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

FORM 8-K

CURRENT REPORT
Pursuant to Section 13 or 15(d) of The Securities Exchange Act of 1934

Date of Report (Date of Earliest Event Reported): December 15, 2017

STEEL PARTNERS HOLDINGS L.P.
(Exact name of registrant as specified in its charter)

Delaware	001-35493	13-3727655
(State or Other Jurisdiction of Incorporation)	(Commission File Number)	(IRS Employer Identification No.)

590 Madison Avenue, 32nd Floor, New York, New York	10022
(Address of Principal Executive Offices)	(Zip Code)

Registrant's Telephone Number, Including Area Code: (212) 520-2300

N/A
(Former Name or Former Address, If Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (*see* General Instruction A.2. below):

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

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

Emerging growth company ☐

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

Item 1.01. Entry into a Material Definitive Agreement.

Preferred Stock Purchase Agreement and Certificate of Designations

On December 15, 2017, ModusLink Global Solutions, Inc. ("ModusLink"), and SPH Group Holdings LLC ("SPH Group"), a subsidiary of Steel Partners Holdings L.P. (the "Company"), entered into a Preferred Stock Purchase Agreement (the "Purchase Agreement") pursuant to which ModusLink issued 35,000 shares of ModusLink's newly created Series C Convertible Preferred Stock, par value $0.01 per share (the "Preferred Stock"), to SPH Group at a price of $1,000 per share, for an aggregate purchase consideration of $35.0 million (the "Preferred Stock Transaction"). The terms, rights, obligations and preferences of the Preferred Stock are set forth in a Certificate of Designations, Preferences and Rights of Series C Convertible Preferred Stock of ModusLink (the "Certificate of Designations"), which has been filed with the Secretary of State of the State of Delaware.

Under the Certificate of Designations, each share of Preferred Stock can be converted into shares of ModusLink's common stock, par value $0.01 per share (the "Common Stock"), at an initial conversion price equal to $1.96 per share, subject to appropriate adjustments for any stock dividend, stock split, stock combination, reclassification or similar transaction. Holders of the Preferred Stock will also receive dividends at 6% per annum payable in cash or Common Stock. If at any time the closing bid price of ModusLink's Common Stock exceeds 170% of the conversion price for at least five consecutive trading days (subject to appropriate adjustments for any stock dividend, stock split, stock combination, reclassification or similar transaction), ModusLink has the right to require each holder of Preferred Stock to convert all, or any whole number, of shares of the Preferred Stock into Common Stock.

Upon the occurrence of certain triggering events such as a liquidation, dissolution or winding up of ModusLink, either voluntary or involuntary, or the merger or consolidation of ModusLink or significant subsidiary, or the sale of substantially all of the assets or capital stock of ModusLink or a significant subsidiary, the holders of the Preferred Stock are entitled to receive, prior and in preference to any distribution of any of the assets or funds of ModusLink to the holders of other equity or equity equivalent securities of ModusLink other than the Preferred Stock by reason of their ownership thereof, an amount per share in cash equal to the sum of (i) one hundred percent (100%) of the stated value per share of Preferred Stock (initially $1,000 per share) then held by them (as adjusted for any stock split, stock dividend, stock combination or other similar transactions with respect to the Preferred Stock), plus (ii) 100% of all declared but unpaid dividends, and all accrued but unpaid dividends on each such share of Preferred Stock, in each case as the date of the triggering event. On or after December 15, 2022, each holder of Preferred Stock can also require ModusLink to redeem its Preferred Stock in cash at a price equal to the Liquidation Preference (as defined in Certificate of Designations).

Each holder of Preferred Stock has a vote equal to the number of shares of Common Stock into which its Preferred Stock would be convertible as of the record date, provided that the number of shares voted is based upon a conversion price which is no less than the greater of the book or market value of the Common Stock on the closing date of the purchase of the Preferred Stock. In addition, for so long as the Preferred Stock remains outstanding, ModusLink will not, directly or indirectly, and including in each case with respect to any significant subsidiary, without the affirmative vote of the holders of a majority of the Preferred Stock (i) liquidate, dissolve or wind up ModusLink or any significant subsidiary; (ii) consummate any transaction that would constitute or result in a Liquidation Event (as defined in the Certificate of Designations); (iii) effect or consummate any Prohibited Issuance (as defined in the Certificate of Designations); or (iv) create, incur, assume or suffer to exist any Indebtedness (as defined in the Certificate of Designations) of any kind, other than certain existing Indebtedness of ModusLink and any replacement financing thereto, unless any such replacement financing be on substantially similar terms as such existing Indebtedness.

The Purchase Agreement provides that ModusLink will use its commercially reasonable efforts to effect the piggyback registration of the Common Stock issuable on the conversion of the Preferred Stock and any securities issued or issuable upon any stock split, dividend or other distribution, recapitalization or similar event with respect to the foregoing, with the Securities and Exchange Commission and in all states reasonably requested by the holder in accordance with certain enumerated conditions. The Purchase Agreement also contains other representations, warranties and covenants customary for an issuance of Preferred Stock in a private placement of this nature.

