassify, such Indebtedness and such Indebtedness may be divided and classified and reclassified into more than one of the exceptions in this Section 6.1 described above. In addition, for purposes of calculating compliance with this Section 6.1, in no event will the amount of any Indebtedness (including any Guarantees of such Indebtedness) be required to be

included more than once despite the fact more than one Person is or becomes liable with respect to any related Indebtedness and despite the fact that such Indebtedness is secured by the assets of more than one Person (for example, and for avoidance of doubt, in the case where more than one Restricted Subsidiary incurs Indebtedness, Guarantees or otherwise becomes liable for such Indebtedness, or in the case where there are Liens on the assets of one or more of the Borrower and its Restricted Subsidiaries securing such Indebtedness or one or more Guarantees thereof permitted under this Section 6.1, the amount of such Indebtedness shall only be included once for purposes of such calculations).

6.2. Limitation on Liens. The Borrower will not, and will not permit any of its Restricted Subsidiaries, to create or incur any Lien on Property, whether now owned or hereafter acquired, in order to secure any Indebtedness, other than:

(a) Permitted Liens; and

(b) Liens securing Indebtedness of the Restricted Subsidiaries permitted by Section 6.1(g) and Indebtedness of the Borrower; provided that the aggregate principal amount of Indebtedness that is secured pursuant to this Section 6.2(b) shall not exceed the greater of (x) \$5,600,000,000 and (y) 15% of Consolidated Net Tangible Assets of the Borrower for the Measurement Period immediately preceding the date of such incurrence; provided that, for the avoidance of doubt, any Liens will be excluded from this clause (b) to the extent the Lien relating thereto is included in clause (a) of this Section 6.2.

For purposes of this Section 6.2, (1) the creation of a Lien to secure Indebtedness which existed prior to the creation of such Lien will be deemed to involve Indebtedness in an amount equal to the lesser of (x) the fair value (as determined in good faith by the Borrower) of the asset subjected to such Lien and (y) the principal amount secured by such Lien, and (2) in the event that a Lien meets the criteria of more than one of the types of exceptions in this Section 6.2, the Borrower, in its sole discretion, will classify, and may reclassify, such Lien and such Lien may be divided and classified and reclassified into more than one of the exceptions in this Section 6.2.

6.3. Merger, Consolidation, or Sale of Assets.

(a) The Borrower may not consolidate with or merge with or into, or sell, assign, convey, transfer, lease or otherwise dispose of all or substantially all of the properties, rights and assets of the Borrower and its Restricted Subsidiaries, taken as a whole, to any Person, in a single transaction or in a series of related transactions, unless:

(1) either (i) the Person formed by or surviving such consolidation or merger is the Borrower or (ii) the Person (if other than the Borrower) formed by such consolidation or into which the Borrower is merged or the Person which acquires by conveyance or transfer, or which leases, all or substantially all of the properties, rights and assets of the Borrower (the "Successor Company"), is an entity organized under the laws of the United States of America, any State thereof or the District of Columbia; provided that such Successor Company shall provide such information reasonably requested by the Administrative Agent or any Lender for purposes of compliance with applicable "know your customer" rules and regulations;

(2) in any such transaction in which there is a Successor Company, the Successor Company expressly assumes the Obligations pursuant to joinder agreements or other documents reasonably satisfactory to the Administrative Agent; and

(3) immediately after giving effect to the transaction, no Event of Default and no Default shall have occurred and be continuing.

This Section 6.3 shall not apply to a merger of the Borrower with an Affiliate solely for the purpose of reincorporating the Borrower in another jurisdiction in the United States of America, any State thereof or the District of Columbia.

(b) Upon any consolidation of the Borrower with, or merger of the Borrower into, any other Person or any sale, assignment, conveyance, transfer, lease or other disposition of all or substantially all the properties, rights and assets of the Borrower to a Successor Company in accordance with the conditions described in Section 6.3(a), the Successor Company shall succeed to and be substituted for, and may exercise every right and power of, the Borrower under this Agreement with the same effect as if such Successor Company had been named as the Borrower and thereafter, except in the case of a lease, the predecessor Person shall be relieved of all obligations and covenants under this Agreement.

6.4. Limitation on Sale and Leaseback Transactions.

(a) The Borrower will not, and will not permit any of its Restricted Subsidiaries, to enter into any sale and lease-back transaction with respect to any Property, whether now owned or hereafter acquired, unless:

(1) such transaction was entered into prior to the Closing Date;

(2) such transaction was for the sale and leasing back to the Borrower or a Restricted Subsidiary by the Borrower or any Restricted Subsidiary of any Property;

(3) such transaction involves a lease of Property executed by the time of or within 18 months (or in the case of any transaction supported by the credit of an export credit agency, 24 months) after the later of (i) the acquisition or the completion of any such development, operation, construction, alteration, repair or improvement of such property, assets or equipment or (ii) the placing into commercial operation of such Property after the acquisition or completion of any such development, operation, construction, alteration, repair or improvement;

(4) such transaction involves a lease for not more than three years (or which may be terminated by the Borrower or the applicable Restricted Subsidiary within a period of not more than three years);

(5) the Borrower or the applicable Restricted Subsidiary would be entitled to incur Indebtedness secured by a Lien on the property to be leased in an amount equal to Attributable Debt with respect to such sale and lease-back transaction pursuant to Section 6.1 and Section 6.2; or

(6) the Borrower or the applicable Restricted Subsidiary applies an amount equal to the net proceeds from the sale of the Property to the purchase of other Property or to the retirement, repurchase or other repayment or prepayment of the Term Loans within 365 calendar days before or after the effective date of any such sale and lease-back transaction; and

(b) Notwithstanding the other provisions of Section 6.4(a), the Borrower and the applicable Restricted Subsidiary may enter into any sale and lease-back transaction with respect to any Property if the Borrower or the applicable Restricted Subsidiary would be entitled to incur Indebtedness secured by a Lien on the property to be leased in an amount equal to Attributable Debt with respect to such sale and lease-back transaction pursuant to Section 6.1 and Section 6.2.

6.5. Anti-Corruption Laws and Sanctions. The Borrower will not request any Borrowing, and the Borrower shall not use, and shall procure that its Subsidiaries and its or their respective directors, officers,

employees and agents shall not use, the proceeds of any Borrowing (a) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws, (b) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country, to the extent such activities, business or transaction would be prohibited by Sanctions if conducted by a corporation incorporated in the United States or in a European Union member state, or (c) in any manner that would result in the violation of any Sanctions applicable to any party hereto.

6.6. Financial Covenant. The Borrower will not permit, as of the last day of any fiscal quarter of the Borrower, the Total Leverage Ratio to exceed 3.25 to 1.00; provided that following the consummation of a Qualified Acquisition for the four fiscal quarters of the Borrower then ended as set forth in the last Compliance Certificate delivered pursuant to Section 5.2, the Total Leverage Ratio set forth above shall increase for each of the four fiscal quarters of the Borrower ending following the consummation of a Qualified Acquisition to 3.75 to 1.00.

## SECTION 7

### Events of Default

7.1. Events of Default. Each of the following is an “Event of Default”:

- (a) failure by the Borrower to pay principal of a Term Loan when due;
- (b) failure by the Borrower to pay (i) any interest or scheduled fees due under this Agreement for five Business Days after such amount” becomes due and (ii) any other obligation due under this Agreement for ten Business Days after such amount becomes due;
- (c) failure by the Borrower to comply with Section 6.6;
- (d) failure by the Borrower or any of its Restricted Subsidiaries to perform, or breach by the Borrower or any of its Restricted Subsidiaries of, any other covenant (other than Section 5.2(d)), agreement, representation or warranty or condition in this Agreement for 30 calendar days after either the Administrative Agent or the Required Lenders have given the Borrower written notice of the breach in the manner required by this Agreement;
- (e) default under any mortgage, indenture or instrument under which there is issued or by which there is secured or evidenced any Indebtedness of the Borrower or any Guarantor, whether such Indebtedness or guarantee now exists or is created after the Closing Date, if both: (a) such default either results from the failure to pay any principal of such Indebtedness at its stated final maturity (after giving effect to any applicable grace periods) or such default is with respect to another obligation under such Indebtedness and results in the holder or holders of such Indebtedness causing the payment of such Indebtedness to be accelerated and to become due prior to its stated maturity without such Indebtedness having been discharged or such acceleration having been cured, waived, rescinded or annulled within a period of thirty (30) calendar days; and (b) the principal amount of such Indebtedness, together with the principal amount of any other such Indebtedness not so paid when due, or the maturity of which has been so accelerated, aggregates \$100,000,000 or more;
- (f) the Borrower or any Significant Subsidiary, pursuant to or within the meaning of any Debtor Relief Law:
  - (1) commences proceedings to be adjudicated bankrupt or insolvent;

(2) consents to the institution of bankruptcy or insolvency proceedings against it, or the filing by it of a petition or answer or consent seeking an arrangement of debt, reorganization, dissolution, winding up or relief under applicable Debtor Relief Laws;

(3) consents to the appointment of a receiver, interim receiver, receiver and manager, liquidator, assignee, trustee, sequestrator or other similar official of it or for all or substantially all of its property; or

(4) makes a general assignment for the benefit of its creditors;

(g) a court of competent jurisdiction enters an order or decree under any Debtor Relief Law that:

(1) is for relief against the Borrower or any Significant Subsidiary in a proceeding in which the Borrower or any Significant Subsidiary is to be adjudicated bankrupt or insolvent;

(2) appoints a receiver, interim receiver, receiver and manager, liquidator, assignee, trustee, sequestrator or other similar official of the Borrower or any Significant Subsidiary, or for all or substantially all of the property of the Borrower or any Significant Subsidiary; or

(3) orders the liquidation, dissolution or winding up of the Borrower or any Significant Subsidiary;

and the order or decree remains unstayed and in effect for 60 consecutive days;

provided that, in the cases of the foregoing clauses (f) and (g), (i) such event or circumstance is either (x) a voluntary proceeding or results therefrom or (y) under or pursuant to the laws of such Person's jurisdiction of incorporation or organization or the jurisdiction in which its head office is located or the laws of the jurisdictions in which all or substantially all its assets are located, and (ii) in no event shall any such event or circumstance constitute an Event of Default if such event or circumstance is a result of a bankruptcy, insolvency, reorganization or other similar proceeding with respect such Person or its assets or business that was ongoing or in process at the time such Person became a Subsidiary of the Borrower (including any alternate proceedings) or other such proceedings that are in the nature of either a continuation or extension thereof;

(h) An ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other such ERISA Events for which liability is reasonably expected to occur, would reasonably be expected to result in a Material Adverse Effect; and

(i) any Change of Control shall occur.

In the case of an Event of Default, then, and in every such event (other than an event with respect to the Borrower described in clause (f) or (g) of this Section), and at any time thereafter during the continuance of such event, the Administrative Agent may take any and all of the following actions: (A) [reserved], and (B) at the request of the Required Lenders, the Administrative Agent shall, by notice to the Borrower (i) declare the Term Loans then outstanding to be due and payable in whole (or in part, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), and thereupon the principal of the Term Loans so declared to be due and payable, together with accrued interest thereon and all fees and other obligations of the Borrower accrued hereunder, shall become due and payable immediately, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower and (ii) exercise on behalf of itself and the Lenders all rights and remedies available to it and the Lenders under the Loan Documents and applicable law. In case of any event with respect to the Borrower described in

clause (f) or (g) of this Section, any outstanding Term Commitments shall automatically terminate and the principal of the Term Loans then outstanding, together with accrued interest thereon and all fees and other obligations of the Borrower accrued hereunder, shall automatically become due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower.

In the event of a declaration of acceleration of the Term Loans because an Event of Default described in Section 7.1(e) has occurred and is continuing, the declaration of acceleration of the Term Loans shall be automatically annulled if the event of default or payment default triggering such Event of Default pursuant to Section 7.1(e) shall be remedied or cured, or waived by the holders of the Indebtedness or the Indebtedness that gave rise to such Event of Default shall have been discharged in full, within thirty (30) calendar days after declaration of acceleration with respect thereto, and if (1) the annulment of the acceleration of the Term Loans would not conflict with any judgment or decree of a court of competent jurisdiction and (2) all existing Events of Default, except nonpayment of principal, premium or interest on the Term Loans that became due solely because of the acceleration of the Term Loans, have been cured or waived.

## SECTION 8

### The Agents

8.1. Appointment. Each Lender hereby irrevocably designates and appoints the Administrative Agent as the agent of such Lender under this Agreement and the other Loan Documents, and each such Lender irrevocably authorizes the Administrative Agent, in such capacity, to take such action on its behalf under the provisions of this Agreement and the other Loan Documents and to exercise such powers and perform such duties as are expressly delegated to the Administrative Agent by the terms of this Agreement and the other Loan Documents, together with such other powers as are reasonably incidental thereto. Each Lender hereby irrevocably designates and appoints the Sustainability Structuring Agent as the agent of such Lender under this Agreement and the other Loan Documents, and each such Lender irrevocably authorizes the Sustainability Structuring Agent, in such capacity, to take such action on its behalf under the provisions of this Agreement and the other Loan Documents and to exercise such powers and perform such duties as are expressly delegated to the Sustainability Structuring Agent by the terms of this Agreement and the other Loan Documents, together with such other powers as are reasonably incidental thereto. Notwithstanding any provision to the contrary elsewhere in this Agreement, none of the Administrative Agent and the Sustainability Structuring Agent shall have any duties or responsibilities, except those expressly set forth herein, or any fiduciary relationship with any Lender, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against the Administrative Agent or the Sustainability Structuring Agent.

8.2. Delegation of Duties. Each of the Administrative Agent and the Sustainability Structuring Agent may execute any of their duties under this Agreement and the other Loan Documents by or through agents or attorneys in fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. None of the Administrative Agent and the Sustainability Structuring Agent shall be responsible for the negligence or misconduct of any agents or attorneys in fact selected by it with reasonable care.

8.3. Exculpatory Provisions. “Use of the term “agent” in the Agreement or in any other Loan Documents (or any other similar term) with reference to the Administrative Agent or Sustainability Structuring Agent does not connote (and is not intended to connote), any fiduciary or other implied (or express) obligation arising under agency doctrine of any applicable law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between the contracting parties. The Administrative Agent and Sustainability Structuring Agent shall not have any duty to take any discretionary action or exercise any discretionary power, except discretionary rights and powers expressly contemplated by the Agreement that the Administrative Agent and Sustainability Structuring Agent are required to exercise and only so long as so directed in writing to take such discretionary action by the

“Required Lenders” provided, however, that the Administrative Agent and Sustainability Structuring Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent or Sustainability Structuring Agent to liability or that is contrary to any Loan Document or Applicable Law, including, for the avoidance of doubt, any action that may be in violation of the automatic stay or that may effect a forfeiture, modification or termination of a property interest in violation of any applicable bankruptcy/insolvency laws and the Administrative Agent and Sustainability Structuring Agent shall in all cases be fully justified in failing or refusing to act under the Agreement or any other Loan Document unless it first receives further assurances of its indemnification from the Lenders that the Administrative Agent and Sustainability Structuring Agent reasonably believe it may require, including prepayment of any related expenses and any other protection it requires against any and all costs, expenses and liabilities it may incur in taking or continuing to take any such discretionary action at the direction of the Required Lenders. The Administrative Agent and Sustainability Structuring Agent shall not have any duty to disclose, and shall not be liable for the failure to disclose, except as expressly set forth in the Agreement and in the other Loan Documents, any information relating to the borrower or any of its affiliates that is communicated to or obtained by the Administrative Agent, Sustainability Structuring Agent, or any of their affiliates in any capacity. The Administrative Agent and Sustainability Structuring Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with the Loan Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any covenant, agreement or other term or condition set forth herein or therein or the occurrence of any default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, or (v) the satisfaction of any conditions precedent set forth in the Loan Agreement, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent or Sustainability Structuring Agent.

8.4. Reliance by the Administrative Agent. The Administrative Agent and Sustainability Structuring Agent shall be entitled to rely, and shall be fully protected in relying, upon any instrument, writing, resolution, notice, consent, certificate, affidavit, letter, telecopy, email message, statement, order 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 the Borrower), independent accountants and other experts reasonably selected by the Administrative Agent and Sustainability Structuring Agent. The Administrative Agent and Sustainability Structuring Agent shall be fully justified in failing or refusing to take any action under this Agreement or any other Loan Document unless the Administrative Agent and Sustainability Structuring Agent shall first receive such advice or concurrence of the Required Lenders (or, if so specified by this Agreement, all Lenders) as it deems appropriate or it shall first be indemnified to its satisfaction by the Lenders against any and all liability and expense that may be incurred by it by reason of taking or continuing to take any such action. In determining compliance with any condition to the making of a loan, or the issuance, extension, renewal or increase of a Letter of Credit, the Administrative Agent may presume that such condition is satisfactory to such Lender unless the Administrative Agent receives notice to the contrary from such Lender prior to the making of such loan or the issuance of such Letter of Credit. The Administrative Agent and Sustainability Structuring Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement and the other Loan Documents in accordance with a request of the Required Lenders (or, if so specified by this Agreement or any other Loan Document, all Lenders), and such request and any action taken or failure to act pursuant thereto shall be binding upon all the Lenders and all future holders of the Term Loans. The Administrative Agent and Sustainability Structuring Agent shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

8.5. Notice of Default. The Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default unless it has 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”. In the event that the Administrative Agent receives such a notice, it shall give notice thereof to the Lenders. The Administrative Agent shall take such action with respect to such Default or Event of Default as shall be reasonably directed by the Required Lenders (or, if so specified by this Agreement or any other Loan Document, all Lenders); provided that unless and until the Administrative Agent shall have received such directions, the Administrative Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as the Administrative Agent shall deem advisable in the best interests of the Lenders. The Administrative Agent shall not be obligated to follow any direction by Required Lenders if the Administrative Agent reasonably determines that such direction is in conflict with any provisions of any applicable law, and the Administrative Agent shall not, under any circumstances, be liable to any Lenders, the Borrower or any other person or entity for following the direction of Required Lenders. At all times, if the Administrative Agent acting at the direction of the Required Lenders advises the Lenders that it wishes to proceed in good faith with respect to any enforcement action, each of the Lenders will cooperate in good faith with respect to such enforcement action.