The Preferred Stock Transaction was approved and recommended to the board of directors of ModusLink (the "ModusLink Board") by a special committee of the Board consisting of independent directors not affiliated with Steel Partners Holdings GP Inc. ("Steel Holdings GP"), an affiliate of the Company, which controls the power to vote and dispose of the securities held by SPH Group and its affiliates.

On December 15, 2017, contemporaneously with the closing of the Preferred Stock Transaction, ModusLink entered into a Warrant Repurchase Agreement (the "Warrant Repurchase") with the Company pursuant to which ModusLink repurchased for $100 the warrant to acquire 2,000,000 shares of the Common Stock (the "Warrant") that ModusLink had previously issued to the Company. The Warrant, which was to expire in 2018, was terminated by ModusLink upon repurchase.

As of December 14, 2017 (prior to the closing of the Preferred Stock Transaction), SPH Group and its affiliates beneficially owned approximately 35.62% of ModusLink's outstanding shares of Common Stock. Upon closing of the Preferred Stock Transaction and the Warrant Repurchase and following certain equity grants, SPH Group and its affiliates beneficially own approximately 52% of ModusLink's outstanding shares of Common Stock and, as a result, ModusLink became a consolidated subsidiary of the Company and may be deemed to be a controlled company under Nasdaq rules.

Warren G. Lichtenstein, the Executive Chairman of the ModusLink Board, is also the Executive Chairman of Steel Holdings GP. Glen Kassan, Vice Chairman of the ModusLink Board and former Chief Administrative Officer, is also affiliated with Steel Holdings GP. Jack L. Howard and William T. Fejes, Jr. who were elected to the ModusLink Board upon the closing of the Preferred Stock Transaction, are also affiliated with Steel Holdings GP. Mr. Howard has served as the President of Steel Holdings GP since July 2009 and has served as a director of Steel Holdings GP since October 2011. Mr. Howard is the President of the Company and has been associated with the Company and its predecessors and affiliates since 1993. Mr. Howard served as the Vice Chairman of the Board of Handy & Harman Ltd. ("HNH"), a shareholder of ModusLink and affiliate of SPH Group, from March 2012 to October 2017 and Principal Executive Officer of HNH from January 2013 to October 2017, and has served as a director of HNH since July 2005. Mr. Fejes has served as the president of Steel Services, Ltd. ("Steel Services"), an indirect wholly owned subsidiary of the Company, since October 2017. Mr. Fejes has also served as Senior Vice President of HNH and President and Chief Executive Officer of Handy & Harman Group Ltd. since June 2016.

Acquisition of IWCO Direct

On December 15, 2017 (the "Effective Date"), ModusLink entered into an Agreement and Plan of Merger (the "Merger Agreement") by and among ModusLink, MLGS Merger Company, Inc., a Delaware corporation and newly formed wholly-owned subsidiary of the ModusLink ("MLGS"), IWCO Direct Holdings Inc. a Delaware corporation ("IWCO"), CSC Shareholder Services, LLC, a Delaware limited liability company (solely in its capacity as representative), and the stockholders of IWCO listed on the signature pages thereto. The stockholders of IWCO party to the Merger Agreement were Court Square Capital Partners II, L.P., Court Square Capital Partners II-A, L.P., Court Square Capital Partners (Executive) II, L.P., Court Square Capital Partners (Offshore) II, L.P., ACP/IWCO Holdings LLC, ACP/IWCO Splitter, L.P., WAM Holdings, INC., James N. Andersen, Joseph Morrison, THOMAS C. WICKA & ANGELA M. WICKA, TTEE, UA/DTD, FEB. 27, 2006, THOMAS C. WICKA, 2006 GRAT, and THOMAS C. WICKA, TRUSTEE UA/DTD, 10/3/05 TOM WICKA REVOCABLE TRUST.

On the Effective Date and pursuant to the Merger Agreement, MLGS was merged with and into IWCO, with IWCO surviving as a wholly-owned subsidiary of ModusLink (the "IWCO Acquisition").

The aggregate consideration paid to stockholders of IWCO by ModusLink in the IWCO Acquisition was $475,600,000 in cash, subject to certain adjustments (the "Purchase Price"), of which $2,500,000 is held in escrow pursuant to a separate escrow agreement. The Purchase Price was funded with a combination of cash on hand and financing available under the Senior Credit Facility described below. The Merger Agreement includes detailed representations, warranties, covenants and indemnification provisions that are customary for Merger Agreements of this type.

Financing

On December 15, 2017, MLGS entered into a Financing Agreement (the "Financing Agreement"), by and among MLGS (as the initial borrower), Instant Web, LLC, a Delaware corporation and wholly owned subsidiary of IWCO (as "Borrower"), IWCO, and certain of IWCO's subsidiaries identified on the signature pages thereto (together with IWCO, the "Guarantors"), the lenders from time to time party thereto, and Cerberus Business Finance, LLC, as collateral agent and administrative agent for the lenders. MLGS was the initial borrower under the Financing Agreement, but immediately upon the consummation of the acquisition of IWCO, as described above, Borrower became the borrower under the Financing Agreement.