8.6. Non-Reliance on the Agent and Other Lenders. Each Lender expressly acknowledges that neither the Agent, the Sustainability Structuring Agent, nor any of their respective officers, directors, employees, agents, attorneys in fact or affiliates have made any representations or warranties to it and that no act by any Agent or the Sustainability Structuring Agent hereafter taken, including any review of the affairs of a Loan Party or any affiliate of a Loan Party, shall be deemed to constitute any representation or warranty by any Agent or the Sustainability Structuring Agent to any Lender. Each Lender represents to the Agent and Sustainability Structuring Agent that it has, independently and without reliance upon any Agent or the Sustainability Structuring Agent, any other Lender and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, operations, property, financial and other condition and creditworthiness of the Loan Parties and their affiliates and made its own decision to make its Term Loans hereunder and enter into this Agreement. Each Lender also represents that it will, independently and without reliance upon any Agent, the Sustainability Structuring Agent or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Loan Documents, and to make such investigation as it deems necessary to inform itself as to the business, operations, property, financial and other condition and creditworthiness of the Loan Parties and their affiliates. Except for notices, reports and other documents expressly required to be furnished to the Lenders by the Administrative Agent or the Sustainability Structuring Agent hereunder, the Administrative Agent and Sustainability Structuring Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the business, operations, property, condition (financial or otherwise), prospects or creditworthiness of any Loan Party or any affiliate of a Loan Party that may come into the possession of the Administrative Agent, the Sustainability Structuring Agent, or any of their officers, directors, employees, agents, attorneys in fact or affiliates.

It is understood and agreed that the Administrative Agent and the Sustainability Structuring Agent make no assurances as to (i) whether this Agreement meets any Loan Party or Lender criteria or expectations with regard to environmental impact and sustainability performance, or (ii) whether the characteristics of the relevant sustainability performance targets and/or key performance indicators included in the Agreement, including any environmental and sustainability criteria or any computation methodology with respect thereto, meet any industry standards for sustainability-linked credit facilities. It is further understood and agreed that neither the Administrative Agent nor the Sustainability Structuring Agent shall have any responsibility for (or liability in respect of) reviewing, auditing or otherwise evaluating any calculation by any Loan Party of (i) the relevant sustainability performance targets and/or key performance indicators or (ii) any Sustainability Adjustment (or any of the data or computations that are part of or related to any such calculation) set forth in



any Sustainability Pricing Certificate (and the Administrative Agent may rely conclusively on any such certificate, without further inquiry, when implementing any such pricing adjustment).

8.7. Indemnification. To the extent the Borrower fails to pay any amount required to be paid by it to the Administrative Agent, the Sustainability Structuring Agent or any other agent under Section 9.5, the Lenders severally agree to indemnify the Agent in their capacity as such (to the extent not reimbursed by the Borrower and without limiting the obligation of the Borrower to do so), ratably according to their respective Term Percentage in effect on the date on which indemnification is sought under this Section 8.7 (or, if indemnification is sought after the date upon which the Term Commitments shall have terminated and the Term Loans shall have been paid in full, ratably in accordance with such Term Percentage immediately prior to such date), from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind whatsoever that may at any time (whether before or after the payment of the Term Loans) be imposed on, incurred by or asserted against such Agent, in any way relating to or arising out of, the Term Commitments, this Agreement, any of the other Loan Documents or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby or any action taken or omitted by such Agent under or in connection with any of the foregoing; provided that no Lender shall be liable for the payment of any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements that are found by a final and nonappealable decision of a court of competent jurisdiction to have resulted from such Agent's, gross negligence or willful misconduct. The agreements in this Section 8.7 shall survive the payment of the Term Loans and all other amounts payable hereunder.

8.8. Agent and Sustainability Structuring Agent in Their Individual Capacity. Each Agent, the Sustainability Structuring Agent and their affiliates may make loans to, accept deposits from and generally engage in any kind of business with any Loan Party as though such Agent or Sustainability Structuring Agent, as applicable, were not an Agent or Sustainability Structuring Agent, as applicable. With respect to its Term Loans made or renewed by it, each Agent and the Sustainability Structuring Agent shall have the same rights and powers under this Agreement and the other Loan Documents as any Lender and may exercise the same as though it were not an Agent or the Sustainability Structuring Agent, as applicable, and the terms "Lender" and "Lenders" shall include each Agent or the Sustainability Structuring Agent in their individual capacity.

8.9. Successor Administrative Agent. The Administrative Agent may resign as Administrative Agent upon 30 days' notice to the Lenders and any Loan Party. If the Administrative Agent shall resign as Administrative Agent under this Agreement and the other Loan Documents, then the Required Lenders shall appoint from among the Lenders a successor agent for the Lenders, which successor agent shall be subject to approval by the Borrower (which approval shall not be unreasonably withheld or delayed), whereupon such successor agent shall succeed to the rights, powers and duties of the Administrative Agent, and the term "Administrative Agent" shall mean such successor agent effective upon such appointment and approval, and the former Administrative Agent's rights, powers and duties as an Administrative Agent shall be terminated, without any other or further act or deed on the part of such former Administrative Agent or any of the parties to this Agreement or any holders of the Term Loans. If no successor agent has accepted appointment as an Administrative Agent by the date that is ten (10) days following the retiring Administrative Agent's notice of resignation, the retiring Administrative Agent's resignation shall nevertheless thereupon become effective, and the Lenders shall assume and perform all of the duties of the Administrative Agent hereunder until such time, if any, as the Required Lenders appoint a successor agent as provided for above. After the retiring Administrative Agent's resignation, the provisions of this Section 8 and Section 9.5 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent under this Agreement and the other Loan Documents.

8.10. Successor Sustainability Structuring Agent. The Sustainability Structuring Agent may resign as Sustainability Structuring Agent upon 30 days' notice to the Lenders and any Loan Party. If the

Sustainability Structuring Agent shall resign as Sustainability Structuring Agent under this Agreement and the other Loan Documents, then the Required Lenders shall appoint from among the Lenders a successor agent for the Lenders, which successor agent shall be subject to approval by the Borrower (which approval shall not be unreasonably withheld or delayed), whereupon such successor agent shall succeed to the rights, powers and duties of the Sustainability Structuring Agent, and the term “Sustainability Structuring Agent” shall mean such successor agent effective upon such appointment and approval, and the former Sustainability Structuring Agent’s rights, powers and duties as an Sustainability Structuring Agent shall be terminated, without any other or further act or deed on the part of such former Sustainability Structuring Agent or any of the parties to this Agreement or any holders of the Term Loans. If no successor agent has accepted appointment as an Sustainability Structuring Agent by the date that is ten (10) days following the retiring Sustainability Structuring Agent’s notice of resignation, the retiring Sustainability Structuring Agent’s resignation shall nevertheless thereupon become effective, and the Lenders shall assume and perform all of the duties of the Sustainability Structuring Agent hereunder until such time, if any, as the Required Lenders appoint a successor agent as provided for above. After the retiring Sustainability Structuring Agent’s resignation, the provisions of this Section 8 and Section 9.5 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Sustainability Structuring Agent under this Agreement and the other Loan Documents.

8.11. Payments.

(a) If the Administrative Agent notifies a Lender or any Person who has received funds on behalf of a Lender (any such Lender or other recipient, a “Payment Recipient”) that the Administrative Agent has determined in its sole discretion (whether or not after receipt of any notice under immediately succeeding clause (b)) that any funds received by such Payment Recipient from the Administrative 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 Lender or other Payment Recipient on its behalf) (any such funds, whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise, individually and collectively, an “Erroneous Payment”) and demands the return of such Erroneous Payment (or a portion thereof), such Erroneous Payment shall at all times remain the property of the Administrative Agent, and such Lender shall (or, with respect to any Payment Recipient who received such funds on its behalf, shall cause such Payment Recipient to) promptly, but in no event later than two Business Day thereafter, return to the Administrative Agent the amount of any such Erroneous Payment (or portion thereof) as to which such a demand was 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 Erroneous Payment (or portion thereof) was received by such Payment Recipient to the date such amount is repaid to the Administrative Agent in same day funds at the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation from time to time in effect. A notice of the Administrative Agent to any Payment Recipient under this clause (a) shall be conclusive, absent manifest error.

(b) Without limiting immediately preceding clause (a), each Payment Recipient hereby further agrees that if it receives a payment, prepayment or repayment (whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise) from the Administrative Agent (or any of its Affiliates) (x) that is in a different amount than, or on a different date from, that specified in a notice of payment, prepayment or repayment sent by the Administrative Agent (or any of its Affiliates) with respect to such payment, prepayment or repayment (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:

(i) an error may have been made (in the case of immediately preceding clauses (x) or (y)) or an error has been made (in the case of immediately preceding clause (z)) with respect to such payment, prepayment or repayment; and

(ii) such Payment Recipient shall promptly (and, in all events, within one Business Day of its knowledge of such error) notify the Administrative Agent of its receipt of such payment, pre-payment or repayment, the details thereof and that it is so notifying the Administrative pursuant to this Section 8.11(b).

(c) Each Lender hereby authorizes the Administrative Agent to set off, net and apply any and all amounts at any time owing to such Lender under any Loan Document, or otherwise payable or distributable by the Administrative Agent to such Lender from any source, against any amount due to the Administrative Agent under immediately preceding clause (a) or under the indemnification provisions of this Agreement.