The Financing Agreement provides for $393.0 million term loan facility (the "Term Loan") and a $25.0 million revolving credit facility (collectively, the "Senior Credit Facility"). Proceeds of the Senior Credit Facility will be used (i) to finance a portion of the IWCO Acquisition, (ii) to repay certain existing indebtedness of the Borrower and its subsidiaries, (iii) for working capital and general corporate purposes and (iv) to pay fees and expenses related to this Agreement and the IWCO Acquisition.

The Senior Credit Facility has a maturity of five years. Borrowings under the Senior Credit Facility bear interest, at the Borrower's option, at a Reference Rate plus 3.75% or a LIBOR Rate plus 6.5%, each as defined the Financing Agreement. The initial interest rate under the Senior Credit Facility will be at the LIBOR Rate option.

The Term Loan under the Senior Credit Facility is repayable in consecutive quarterly installments, each of which will be in an amount equal per quarter of $1,500,000 and each such installment to be due and payable, in arrears, on the last day of each quarter commencing on March 31, 2018 and ending on the earlier of (a) December 15, 2022 and (b) upon the payment in full of all obligations under the Financing Agreement and the termination of all commitments under the Financing Agreement. Further, the Term Loan would be permanently reduced pursuant to certain mandatory prepayment events including an annual "excess cash flow sweep" of 50% of the consolidated excess cash flow, with a step-down to 25% when the Leverage Ratio (as defined in the Financing Agreement) is below 3.50:1.00; provided that, in any fiscal year, any voluntary prepayments of the Term Loan shall be credited against the Borrower's "excess cash flow" prepayment obligations on a dollar-for-dollar basis for such fiscal year.

Borrowings under the Financing Agreement are fully guaranteed by the Guarantors and are collateralized by substantially all the assets of the Borrower and the Guarantors and a pledge of all of the issued and outstanding equity interests of each of IWCO's subsidiaries.

The Financing Agreement contains certain representations, warranties, events of default, mandatory prepayment requirements, as well as certain affirmative and negative covenants customary for financing agreements of this type. These covenants include restrictions on borrowings, investments and dispositions, as well as limitations on the Borrower's and the Guarantors' ability to make certain capital expenditures and pay dividends. Upon the occurrence and during the continuation of an event of default under the Financing Agreement, the lenders under the Financing Agreement may, among other things, terminate all commitments and declare all or a portion of the loans under the Financing Agreement immediately due and payable and increase the interest rate at which loans and obligations under the Financing Agreement bear interest.

The foregoing summaries of certain of the material terms of the Purchase Agreement, Certificate of Designations, Merger Agreement and Financing Agreement do not purport to be complete and are subject to, are qualified in their entirety by, the full texts of the Purchase Agreement, Certificate of Designations, Merger Agreement and Financing Agreement, attached hereto as Exhibits 10.1, 4.1, 2.1 and 10.2, respectively, and are incorporated into this Item 1.01 by reference.

Item 2.01. Completion of Acquisition or Disposition of Assets.

The descriptions of the Merger Agreement and the purchase of the Preferred Stock provided under the headings "Acquisition of IWCO Direct" and "Preferred Stock Purchase Agreement and Certificate of Designations" in Item 1.01 are incorporated into this Item 2.01 by reference.

Item 7.01. Regulation FD Disclosure

On December 18, 2017, the Company and ModusLink issued a joint press release (the "Press Release") announcing ModusLink's acquisition of IWCO and the other transactions. A copy of the Press Release is furnished as Exhibit 99.1 to this Current Report on Form 8-K and is incorporated herein by reference. A reconciliation related to the non-GAAP financial measures used in the Press Release is furnished as Exhibit 99.2 to this Current Report on Form 8-K and is incorporated herein by reference.

The information furnished by the Company pursuant to this item, including Exhibit 99.1 and Exhibit 99.2, shall not be deemed "filed" for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, (the "Exchange Act") or otherwise subject to the liability of that section, and shall not be deemed to be incorporated by reference into any Company filing under the Securities Act of 1933, as amended, or the Exchange Act, regardless of any general incorporation language in such filing.

Item 9.01. Financial Statements and Exhibits.

(a) Financial Statements of Business Acquired.

Any financial statements required by Item 9.01(a) will be filed by amendment as soon as practicable, but no later than 71 calendar days after the date on which this initial Current Report on Form 8-K was required to be filed.

(b) Pro Forma Financial Information.

Any pro forma financial information required by Item 9.01(b) will be filed by amendment as soon as practicable, but no later than 71 calendar days after the date on which this initial Current Report on Form 8-K was required to be filed.

(d) Exhibits

Exhibit No.	Description
2.1	Agreement and Plan of Merger, dated December 15, 2017, by and among ModusLink Global Solutions, Inc., MLGS Merger Company, Inc., IWCO Direct Holdings Inc., CSC Shareholder Services, LLC (solely in its capacity as representative), and the stockholders of IWCO Direct Holdings Inc.*
4.1	Certificate of Designations, Preferences and Rights of Series C Convertible Preferred Stock of ModusLink Global Solutions, Inc. filed with the Secretary of State of the State of Delaware on December 15, 2017.
10.1	Preferred Stock Purchase Agreement dated as of December 15, 2017, by and between ModusLink Global Solutions, Inc. and SPH Group Holdings LLC.
10.2	Financing Agreement dated as of December 15, 2017, by and among IWCO Direct Holdings Inc., MLGS Merger Company, Inc., Instant Web, LLC, certain subsidiaries of IWCO Direct Holdings Inc. identified on the signature pages thereto, the lenders from time to time party hereto, and Cerberus Business Finance, LLC, as collateral agent and administrative agent for the lenders.
99.1	Press Release of ModusLink Global Solutions, Inc. and Steel Partners Holdings L.P. dated December 18, 2017.
99.2	Information Related to the Use of Non-GAAP Financial Measures

* Schedules and exhibits have been omitted pursuant to Item 601(b)(2) of Regulation S-K. The Company hereby agrees to furnish supplementary copies of any of the omitted schedules or exhibits upon request by the Securities and Exchange Commission.

SIGNATURES

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

December 18, 2017

STEEL PARTNERS HOLDINGS L.P.

By: Steel Partners Holdings GP Inc.
Its General Partner

By: /s/ Douglas B. Woodworth
Douglas B. Woodworth
Chief Financial Officer

Exhibit 2.1

AGREEMENT AND PLAN OF MERGER

by and among

IWCO DIRECT HOLDINGS INC.,

CERTAIN STOCKHOLDERS OF IWCO DIRECT HOLDINGS INC.,

CSC SHAREHOLDER SERVICES, LLC,
AS REPRESENTATIVE,

MODUSLINK GLOBAL SOLUTIONS, INC.

and

MLGS MERGER COMPANY, INC.

Dated December 15, 2017

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AGREEMENT AND PLAN OF MERGER

AGREEMENT AND PLAN OF MERGER, dated December 15, 2017, by and among (a) MODUSLINK GLOBAL SOLUTIONS, INC., a Delaware corporation ("Parent"), (b) MLGS MERGER COMPANY, INC., a Delaware corporation ("Newco"), (c) IWCO DIRECT HOLDINGS INC., a Delaware corporation (the "Company"), (d) CSC Shareholder Services, LLC, a Delaware limited liability company ("CSC"), solely in its capacity as Representative, and (e) the stockholders of the Company listed on the signature pages hereto (each, a "Signing Stockholder").

WHEREAS, the respective Boards of Directors of Parent, Newco and the Company, and the respective stockholders of Newco and the Company, have approved the merger of Newco with and into the Company on the terms and subject to the conditions set forth herein.

WHEREAS, in furtherance thereof, the Boards of Directors of each of Parent, Newco and the Company, and the stockholders of each of Newco and the Company, have approved this Agreement and the Merger (as defined below), upon the terms of and subject to the conditions set forth in this Agreement.

WHEREAS, pursuant to the Merger, each share of Series A Preferred Stock will be converted into the Per Share Series A Closing Consideration (as defined below) and the applicable Distribution Per Share Amount (as defined below) in respect of any future Distributions (as defined below), in the manner set forth herein.

WHEREAS, as a condition precedent to each stockholder of the Company receiving their respective portion of the consideration pursuant to this Agreement, each stockholder has entered, or will be required to enter, into a Support Agreement, by and among Parent, Newco, the Company, the Representative and such stockholder, substantially in the form attached hereto as Exhibit A (the "Support Agreement").

NOW, THEREFORE, in consideration of the premises and the mutual covenants, representations, warranties and undertakings contained herein and in the Letters of Transmittal (as defined herein), and intending to be legally bound, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1. **Certain Definitions**. As used in this Agreement, the following terms have the respective meanings set forth below.

"Action" means any lawsuit, administrative charge, investigation, action, proceeding, arbitration, audit, injunction or order by or before any Governmental Authority.

"Adjustment Escrow Amount" means Two Million Five Hundred Thousand Dollars ($2,500,000) in cash to be held in accordance with the Escrow Agreement.

"Affiliate" means a Person that, directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, a specified Person. A Person shall be deemed to control another Person if such first Person possesses, directly or indirectly, the power to direct, or cause the direction of, the management and policies of such other Person, whether through the ownership of voting securities, by contract or otherwise.

"Affiliated Group" means any affiliated group within the meaning of Code Section 1504(a) or any similar group defined under a similar provision of state, local, or non-U.S. law.

"Agreement" means this Agreement and Plan of Merger.