(d) In the event an Erroneous Payment (or portion thereof) is not recovered by the Administrative Agent for any reason, after demand therefor by the Administrative Agent in accordance with immediately preceding clause (a), from any Lender that has received such Erroneous Payment (or portion thereof) (or from any Payment Recipient who received such Erroneous Payment (or portion thereof) on its respective behalf) (such unrecovered amount, an “Erroneous Payment Return Deficiency”), upon the Administrative Agent’s request to such Lender or Issuing Lender at any time, (i) such Lender shall be deemed to have assigned its Term Loans (but not its Term Commitments) with respect to which such Erroneous Payment was made in an amount equal to the Erroneous Payment Return Deficiency (such assignment of the Term Loans (but not Term Commitments), the “Erroneous Payment Deficiency Assignment”) at par plus any accrued and unpaid interest (with the assignment fee to be waived by the Administrative Agent in such instance), and is hereby (together with the Borrower) deemed to execute and deliver an Assignment and Acceptance (or, to the extent applicable, an agreement incorporating an Assignment and Assumption by reference pursuant to an approved electronic platform as to which the Administrative Agent and such parties are participants) with respect to such Erroneous Payment Deficiency Assignment, and such Lender shall deliver any Notes evidencing such Term Loans to the Borrower or the Administrative Agent, (ii) the Administrative Agent as the assignee Lender shall be deemed to acquire the Erroneous Payment Deficiency Assignment and (iii) upon such deemed acquisition, the Administrative Agent as the assignee Lender shall become a Lender hereunder with respect to such Erroneous Payment Deficiency Assignment and the assigning Lender shall cease to be a Lender hereunder with respect to such Erroneous Payment Deficiency Assignment, excluding, for the avoidance of doubt, its obligations under the indemnification provisions of this Agreement and its applicable Term Commitments which shall survive as to such assigning Lender. For the avoidance of doubt, no Erroneous Payment Deficiency Assignment will reduce the Term Commitments of any Lender and such Term Commitments shall remain available in accordance with the terms of this Agreement.

(e) The parties hereto agree that an Erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Obligations owed by the Borrower or any other Loan Party, except, in each case, to the extent such Erroneous Payment is, and solely with respect to the amount of such Erroneous Payment that is, comprised of funds received by the Administrative Agent from the Borrower or any other Loan Party used to make such Erroneous Payment.

(f) To the extent permitted by applicable law, no Payment Recipient shall assert any right or claim to an Erroneous Payment, and hereby waives, and is deemed to waive, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by the Administrative Agent for the return of any Erroneous Payment received, including without limitation waiver of any defense based on “discharge for value” or any similar doctrine

(g) Each party's obligations, agreements and waivers under this Section 8.11 shall survive the resignation or replacement of the Administrative Agent, any transfer of rights or obligations by, or the replacement of, a Lender, the termination of the Term Commitments and/or the repayment, satisfaction or discharge of all Obligations (or any portion thereof) under any Loan Document.

8.12. Other Terms.

(a) The Administrative Agent and Sustainability Structuring Agent shall be entitled to take any action or refuse to take any action which the Administrative Agent or Sustainability Structuring Agent regards as necessary for the Administrative Agent or Sustainability Structuring Agent to comply with any applicable law, regulation or court order.

(b) Notwithstanding anything to the contrary set forth herein, each reference to any discretion of the Administrative Agent or Sustainability Structuring Agent herein or to any action that is required to be satisfactory to any Administrative Agent or the Sustainability Structuring Agent or determined by any Administrative Agent or Sustainability Structuring Agent, shall be deemed to refer to the Administrative Agent or Sustainability Structuring Agent taking direction from the Lenders or the Required Lenders with respect to such discretion or approval, as applicable.

8.13. Enforcement by the Administrative Agent. All rights of action under this Agreement and under the Notes hereunder may be enforced by the Administrative Agent and any suit or proceeding instituted by the Administrative Agent in furtherance of such enforcement shall be brought in its name as Administrative Agent without the necessity of joining as plaintiffs or defendants any other Lenders, and the recovery of any judgment shall be for the benefit of Lenders subject to the expenses of the Administrative Agent.

8.14. Withholding Tax. Each Lender shall severally indemnify the Administrative Agent, within 10 days after demand therefor, for (i) any Non-Excluded Taxes or Other Taxes attributable to such Lender (but only to the extent that the Borrower has not already indemnified the Administrative Agent for such Non-Excluded Taxes or Other Taxes and without limiting the obligation of the Borrower to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 9.6(c) relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under this Agreement or any other Loan Document against any amount due to the Administrative Agent under this Section 8.14. The agreements in this Section 8.14 shall survive the resignation and/or replacement of the Administrative Agent, any assignment of rights by, or the replacement of, a Lender, the termination of this Agreement and the repayment, satisfaction or discharge of all other Obligations.

8.15. Certain ERISA Matters. (a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent, the Sustainability Structuring Agent and each Arranger and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that at least one of the following is and will be true:

(i) such Lender is not using “plan assets” (within the meaning of Section 3(42) of ERISA or otherwise) of one or more Benefit Plans with respect to such Lender’s entrance into, participation in, administration of and performance of the Term Loans, the Term 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 Term Loans, the Term 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 Term Loans, the Term Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Term Loans, the Term 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 Term Loans, the Term Commitments and this Agreement, or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

(b) In addition, unless sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or such Lender has provided another representation, warranty and covenant in accordance with sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of the Administrative Agent and Sustainability Structuring Agent, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that the Administrative Agent and Sustainability Structuring Agent are not fiduciaries with respect to the assets of such Lender involved in such Lender’s entrance into, participation in, administration of and performance of the Term Loans, the Term Commitments and this Agreement (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Loan Document or any documents related hereto or thereto).

## SECTION 9

### Miscellaneous

#### 9.1. Amendments and Waivers.

(a) Subject to Section 2.25(f), none of this Agreement, any Note, any other Loan Document, nor any terms hereof or thereof may be amended, supplemented or modified except in accordance with the provisions of this Section 9.1. The Required Lenders and each Loan Party party to the relevant Loan Documents may, or, with the written consent of the Required Lenders, the Administrative Agent and each Loan Party party to the relevant Loan Document may, from time to time, (I) enter into written amendments, supplements or modifications hereto or to the other Loan Documents for the purpose of adding any provisions to this Agreement or the other Loan Documents or changing in any manner the rights of the Lenders or of the

Loan Parties hereunder or thereunder or (II) waive, on such terms and conditions as the Required Lenders or the Administrative Agent, as the case may be, may specify in such instrument, any of the requirements of this Agreement or the other Loan Documents or any Default or Event of Default and its consequences; provided, however, that no such waiver and no such amendment, supplement or modification shall (A)(i) forgive the principal amount or extend the final scheduled date of maturity of any Term Loan, (ii) reduce the stated rate of any interest or fee payable hereunder (including, for the avoidance of doubt, the Sustainability Margin Adjustment) (except in connection with the waiver of applicability of any post-default increase in interest rates (which waiver shall be effective with the consent of the Required Lenders)) or extend the scheduled date of any payment thereof, (iii) increase the amount or extend the expiration date of any Lender's Term Commitment (it being understood that a waiver of any Event of Default or Default shall not be deemed to be an increase in the amount of or extension of the expiration date of any Lender's Term Commitments), (iv) release all or substantially all of the Guarantors (except as expressly permitted by the Loan Documents, including in accordance with Section 9.14) or (v) amend, modify or waive any provision of Section 9.7(a), in each case without the written consent of each Lender directly affected thereby, (B) without the consent of all the Lenders, (i) amend, modify or waive any provision of this Section 9.1(a) or any other provision of any Section hereof expressly requiring the consent of all the Lenders (except, in either case, for technical amendments with respect to additional extensions of credit pursuant to this Agreement which afford protections to such additional extensions of credit of the type provided to the Term Commitments on the Closing Date), or (ii) reduce the percentage specified in or otherwise change the definition of Required Lenders (it being understood that, with the consent of the Required Lenders or as otherwise permitted hereunder, additional extensions of credit pursuant to this Agreement may be included in the determination of the Required Lenders on substantially the same basis as the extensions of Term Commitments are included on the Closing Date), or (iii) change Section 2.14 in a manner that would alter the pro rata sharing of payments required thereby (other than as permitted thereby or by Section 9.1(b)), (C) amend, modify or waive any provision of Section 8 or any other provision of this Agreement or the other Loan Documents, which affects, the rights, duties or obligations of the Administrative Agent without the written consent of the Administrative Agent and (D) [reserved]; provided further that no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent hereunder without the prior written consent of the Administrative Agent. Any such waiver and any such amendment, supplement or modification shall apply equally to each of the Lenders and shall be binding upon the Loan Parties, the Lenders, the Administrative Agent and all future holders of the Term Loans. In the case of any waiver, the Loan Parties, the Lenders and the Administrative Agent shall be restored to their former position and rights hereunder and under any other Loan Documents, and any Default or Event of Default waived shall be deemed to have not occurred or to be cured and not continuing, as the parties may agree; but no such waiver shall extend to any subsequent or other Default or Event of Default, or impair any right consequent thereon. Notwithstanding anything to the contrary contained in this Section 9.1, any amendment, supplement or modification related to Section 2.25, Section 5.2(d) and Schedule 1.3 (and any component definitions thereof related to sustainability provisions) shall require, in addition to the other requirements set forth in this Agreement, the consent of the Sustainability Structuring Agent.

(b) Notwithstanding anything to the contrary contained in this Section 9.1, if the Administrative 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 Administrative 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 ten (10) Business Days following receipt of notice thereof. Notwithstanding anything to the contrary in this Agreement or the other Loan Documents, the Administrative Agent is hereby irrevocably authorized by each Lender (and each such Lender expressly consents), without any further action or the consent of any other party to any Loan Document, to make any technical amendments to the Guarantee Agreement to correct any cross-references therein to any provision of this Agreement that may be necessary in order to properly reflect the amendments made to this Agreement.

(c) Notwithstanding anything to the contrary contained in the Loan Documents, the Term Loans of any Lender that is at the time a Defaulting Lender shall not have any voting or approval rights under the Loan Documents and shall be excluded in determining whether all Lenders, all affected Lenders or the Required Lenders have taken or may take any action hereunder (including any consent to any amendment or waiver pursuant to this Section 9.1); provided that any waiver, amendment or modification (i) requiring the consent of all Lenders or (ii) each affected Lender that affects any Defaulting Lender more adversely than other affected Lenders shall require the consent of each Defaulting Lender.

9.2. Notices.

(a) All notices, requests and demands to or upon the respective parties hereto to be effective shall be in writing (including by telecopy), and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when received, addressed as follows in the case of the Loan Parties and the Administrative Agent, and as set forth in the administrative questionnaire delivered to the Administrative Agent in the case of the Lenders, or to such other address as may be hereafter notified by the respective parties hereto and any future parties:

The Borrower:            Micron Technology, Inc.  
8000 S. Federal Way  
Boise, ID 83716-9632  
Attention: General Counsel

with copies (which shall not constitute notice) to:

Wilson Sonsini Goodrich & Rosati  
650 Page Mill Road  
Palo Alto, CA 94304  
Attention: Erik Franks  
Email: [efranks@wsgr.com](mailto:efranks@wsgr.com)  
Telecopier No.: 650-493-6811

The Administrative Agent: Wells Fargo Bank, National Association MAC D1109-019 1525 West W.T. Harris Blvd. Charlotte, NC 28262  
Attention: Syndication Agency Services Facsimile Number: (888) 879-5899 Email:  
[Agencyservices.requests@wellsfargo.com](mailto:Agencyservices.requests@wellsfargo.com)

with copies (which shall not constitute notice) to:

Simpson Thacher & Bartlett LLP  
425 Lexington Ave  
New York, NY 10017  
Attention: Justin M. Lungstrum  
Telecopier No.: 212-455-2502

The Sustainability Structuring Agent: Credit Agricole Corporate and Investment Bank  
1301 Avenue of the Americas  
New York, NY, 10019

Attn: Fanny Charrier  
Telephone: 212-261-3931  
Email: SB.US.Loans@ca-cib.com

with copies (which shall not constitute notice) to:

Simpson Thacher & Bartlett LLP  
425 Lexington Ave  
New York, NY 10017  
Attention: Justin M. Lungstrum  
Telecopier No.: 212-455-2502

(b) Notices and other communications to the Lenders and the Sustainability Structuring Agent hereunder may be delivered or furnished by electronic communications (including e-mail and Internet or intranet websites or other information platform) (the “Platform”) pursuant to procedures approved by the Administrative Agent; provided that the foregoing shall not apply to notices pursuant to Sections 2.2, 2.4, 2.6, 2.7(e), 2.10, 2.11, 2.12, 2.14 and 2.17 unless otherwise agreed by the Administrative Agent and the applicable Lender. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications. Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender’s receipt of an acknowledgement from the intended recipient (such as by the “return receipt requested” function, as available, return e-mail or other written acknowledgement), provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(c) Each of the Loan Parties understands that the distribution of material through an electronic medium is not necessarily secure and that there are confidentiality and other risks associated with such distribution and agrees and assumes the risks associated with such electronic distribution, except to the extent caused by the willful misconduct or gross negligence of the Administrative Agent or Sustainability Structuring Agent, as determined by a final, non-appealable judgment of a court of competent jurisdiction.

(d) The Platform and any Approved Electronic Communications are provided “as is” and “as available”. None of the Agent or any of their respective officers, directors, employees, agents, advisors or representatives warrant the accuracy, adequacy, or completeness of the Approved Electronic Communications or the Platform and each expressly disclaims liability for errors or omissions in the Platform and the Approved Electronic Communications. No warranty of any kind, express, implied or statutory, including any warranty of merchantability, fitness for a particular purpose, non-infringement of third party rights or freedom from viruses or other code defects is made by any of the Agent or the Sustainability Structuring Agent or any of their respective officers, directors, employees, agents, advisors or representatives in connection with the Platform or the Approved Electronic Communications. In no event shall the Agent or the Sustainability Structuring Agent have any liability to the Borrower, any Lender, Issue or any other person or entity for damages of any kind, including direct or indirect, special, incidental or consequential damages, losses or expenses (whether in tort, contract or otherwise) arising out of the Borrower’s or the Administrative Agent’s Transmission of Communications through the internet or the approved electronic platform except where such liabilities result from the Agent or Sustainability Structuring Agent’s bad faith, willful misconduct, gross



negligence or material breach as determined in a final, nonappealable judgment by a court of competent jurisdiction.

(e) Each of the Loan Parties, the Lenders, and the Agent agree that Administrative Agent may, but shall not be obligated to, store any Approved Electronic Communications on the Platform in accordance with the Administrative Agent's customary document retention procedures and policies.

9.3. No Waiver; Cumulative Remedies. No failure to exercise and no delay in exercising, on the part of the Administrative Agent or any Lender, any right, remedy, power or privilege hereunder or under the other Loan Documents shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

9.4. Survival of Representations and Warranties. All representations and warranties made hereunder, in the other Loan Documents and in any document, certificate or statement delivered pursuant hereto or in connection herewith shall survive the execution and delivery of this Agreement and the making of the Term Loans and the other extensions of credit hereunder.

9.5. Payment of Expenses. The Borrower agrees (a) to pay or reimburse each of the Administrative Agent and the Sustainability Structuring Agent for all its reasonable out-of-pocket costs and expenses reasonably incurred in connection with (i) the development, negotiation, preparation, execution and delivery of this Agreement, the Notes and any other documents prepared in connection herewith or therewith, including any amendment, supplement or modification to any of the foregoing and (ii) the consummation and administration of the transactions contemplated hereby and thereby, and the reasonable fees and disbursements of one counsel to the Administrative Agent, the Sustainability Structuring Agent and the Arrangers, taken as a whole (and to the extent necessary, one local counsel in each relevant jurisdiction for all such entities, taken as a whole and, solely in the case of an actual or potential conflict of interest, one additional local counsel in each relevant jurisdiction to the affected entities similarly situated, taken as a whole), and security interest filing and recording fees and expenses, (b) to pay or reimburse the Administrative Agent, the Sustainability Structuring Agent, each Lender for all its reasonable costs and expenses reasonably incurred in connection with the enforcement or preservation of any rights under this Agreement, the Notes, the other Loan Documents and any such other documents following the occurrence and during the continuance of an Event of Default, including without limitation, the reasonable fees and disbursements of one counsel to the Administrative Agent, the Sustainability Structuring Agent and the Lenders and each of their respective affiliates, taken as a whole (other than during an Event of Default, in which case, the Administrative Agent shall be entitled to its own counsel separate from the Sustainability Structuring Agent, the Lenders) (and, to the extent reasonably necessary, one local counsel in each relevant jurisdiction for all such entities, taken as a whole, and, solely in the case of an actual or potential conflict of interest, one additional local counsel in each relevant jurisdiction to the affected entities similarly situated, taken as a whole, and (c) to pay, and indemnify and hold harmless each Lender, each Arranger, the Sustainability Structuring Agent, the Administrative Agent and each of their respective Affiliates, directors, officers, employees, representatives, partners, advisors and agents (each, an "Indemnitee") from and against any and all other liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever with respect to the execution, delivery, enforcement, performance, preservation of rights and administration of this Agreement, the Notes, the other Loan Documents or the use of the proceeds of the Term Loans or any of the foregoing in connection with (i) the violation of, noncompliance with or liability under, any Environmental Law (including environmental claims and liabilities), (ii) consummation of the transactions contemplated thereby; or (iii) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Borrower, and regardless of whether any