"Business Day" means a day, other than a Saturday or Sunday, on which commercial banks in New York City are open for the general transaction of business.

"Cash and Cash Equivalents" means the sum of the fair market value (expressed in United States dollars) of all cash and cash equivalents of any kind in accordance with GAAP (including bank account balances (net of outstanding checks but including inbound checks), marketable securities, short term investments and any amounts accrued or paid in advance by customers for postage, products or services) and certificates of deposit of the Company and its Subsidiaries as of the open of business on the Closing Date, net of any issued and uncleared checks as of the open of business on the Closing Date.

"Certificates" means the outstanding certificates which immediately prior to the Effective Time represent shares of Common Stock, Series A Preferred Stock, Series B-1 Preferred Stock or Series B-2 Preferred Stock, as applicable.

"Certificate of Incorporation" means the Company's Amended and Restated Certificate of Incorporation, filed March 28, 2014.

"Closing Cash Consideration" means an amount equal to (i) the Estimated Merger Consideration minus (ii) the Adjustment Escrow Amount minus (iii) the Expense Reserve.

"Closing Date Bank Debt" means the outstanding principal amount of, accrued and unpaid interest on and other payment obligations (including any prepayment premiums payable as a result of the consummation of the Merger) arising under (i) that certain Credit and Security Agreement, dated as of March 28, 2014, among the Company and its Subsidiaries and Wells Fargo Bank, National Association and (ii) that certain Loan Agreement, dated as of March 28, 2014, among the Company, Prospect Capital Corporation and the other parties thereto, in each case as amended, restated, supplemented or otherwise modified from time to time.

"Closing Date Funded Indebtedness" means the Funded Indebtedness as of the open of business on the Closing Date; provided that in calculating the Merger Consideration for purposes of Section 2.7, Closing Date Funded Indebtedness shall be reduced by the Cash and Cash Equivalents.

"COBRA" means Part 6 of Subtitle B of Title I of ERISA, Section 4980B of the Code and any similar state Law.

"Code" means the Internal Revenue Code of 1986, as amended.

"Common Stock" means the Class A Common Stock, par value $0.01 per share, of the Company.

"Company Data" means the Company's and its Subsidiaries' proprietary, confidential data, including customer data and Personal Data held by the Company or its Subsidiaries.

"Company Fundamental Representations" means the representations and warranties set forth in Section 3.1, Section 3.2, Section 3.5, Section 3.20, Section 5.1, Section 5.2, Section 5.6 and Section 5.7, the following representations and warranties set forth in each Letter of Transmittal: (a), (b), (c) and (f) and the following representations and warranties set forth in each Support Agreement: Section 3(a), Section 3(b), Section 3(c) and Section 3(f).

"Company Intellectual Property Rights" means all Intellectual Property Rights owned in whole or in part by the Company or its Subsidiaries.

"Company Stock" means, collectively, the Common Stock, the Series A Preferred Stock, the Series B-1 Preferred Stock and the Series B-2 Preferred Stock.

"Company Tax Liability" means Liabilities of the Company and its Subsidiaries for the payment of Sales Taxes owed by the Company or its Subsidiaries with respect to the Pre-Closing Tax Period in jurisdictions in which the Company or any of its Subsidiaries has not previously filed Sales Tax Returns.

"Contract" means any contract, agreement, indenture, note, bond, loan, instrument, lease, mortgage, license, or other agreements or commitments, whether written or oral.

"Defaulted Funded Indebtedness" means any Funded Indebtedness which is in default or would be in default after the consummation of the transactions contemplated by this Agreement.

"Distribution" means any cash distribution to be paid to holders of Transaction Incentive Awards and Former Holders of Series A Preferred Stock following the Closing as set forth in this Agreement, including any distribution pursuant to Section 2.7(e) and any distribution in respect of the Expense Reserve (excluding, for the avoidance of doubt, the Estimated Merger Consideration on the Closing Date).

"Distribution Amount" means the amount of any Distribution less the Transaction Incentive Distribution Amount in respect of such Distribution.

"Distribution Per Share Amount" means, with respect to any Distribution Amount, with respect to each share of Series A Preferred Stock, an amount equal to the Distribution Amount divided by the number of issued and outstanding shares of Series A Preferred Stock immediately prior to the Effective Time.

"Distribution Percentage" means with respect to each Former Holder and holder of Transaction Incentive Awards, the percentage set forth opposite such holder's name on Section 1.1(a) of the Schedules.

"Employee Benefit Plan" means any plan, program, policy, practice or Contract, whether written or unwritten, providing benefits or compensation to any employee, officer, director, consultant or independent contractor (in each case current or former) or any beneficiary or dependent thereof that is sponsored or maintained by the Company or any of its Subsidiaries or to which the Company or any of its Subsidiaries contributes or is obligated to contribute, or otherwise has any Liability (including through an ERISA Affiliate) whether contingent or otherwise, including any employee welfare benefit plan within the meaning of Section 3(1) of ERISA, any employee pension benefit plan within the meaning of Section 3(2) of ERISA (whether or not such plan is subject to ERISA) or any bonus, incentive, deferred compensation, vacation, insurance, supplemental unemployment, retention, stock purchase, phantom equity, stock option or other equity-related award, severance, employment, consulting, change of control or fringe benefit plan, program, policy, practice or Contract.

"Environmental Laws" means all applicable federal, state, local and foreign Laws, guidance documents (where binding and enforceable), approvals, authorizations, licenses or permits issued by any Governmental Authority and all applicable judicial, administrative and regulatory Orders and similar provisions having the force or effect of Law concerning protection of human health from exposure to Hazardous Substances, pollution or protection of the environment (including ambient air, surface water, ground water, land surface or surface strata).

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended, and the rules and regulations promulgated thereunder from time to time.

"ERISA Affiliate" means any entity that would be considered a single employer with the Company or any of its Subsidiaries within the meaning of Section 414 of the Code.

"Escrow Agreement" means the Escrow Agreement to be entered into on the Closing Date by and among Parent, the Representative and Wells Fargo Bank, National Association, substantially in the form of Exhibit B attached hereto.

"Exception Claims" means if a Third Party Claim (i) seeks non-monetary relief, (ii) involves a criminal allegation by a Governmental Authority, (iii) involves a claim by or against a customer or supplier of the Company or any of its Subsidiaries, (iv) involves, in the opinion of counsel of the Indemnified Party, a conflict of interest between the Responsible Party and the Indemnified Party or (v) involves a claim for which the insurer under the R&W Insurance Policy has assumed the conduct and control.

"Former Holders" means, collectively, the Former Holders of Common Stock, the Former Holders of Series A Preferred Stock, the Former Holders of Series B-1 Preferred Stock and the Former Holders of Series B-2 Preferred Stock, and includes, without limitation, the Stockholders.

"Former Holders of Common Stock" means the holders of Common Stock as of immediately prior to the Closing.

"Former Holders of Series A Preferred Stock" means the holders of Series A Preferred Stock as of immediately prior to the Closing.

"Former Holders of Series B-1 Preferred Stock" means the holders of Series B-1 Preferred Stock as of immediately prior to the Closing.

"Former Holders of Series B-2 Preferred Stock" means the holders of Series B-2 Preferred Stock as of immediately prior to the Closing.

"Fraud" means, with respect to a Former Holder or any officer, director or employee of the Company or any of its Subsidiaries, intentional and knowing misrepresentation of material facts with the intent to mislead or deceive with respect to the making of a representation or warranty pursuant to this Agreement that would constitute common law fraud.

"Funded Indebtedness" means, as of any date, without duplication, the outstanding principal amount of, accrued and unpaid interest on and other payment obligations (including any prepayment premiums payable as a result of the consummation of the Merger) arising under any obligations of the Company or any of its Subsidiaries for (i) indebtedness for borrowed money, (ii) indebtedness evidenced by any note, bond, debenture or other debt security, (iii) obligations of the types described in clauses (i) and (ii) guaranteed, directly or indirectly, in any manner by the Company or any of its Subsidiaries, (iv) letters of credit, only to the extent drawn, and bankers' acceptances issued for the account of the Company or any of its Subsidiaries, (v) obligations under leases required in accordance with GAAP to be recorded as capital leases, (vi) indebtedness for the deferred purchase price of property or services, other than ordinary course trade payables, (vii) all payment obligations under any interest rate swap agreements or interest rate hedge agreements, in each case excluding (x) any intercompany obligations between or among the Company and any of its Subsidiaries and Financing Expenses and (y) any items taken into account in determining Net Working Capital.

"Fundamental Representations" means the representations and warranties set forth in Section 3.1, Section 3.2, Section 3.5, Section 3.20, Section 4.1, Section 4.2, Section 4.6, Section 5.1, Section 5.2, Section 5.6 and Section 5.7, the following representations and warranties set forth in each Letter of Transmittal: (a), (b), (c) and (f) and the following representations and warranties set forth in each Support Agreement: Section 3(a), Section 3(b), Section 3(c) and Section 3(f).

"GAAP" means generally accepted accounting principles as in effect in the United States as of the date of preparation.

"GAAP Consistently Applied" means GAAP using the same accounting methods, principles, policies, practices, and procedures, with consistent classification, judgments, and estimation methodology, as were used in preparing the Recent Financial Statements (provided that if there is any difference between such principles and GAAP then such principles shall apply) and (i) not taking into account any changes in circumstances or events occurring after the opening of business on the Closing Date; (ii) not including any purchase accounting or other adjustment arising out of the consummation of the transactions contemplated by this Agreement; (iii) not reflecting, directly or indirectly, any additional reserve or accrual (not including amounts thereof) that is not reflected on the Recent Balance Sheet, and (iv) not introducing any new class or classes of liabilities, asset reserves or valuation allowances in the determination of Net Working Capital that were not used in determining the Reference Amount.