Indemnitee is a party thereto and the reasonable fees and expenses of one legal counsel for the Indemnitees taken as a whole in connection with claims, actions or proceedings by any Indemnitee against any Loan Party under any Loan Document (all the foregoing in this clause (c), collectively, the “indemnified liabilities”), provided that the Borrower shall have no obligation hereunder to any Indemnitee with respect to indemnified liabilities to the extent determined by the final non-appealable judgment of a court of competent jurisdiction to have resulted from the bad faith, gross negligence or willful misconduct of such Indemnitee or any of such Indemnitee’s Related Persons; provided, further, that the Borrower shall in no event be responsible for consequential, indirect, special or punitive damages to any Indemnitee pursuant to this Section 9.5 except such consequential, indirect, special or punitive damages required to be paid by such Indemnitee in respect of any indemnified liabilities. Without limiting the foregoing, and to the extent permitted by applicable law, the Borrower agrees not to assert and to cause its Subsidiaries not to assert, and hereby waives and agrees to cause its Subsidiaries to waive, all rights for contribution or any other rights of recovery with respect to all claims, demands, penalties, fines, liabilities, settlements, damages, costs and expenses of whatever kind or nature, under or related to Environmental Laws, that any of them might have by statute or otherwise against any Indemnitee. To the extent permitted by applicable law, no party to this agreement shall assert, and each Loan Party hereby waives, on behalf of itself and its Subsidiaries, any claim against any Indemnitee and its affiliates, directors, officers, employees, attorneys, representatives, agents or sub-agents, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) (whether or not the claim therefor is based on contract, tort or duty imposed by any applicable legal requirement) arising out of, in connection with, as a result of, or in any way related to, this Agreement or any Loan Document or any agreement or instrument contemplated hereby or thereby or referred to herein or therein, the transactions contemplated hereby or thereby, any Term Loan or the use of the proceeds thereof or any act or omission or event occurring in connection therewith, and the each Loan Party hereby waives, releases and agrees, on behalf of itself and each of its respective Subsidiaries, not to sue upon any such claim or any such damages, whether or not accrued and whether or not known or suspected to exist in its favor. No Indemnitee referred to in clause above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with the Agreement or the other Loan Documents or the transactions contemplated thereby. All amounts due under this Section 9.5 shall be payable not later than 10 days after written demand therefor. The agreements in this Section shall survive the termination of this Agreement and repayment of the Term Loans and all other amounts payable hereunder. This Section 9.5 shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

9.6. Successors and Assigns; Participations.

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted, except that (i) unless otherwise permitted by Section 6.3 hereof, the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender (and any attempted assignment or transfer by the Borrower without such consent shall be null and void) and (ii) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section.

(b) (i) Subject to the conditions set forth in paragraph (b)(ii) below, any Lender may assign to one or more assignees (each, an “Assignee”) all or a portion of its rights and obligations under this Agreement (including all or a portion of its Term Commitments and the Term Loans at the time owing to it) with the prior written consent of:

(A) the Borrower (such consent not to be unreasonably withheld, delayed or conditioned), provided that no consent of the Borrower shall be required for an assignment to a Lender, a depository institution affiliate of a Lender having access to discount window

credit of the Federal Reserve (as defined below) or, if an Event of Default under Section 7.1(a) or (b) has occurred and is continuing, any other Person;

(B) the Administrative Agent (such consent not to be unreasonably withheld, delayed or conditioned), provided that no consent of the Administrative Agent shall be required for an assignment to a Lender, an affiliate of a Lender or an Approved Fund; and

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

(A) except in the case of an assignment to a Lender, an affiliate of a Lender or an Approved Fund or an assignment of the entire remaining amount of the assigning Lender's Term Commitments or Term Loans, the amount of the Term Commitments or Term Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Acceptance with respect to such assignment is delivered to the Administrative Agent) shall not be less than \$5,000,000 unless each of the Borrower and the Administrative Agent otherwise consent, provided that (1) no such consent of the Borrower shall be required if an Event of Default under Section 7.1(a) or (b) has occurred and is continuing and (2) such amounts shall be aggregated in respect of each Lender and its affiliates or Approved Funds, if any;

(B) (1) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Acceptance, together with a processing and recordation fee of \$3,500 (although the Borrower shall not be responsible for the payment of the recordation fee unless the Borrower has chosen to replace a Lender pursuant to Section 2.22) and (2) the assigning Lender shall have paid in full any amounts owing by it to the Administrative Agent;

(C) the Assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an administrative questionnaire in which the Assignee designates one or more credit contacts to whom all syndicate-level information (which may contain material non-public information about the Borrower and its Affiliates and their related parties or their respective securities) will be made available and who may receive such information in accordance with the assignee's compliance procedures and applicable laws, including federal and state securities laws; and

(D) none of the Loan Parties, their respective Affiliates, any natural person or a Defaulting Lender shall be an Assignee hereunder.

For the purposes of this Section 9.6, "Approved Fund" means any Person (other than a natural person) that is engaged in making, purchasing, holding or investing in bank loans and similar extensions of credit in the ordinary course of its business and that is administered or managed by (a) a Lender, (b) an affiliate of a Lender or (c) an entity or an affiliate of an entity that administers or manages a Lender.

(iii) Subject to acceptance and recording thereof pursuant to paragraph (b)(iv) below, from and after the effective date specified in each Assignment and Acceptance the Assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Acceptance, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Acceptance, be released from its obligations under this Agreement (and, in the case of an Assignment and Acceptance covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of

Sections 2.15, 2.16, 2.17 and 9.5 for the period of time in which it was a Lender hereunder. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 9.6 shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (c) of this Section.

(iv) The Administrative Agent, acting solely for this purpose as an agent of the Borrower, shall maintain at one of its offices a copy of each Assignment and Acceptance delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Term Commitments of, and principal amount (and interest amounts) of the Term Loans owing to, each Lender pursuant to the terms hereof from time to time (the “Register”). The entries in the Register shall be conclusive (absent manifest error), and the Borrower, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower or any Lender at any reasonable time and from time to time upon reasonable prior notice. Any assignment shall be effective only upon appropriate entries with respect thereto being made in the Register.

(v) Upon its receipt of an Assignment and Acceptance (executed via an electronic settlement system acceptable to the Administrative Agent (or, if previously agreed with the Administrative Agent, manually)), by a transferor Lender and an Assignee, as the case may be (and, in the case of an Assignee that is not then a Lender, by the Administrative Agent and the Borrower to the extent required under this Section 9.6), together with payment to the Administrative Agent by the transferor Lender or the Assignee of a recordation and processing fee of \$3,500 (which fee may be waived or reduced in the sole discretion of the Administrative Agent), the Administrative Agent shall (i) promptly accept such Assignment and Acceptance, (ii) on the effective date of such transfer determined pursuant thereto record the information contained therein in the Register and (iii) give notice of such acceptance and recordation to the transferor Lender, the Assignee and the Borrower.

(c) Any Lender may, without the consent of or notice to the Borrower or the Administrative Agent, sell participations to one or more banks or other entities (a “Participant”) in all or a portion of such Lender’s rights and obligations under this Agreement (including all or a portion of its Term Loans owing to it); provided that (A) such Lender’s obligations under this Agreement shall remain unchanged, (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, (C) the Borrower, the Administrative Agent and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender’s rights and obligations under this Agreement and (D) none of the Loan Parties, their respective Affiliates, any natural person or a Defaulting Lender shall be a Participant hereunder. Any agreement pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and the other Loan Documents and to approve any amendment, modification or waiver of any provision of this Agreement and any other Loan Document or to otherwise exercise its voting righting rights under this Agreement and any other Loan Document; provided that such agreement may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver that (1) requires the consent of each Lender directly affected thereby pursuant to the proviso to the second sentence of Section 9.1(a) and (2) directly affects such Participant. Subject to paragraph (c)(i) of this Section, the Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.15, 2.16 and 2.17 (subject to the requirements and limitations of such sections and Sections 2.18 and 2.22 and it being understood that the documentation required under Section 2.16(e) shall be delivered solely to the participating Lender) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 9.7(b) as though it were a Lender, provided such Participant shall be subject to Section 9.7(a) as though it were a Lender.

(i) A Participant shall not be entitled to receive any greater payment under Section 2.15, 2.16 or 2.17 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, except to the extent that any entitlement to a greater payment results from a change in any Requirement of Law arising after such Participant became a Participant.

(ii) Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each participant and the principal amounts (and related interest amounts) of each participant's interest in the Term Loans or other obligations under this Agreement (the "Participant Register"). The entries in a Participant Register shall be conclusive, absent manifest error, and such Lender shall treat each person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. No Lender shall have any obligation to disclose all or any portion of a Participant Register to any Person (including the identity of any Participant or any information relating to a Participant's interest in any Term Loans) except to the extent that such disclosure is necessary to establish that such Term Loan is in registered form under Section 5f.103(c) of the United States Treasury Regulations or, if different, under Sections 871(h) or 881(c) of the Code.

(d) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank, and this Section shall not apply to any such pledge or assignment of a security interest; provided that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or Assignee for such Lender as a party hereto.

(e) Subject to Section 9.15, the Borrower authorizes each Lender to disclose to any Transferee and any prospective Transferee (in each case which agrees to comply with the provisions of Section 9.15 or confidentiality requirements no less restrictive on such prospective transferee than those set forth in Section 9.15) any and all financial information in such Lender's possession concerning the Borrower and its Affiliates which has been delivered to such Lender by or on behalf of the Borrower pursuant to this Agreement or any other Loan Document or which has been delivered to such Lender by or on behalf of the Borrower in connection with such Lender's credit evaluation of the Borrower and its Affiliates prior to becoming a party to this Agreement.