"Governmental Authority" means any national, federal, state, provincial, county, municipal or local government, foreign or domestic, or the government of any political subdivision of any of the foregoing, or any entity, authority, agency, ministry or other similar body exercising executive, legislative, judicial, regulatory or administrative authority or functions of or pertaining to government, including any authority or other quasi-governmental entity established to perform any of such functions.

"Hazardous Substances" means hazardous or toxic substances or materials, hazardous wastes, pollutants or contaminants as said terms are defined by applicable Environmental Laws or with respect to which Liability or standards of conduct are imposed under any applicable Environmental Laws, including without limitation, petroleum or petroleum constituents, friable asbestos-containing material, polychlorinated biphenyls, asbestos and toxic mold.

"HSR Act" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations promulgated thereunder.

"Indemnification Cap" means an amount equal to (i) $475,600,000 plus (ii) the Net Working Capital Adjustment (which may be a negative number).

"Information Technology Infrastructure" means the hardware, software, network infrastructure and other information technology infrastructure systems of Company and its Subsidiaries (whether owned, leased, software as a service, cloud-based or otherwise) that are used in their respective business or operations.

"Intellectual Property Rights" means the following: (i) patents and patent applications, reexaminations, extensions and counterparts claiming priority therefrom; (ii) inventions, invention disclosures, discoveries and improvements, whether or not patentable invention; (iii) computer software and firmware, including without limitation data files, source code, object code and software-related specifications and documentation (collectively "Software"); (iv) copyright rights and all works of authorship, including such works fixed in a tangible medium or expression, whether registered or unregistered, including but not limited to all copyright registrations or foreign equivalents, applications for registration or foreign equivalents, all moral rights, all common-law rights, and all rights to register and obtain renewals and extension of copyright registrations, together with all other copyright interests accruing by reason of international copyright convention; (v) trademarks, trade names, service marks, certification marks, service names, brands, trade dress and logos and the goodwill associated therewith; (vi) trade secrets (including those trade secrets defined in the Uniform Trade Secrets Act and under corresponding foreign statutory Law and common law), non-public information, and confidential information, know-how, business and technical information, and rights to limit the use or disclosure thereof by any Person; (vii) domain names, social media handles and accounts, and all websites, including without limitation all of the data, scripts, information, text and graphics relating to websites or FTP sites on the internet, the structure, sequence and organization of the sites, all text, graphics and other information displayed thereon and the rights owned or licensed for any and all Software used to develop, maintain or enhance such text, graphics and other information displayed thereon; and (viii) proprietary databases and data compilations and all documentation relating to the foregoing including in each case any registrations of, applications to register, and renewals and extensions of, any of the foregoing with or by any Governmental Authority in any jurisdiction.

"Knowledge" means, with respect to any Person, the actual knowledge of such Person after reasonable inquiry; provided that, in the case of the Company, such Knowledge shall be limited to the Knowledge of James Andersen, Jake Hertel, Joseph Morrison and Mike Ertel.

"Laws" means any statutes, laws, rules, regulations, codes, ordinances, policies and Orders of all Governmental Authorities.

"Liabilities" with respect to any Person, means any liability, debt or other monetary obligation or guarantee of such Person, whether known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, secured or unsecured, or otherwise, and whether or not the same is required to be accrued on the financial statements of such Person.

"Lien" means any mortgage, pledge, security interest, encumbrance, lien or charge of any kind.

"L/T Representations" means the representations and warranties of the Former Holders set forth in each Letter of Transmittal and in each Support Agreement.

"Material Adverse Effect" means any event, change, occurrence, condition or circumstance which has had or could reasonably be expected to have a material adverse effect upon the financial condition, business or results of operations of the Company and its Subsidiaries, taken as a whole; provided, however, that any event, change, occurrence, condition or circumstance arising from or related to any of the following shall not be deemed to constitute and shall not be taken into account in determining whether a "Material Adverse Effect" has occurred: (i) conditions generally affecting the United States or foreign economies or generally affecting one or more industries in which the Company or its Subsidiaries operate; (ii) national or international political or social conditions, including terrorism or the engagement by the United States in hostilities or acts of war or the escalation thereof, whether or not pursuant to the declaration of a national emergency or war, or the occurrence or the escalation of any military, cyber or terrorist attack upon the United States, or any of its territories, possessions, or diplomatic or consular offices or upon any military installation, asset, equipment or personnel of the United States; (iii) financial, banking or securities markets (including (x) any disruption thereof, (y) any decline or rise in the price of any security or any market index and (z) any increased cost, or decreased availability, of capital or pricing or terms related to any financing for the transactions contemplated hereby); (iv) any failure, in and of itself, by the Company or its Subsidiaries to meet any internal or disseminated projections, forecasts or revenue or earnings predictions for any period (it being understood that the facts and circumstances giving rise or contributing to such failure may be taken into account in determining whether there has been a Material Adverse Effect); provided that the matters described in (i) and (ii) shall be taken into account to the extent such matter has a disproportionate impact on the Company and its Subsidiaries, taken as a whole, as compared to other participants in the industry in which the Company and its Subsidiaries operate.