#### 9.7. Adjustments; Setoff.

(a) Except to the extent that this Agreement, any other Loan Document or a court order expressly provides or permits for payments to be allocated to a particular Lender or to the Lenders, if any Lender (a "Benefited Lender") shall receive any payment of all or part of the Obligations owing to it (other than in connection with an assignment or participation made pursuant to Section 9.6), or receive any collateral in respect thereof (whether voluntarily or involuntarily, by setoff or otherwise), in a greater proportion than any such payment to or collateral received by any other Lender, if any, in respect of the Obligations owing to such other Lender, such Benefited Lender shall purchase for cash from the other Lenders a participating interest in such portion of the Obligations owing to each such other Lender, or shall provide such other Lenders with the benefits of any such collateral, as shall be necessary to cause such Benefited Lender to share the excess payment or benefits of such collateral ratably with each of the Lenders; provided that if all or any portion of such excess payment or benefits is thereafter recovered from such Benefited Lender, such purchase shall be rescinded, and the purchase price and benefits returned, to the extent of such recovery, but without interest.

(b) In addition to any rights and remedies of the Lenders provided by law, each Lender shall have the right, unless otherwise agreed in writing by such Lender with the Borrower, without notice to the

Borrower, any such notice being expressly waived by the Borrower to the extent permitted by applicable law, upon any Obligations becoming due and payable by the Borrower (whether at the stated maturity, by acceleration or otherwise), to apply to the payment of such Obligations, by setoff or otherwise, any and all deposits (general or special, time or demand, provisional or final), in any currency, and any other credits, indebtedness or claims, in any currency, in each case whether direct or indirect, absolute or contingent, matured or unmatured, at any time held or owing by such Lender, any affiliate thereof or any of their respective branches or agencies to or for the credit or the account of the Borrower. Each Lender agrees promptly to notify the Borrower and the Administrative Agent after any such application made by such Lender, provided that the failure to give such notice shall not affect the validity of such application.

9.8. Counterparts. This Agreement may be executed by one or more of the parties to this Agreement on any number of separate counterparts, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. Delivery of an executed signature page of this Agreement by facsimile or email transmission shall be effective as delivery of a manually executed counterpart hereof. The words “execution”, “signed”, “signature” and words of like import in this Agreement or in any other Loan Document shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act or any other similar state laws based on the Uniform Electronic Transactions Act.

9.9. Severability. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

9.10. Integration. This Agreement and the other Loan Documents represent the entire agreement of the Borrower, the Administrative Agent and the Lenders with respect to the subject matter hereof and thereof, and there are no promises, undertakings, representations or warranties by the Administrative Agent or any Lender relative to the subject matter hereof not expressly set forth or referred to herein or in the other Loan Documents.

9.11. GOVERNING LAW. THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES UNDER THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

9.12. Submission To Jurisdiction; Waivers.

(a) Subject to clause (b)(iii) of this Section 9.12, each party hereto hereby irrevocably and unconditionally submits for itself and its property in any legal action or proceeding relating to this Agreement and the other Loan Documents to which it is a party, or for recognition and enforcement of any judgment in respect thereof, to the exclusive general jurisdiction of the courts of the State of New York, the courts of the United States for the Southern District of New York, and appellate courts from any thereof, in each case that are located in the Borough of Manhattan, the City of New York;

(b) The Borrower hereby irrevocably and unconditionally:

(i) agrees that any such action or proceeding shall be brought in such courts and waives any objection that it may now or hereafter have to the venue of any such action or proceeding in any

such court or that such action or proceeding was brought in an inconvenient court and agrees not to plead or claim the same;

(ii) agrees that service of process in any such action or proceeding may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, to the Borrower at its address set forth in Section 9.2 or at such other address of which the Administrative Agent shall have been notified pursuant thereto;

(iii) agrees that nothing herein shall affect the right to effect service of process in any other manner permitted by law or shall limit the right of any Agent, any Arranger or any Lender to sue in any other jurisdiction; and

(iv) waives, to the maximum extent not prohibited by law, any right it may have to claim or recover in any legal action or proceeding referred to in this Section any special, exemplary, punitive or consequential damages.

9.13. Acknowledgements. The Borrower hereby acknowledges that:

(a) it has been advised by counsel in the negotiation, execution and delivery of this Agreement and the other Loan Documents;

(b) notwithstanding the provisions of this Agreement or any of the other Loan Documents, the Arrangers, Syndication Agent and Documentation Agents shall have no powers, duties, responsibilities or liabilities with respect to this Agreement and the other Loan Documents;

(c) the Agent, the Arrangers, the Syndication Agent, the Documentation Agents, the Lenders and their Affiliates may have economic interests that conflict with those of the Borrower; and

(d) no joint venture is created hereby or by the other Loan Documents or otherwise exists by virtue of the transactions contemplated hereby among the Lenders or among the Borrower and the Lenders

9.14. Guarantors; Release of Guarantors.

(a) The Borrower may, at any time after the Closing Date, upon prior written notice to the Administrative Agent, cause any of its Subsidiaries to become a Guarantor by causing such Subsidiary to execute and deliver to the Administrative Agent a Subsidiary Guaranty, with respect to such Subsidiary, all in form and substance reasonably satisfactory to the Administrative Agent.

(b) Notwithstanding anything to the contrary contained herein or in any other Loan Document, the Administrative Agent is hereby irrevocably authorized by each Lender (and each such Lender hereby expressly consents) (without requirement of notice to or consent of any Lender except as expressly required by Section 9.1(a)), and the Administrative Agent hereby agrees with the Borrower, to take any action reasonably requested by the Borrower to effect the release of any Guarantor from its guarantee obligations (i) to the extent necessary to permit consummation of any transaction not prohibited by any Loan Document or that has been consented to in accordance with Section 9.1(a), including, in each case and without limitation, any sale, transfer or other disposition of any Guarantor (other than to the Borrower or another Guarantor), and (ii) under the circumstances described in paragraph (c) below (and, upon the consummation of any such transaction in preceding clause (i) or (ii), such Guarantor shall be released from its obligations hereunder).

(c) Notwithstanding anything to the contrary contained herein or in any other Loan Document, the Lenders hereby agree, and the Administrative Agent is hereby irrevocably authorized by each Lender (without requirement of notice to or consent of any Lender) to take any action required by the Borrower having the effect of releasing a Guarantor from its guarantee obligations hereunder if (i) all or substantially all of the assets of such Guarantor have been sold or otherwise disposed of (including by way of merger or consolidation) to a Person that is not a Borrower or a Guarantor or (ii) such Guarantor has been liquidated or dissolved.

(d) The Guarantee of the Obligations by any Guarantor will terminate upon:

(i) a sale or other disposition (including by way of consolidation or merger) of the Capital Stock of such Guarantor such that such Guarantor is no longer a Restricted Subsidiary of the Borrower; and

(ii) if such Guarantor was not required to Guarantee the Obligations, but did so at its option, the request by such Guarantor of release at any time; provided that after giving effect to such release the Borrower would be in compliance with the covenant set forth in Section 6.1.

The Administrative Agent will execute any documents reasonably required in order to evidence the release of any Guarantor from its obligations under its Guarantee pursuant to the foregoing.

9.15. Confidentiality. Each Agent, each Arranger and each Lender agrees to keep confidential all non-public information provided to it by any Loan Party, the Administrative Agent or any Lender pursuant to or in connection with this Agreement; provided that nothing herein shall prevent any Agent, any Arranger, any Lender from disclosing any such information (a) to the Administrative Agent, any other Lender or any affiliate thereof (so long as such affiliate agrees to be bound by the provisions of this Section 9.15), (b) subject to an agreement to comply with provisions no less restrictive than this Section 9.15, or to any actual or prospective Transferee (or any professional advisor to such counterparty), (c) to its employees, directors, officers, agents, attorneys, accountants, partners and other professional advisors (including insurance brokers) or those of any of its affiliates, (d) upon the request or demand, or in accordance with the requirements (including reporting requirements), of any Governmental Authority having jurisdiction over such Lender, provided that to the extent permitted by law, such Lender shall promptly notify the applicable Loan Party of such disclosure (except with respect to any audit or examination conducted by bank accountants or any governmental bank authority exercising examination or regulatory authority), in response to any order of any court or other Governmental Authority or as may otherwise be required pursuant to any Requirement of Law or other legal process, provided that to the extent permitted by law, such Lender shall promptly notify the applicable Loan Party of such disclosure (except with respect to any audit or examination conducted by bank accountants or any governmental bank authority exercising examination or regulatory authority), (e) if requested or required to do so in connection with any litigation or similar proceeding; provided that to the extent permitted by law, such Lender shall promptly notify the applicable Loan Party of such disclosure, (f) to the extent such information has been independently developed by such Lender or that has been publicly disclosed other than in breach of this Agreement, (g) to the National Association of Insurance Commissioners or any similar organization or any nationally recognized rating agency that requires access to information about a Lender's investment portfolio in connection with ratings issued with respect to such Lender, (h) in connection with the exercise of any remedy hereunder or under any other Loan Document and (i) any other disclosure with the written consent of the Borrower.

Each Lender acknowledges that all information, including requests for waivers and amendments, furnished by the Borrower or the Administrative Agent pursuant to, or in the course of administering this Agreement or the other Loan Documents, will be syndicate-level information, which may (except as provided in the following paragraph) contain material non-public information concerning the Borrower and its



Affiliates and their related parties or their respective securities. Accordingly, each Lender confirms to the Borrower and the Administrative Agent that (i) it has developed compliance procedures regarding the use of material non-public information, (ii) it has identified in its administrative questionnaire a credit contact who may receive information that may contain material non-public information in accordance with its compliance procedures and applicable law, including federal and state securities laws and (iii) it will handle such material non-public information in accordance with those procedures and applicable law, including federal and state securities laws.

The Borrower acknowledges that certain of the Lenders may be “public-side” Lenders (Lenders that do not wish to receive material non-public information with respect to the Borrower, its subsidiaries or their securities) (each, a “Public Lender”) and, if documents required to be delivered pursuant to Section 5.1 or 5.2 or otherwise are being distributed through the Platform, the Borrower agrees to designate those documents or other information that are suitable for delivery to the Public Lenders as such. Any document that the Borrower has indicated contains non-public information shall not be posted on that portion of the Platform designated for such Public Lenders. If the Borrower has not indicated whether a document delivered pursuant to Section 5.1 or 5.2 contains non-public information, the Administrative Agent reserves the right to post such document or notice solely on that portion of the Platform designated for Lenders who wish to receive material nonpublic information with respect to the Borrower, its Subsidiaries and their securities. The Borrower acknowledges and agrees that copies of the Loan Documents may be distributed to Public Lenders (unless the Borrower promptly notifies the Administrative Agent that any such document contains material non-public information with respect to the Borrower or its securities).

9.16. WAIVERS OF JURY TRIAL. THE BORROWER, THE ADMINISTRATIVE AGENT, THE SUSTAINABILITY STRUCTURING AGENT AND THE LENDERS HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AND FOR ANY COUNTERCLAIM THEREIN.

9.17. Patriot Act. Each Lender that is subject to the requirements of the Patriot Act hereby notifies each Loan Party that pursuant to the requirements of the Patriot Act, it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of such Loan Party and other information that will allow such Lender to identify such Loan Party in accordance with the Patriot Act. The Borrower shall, and shall cause each of its Subsidiaries to, provide, to the extent commercially reasonable, such information and take such actions as are reasonably requested by each Lender and the Administrative Agent to maintain compliance with the Patriot Act.

9.18. No Fiduciary Duty. Each Agent, each Lender, the Arrangers, the Syndication Agent, the Documentation Agents and their respective Affiliates (collectively, solely for purposes of this paragraph, the “Lenders”) may have economic interests that conflict with those of the Borrower, its stockholders and/or its affiliates. The Borrower agrees that nothing in the Loan Documents or otherwise will be deemed to create an advisory, fiduciary or agency relationship or fiduciary or other implied duty between any Lender, on the one hand, and the Borrower, its stockholders or its affiliates, on the other. The Borrower acknowledges and agrees that (i) the transactions contemplated by the Loan Documents (including the exercise of rights and remedies hereunder and thereunder) are arm’s-length commercial transactions between the Lenders, on the one hand, and the Borrower, on the other, and (ii) in connection therewith and with the process leading thereto, (x) no Lender has assumed an advisory or fiduciary responsibility in favor of the Borrower, its stockholders or its affiliates with respect to the transactions contemplated hereby (or the exercise of rights or remedies with respect thereto) or the process leading thereto (irrespective of whether any Lender has advised, is currently advising or will advise the Borrower, its stockholders or its affiliates on other matters) or any other obligation to the Borrower except the obligations expressly set forth in the Loan Documents and (y) each Lender is acting solely as principal and not as the agent or fiduciary of the Borrower, its

management, stockholders, creditors or any other Person. The Borrower acknowledges and agrees that the Borrower has consulted its own legal and financial advisors to the extent it deemed appropriate and that it is responsible for making its own independent judgment with respect to such transactions and the process leading thereto. The Borrower agrees that it will not claim that any Lender has rendered advisory services of any nature or respect, or owes a fiduciary or similar duty to the Borrower, in connection with such transaction or the process leading thereto. None of the Arrangers, Syndication Agent and Documentation Agents identified on the cover page or signature pages of this Agreement shall have any rights, powers, obligations, liabilities, responsibilities or duties under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as a Lender hereunder. Without limiting any other provision of this Article, none of such Arrangers, Syndication Agent and Documentation Agents in their respective capacities as such shall have or be deemed to have any fiduciary relationship with any Lender, the Administrative Agent or any other Person by reason of this Agreement or any other Loan Document.

9.19. Acknowledgement and Consent to Bail-In of Affected Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Affected Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an Affected Financial Institution; and

(b) the effects of any Bail-in Action on any such liability, including, if applicable:

(1) a reduction in full or in part or cancellation of any such liability;

(2) 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

(3) 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.

9.20. Interest Rate Limitations. Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Term Loan, together with all Charges, shall exceed the maximum lawful rate (the "Maximum Rate") which may be contracted for, charged, taken, received or reserved by the Lender holding such Term Loan in accordance with applicable law, the rate of interest payable in respect of such Term Loan, together with all Charges payable in respect thereof, shall be limited to the Maximum Rate and, to the extent lawful, the interest and Charges that would have been payable in respect of such Term Loan but were not payable as a result of the operation of this Section 9.20 shall be cumulated and the interest and Charges payable to such Lender in respect of other Term Loans or periods shall be increased (but not above the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the Federal Funds Effective Rate to the date of repayment, shall have been received by such Lender.

9.21. Existing Credit Agreement. In connection with the termination of the Existing Credit Agreement, the Borrower's repayment of outstanding eurodollar loans under the Existing Credit Agreement is on a day that is not the last day of an Interest Period (as defined in the Existing Credit Agreement). Each

Lender that is a party to the Existing Credit Agreement hereby waives its rights to indemnification and payment under clause (c) of the first sentence of Section 2.20 of the Existing Credit Agreement.

IN WITNESS HEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and the year first written.

**BORROWER:**

**MICRON TECHNOLOGY, INC.**

By: /s/ Gregory Routin  
Name: Gregory Routin  
Title: Treasurer

[Signature Page to Micron Technology, Inc. Term Loan Credit Agreement]

**WELLS FARGO BANK, NATIONAL ASSOCIATION,  
as Administrative Agent and a Lender**

By: /s/ Jesse Mason  
Name: Jesse Mason  
Title: Director

[Signature Page to Micron Technology, Inc. Term Loan Credit Agreement]

**Oversea-Chinese Banking Corporation Limited, Los Angeles Agency, as a Lender**

By: /s/ Charles Ong  
Name: Charles Ong  
Title: General Manager

**The Bank of Nova Scotia,  
as a Lender**

By: /s/ Khrystyna Manko  
Name: Khrystyna Manko  
Title: Director

**The Toronto-Dominion Bank, New York Branch,  
as a Lender**

By: /s/ Michael Borowiecki  
Name: Michael Borowiecki  
Title: Authorized Signatory

**Bank of America, N.A.,  
as a Lender**

By: /s/ Shyam P. Gondha  
Name: Shyam P. Gondha  
Title: Vice President

**DBS Bank Ltd.,  
as a Lender**

By: /s/ Terence Yong  
Name: Terence Yong  
Title: Managing Director

**U.S. Bank National Association,  
as a Lender**

By: /s/ Lukas Coleman  
Name: Lukas Coleman  
Title: Vice President

**United Overseas Bank Limited, New York Agency  
as a Lender**

By: /s/ Eriberto de Guzman  
Name: Eriberto de Guzman  
Title: Managing Director

By: /s/ Brian Ike  
Name: Brian Ike  
Title: First Vice President

**CREDIT AGRICOLE CORPORATE AND  
INVESTMENT BANK,  
as Sustainability Structuring Agent and a Lender**

By: /s/ Jill Wong  
Name: Jill Wong  
Title: Director

By: /s/ Gordon Yip  
Name: Gordon Yip  
Title: Director

**RULE 13a-14(a) CERTIFICATION OF  
CHIEF EXECUTIVE OFFICER**

I, Sanjay Mehrotra, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Micron Technology, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations, and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize, and report financial information; and
  - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: July 1, 2021

/s/ Sanjay Mehrotra

Sanjay Mehrotra  
President and Chief Executive Officer and Director



**RULE 13a-14(a) CERTIFICATION OF  
CHIEF FINANCIAL OFFICER**

I, David A. Zinsner, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Micron Technology, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations, and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize, and report financial information; and
  - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: July 1, 2021

/s/ David A. Zinsner

David A. Zinsner  
Senior Vice President and Chief Financial Officer

**CERTIFICATION OF CHIEF EXECUTIVE OFFICER  
PURSUANT TO 18 U.S.C. 1350**

I, Sanjay Mehrotra, certify, pursuant to 18 U.S.C. 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that the Quarterly Report of Micron Technology, Inc. on Form 10-Q for the period ended June 3, 2021, fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and that information contained in the Quarterly Report on Form 10-Q fairly presents, in all material respects, the financial condition and results of operations of Micron Technology, Inc.

Date: July 1, 2021

/s/ Sanjay Mehrotra

Sanjay Mehrotra  
President and Chief Executive Officer and Director

**CERTIFICATION OF CHIEF FINANCIAL OFFICER  
PURSUANT TO 18 U.S.C. 1350**

I, David A. Zinsner, certify, pursuant to 18 U.S.C. 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that the Quarterly Report of Micron Technology, Inc. on Form 10-Q for the period ended June 3, 2021, fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and that information contained in the Quarterly Report on Form 10-Q fairly presents, in all material respects, the financial condition and results of operations of Micron Technology, Inc.

Date: July 1, 2021

/s/ David A. Zinsner

David A. Zinsner  
Senior Vice President and Chief Financial Officer