"Merger Documents" means, collectively, this Agreement, the Certificate of Merger, each Letter of Transmittal, each Support Agreement, and all other agreements and documents entered into in connection with the Merger and the other transactions contemplated hereby.

"Multiemployer Plan" has the meaning set forth in Section 3(37) or Section 4001(a)(3) of ERISA or 414(f) of the Code.

"Net Working Capital Adjustment" means (i) the amount by which Net Working Capital exceeds the Reference Amount or (ii) the amount by which Net Working Capital is less than the Reference Amount; provided that any amount which is calculated pursuant to clause (ii) of this definition shall be deemed to be a negative number.

"Net Working Capital" means the "current assets" of the Company and its Subsidiaries set forth in Section 1.1(b) of the Schedules less the "current liabilities" of the Company and its Subsidiaries set forth in Section 1.1(b) of the Schedules, in each case, as each such "current asset" and "current liability" is accrued and reflected on the books and records of the Company and its Subsidiaries in accordance with GAAP Consistently Applied as of the opening of business on the Closing Date, subject to the adjustments and exclusions set forth in Section 1.1(b) of the Schedules; provided that, for the avoidance of doubt, "current assets" shall not include (a) Cash and Cash Equivalents, or (b) any Tax assets, and "current liabilities" shall not include (u) any Funded Indebtedness, (w) notes payable, (x) Seller Expenses, (y) any Tax liabilities, or (z) any fees and expenses to the extent incurred by or at the direction of Parent, Newco or their respective Affiliates or otherwise relating to Parent's, Newco's or their respective Affiliates' financing for the transactions contemplated hereby (the "Financing Expenses"). For the further avoidance of doubt, the determination of the Net Working Capital Adjustment and the preparation of the Final Merger Consideration will take into account only those components (i.e., only those line items) and adjustments reflected in Section 1.1(b) of the Schedules and used in calculating the Reference Amount. Further to the preceding sentence, the calculation of Final Merger Consideration will be determined in all instances in accordance with GAAP Consistently Applied (and without any change in or introduction of any new reserves), and without duplication to any items counted in such calculation. The parties agree that the purpose of preparing and calculating the Net Working Capital hereunder is to measure changes in Net Working Capital without the introduction of new or different accounting methods, policies, practices, procedures, classifications, judgments or estimation methodologies from GAAP Consistently Applied. The parties hereto agree that Net Working Capital shall be calculated and formatted consistent with the illustrative calculation of Net Working Capital set forth in Section 1.1(b) of the Schedules.

"Order" means any outstanding order, ruling, judgment, writ, injunction, stipulation, award, decree or similar order of any Governmental Authority or arbitrator.

"Ordinary Course of Business" means any action taken by a Person if such action is consistent in nature, scope and magnitude with the past practices of such Person and is taken in the ordinary course of the normal day-to-day operations of such Person.

"Permitted Liens" means (a) mechanics', materialmens', carriers', workmens', repairmens', contractors' or other similar Liens arising or incurred in the Ordinary Course of Business for amounts that are not delinquent and which are set forth as a current liability in the Net Working Capital, (b) as to any Property, easements, rights-of-way, restrictions and other similar charges and encumbrances of record not interfering materially with the ordinary conduct of the business of the Company and its Subsidiaries or the use or occupancy, value of the assets subject thereto, (c) Liens for Taxes not yet due and payable, or for Taxes that the taxpayer is contesting, and for which adequate reserve has been made in the Net Working Capital and (d) as to any Leased Property, Liens created, permitted or suffered by the fee owner thereof.

"Per Share Series A Preferred Closing Consideration" means, with respect to each share of Series A Preferred Stock, an amount equal to the Closing Cash Consideration divided by the number of issued and outstanding shares of Series A Preferred Stock immediately prior to the Effective Time.

"Person" means an individual, partnership, corporation, limited partnership, limited liability company, joint stock company, unincorporated organization or association, trust, joint venture, association or other organization, whether or not a legal entity, or a Governmental Authority.

"Personal Data" means (i) a natural person's name, street address, telephone number, email address, photograph, passport number, credit card number, bank information, or account number, and (ii) any other piece of non-publicly available information that allows the identification of such natural person.

"Pre-Closing Tax Period" means any taxable period ending on or before the Closing and the portion through the end of the day on the Closing Date for the Straddle Period.

"Property" means the Leased Property and all real property owned by the Company or any Subsidiary.

"Protected Communications" means, at any time, any and all communications in whatever form, whether written, oral, video, electronic or otherwise, that shall have occurred between or among any of the Company or its Subsidiaries, the Former Holders, or any of their respective Affiliates, equity holders, directors, officers, employees, agents, advisors (including Houlihan Lokey) and attorneys (including Dechert LLP or any predecessor or successor law firm of the foregoing) relating to or in connection with this Agreement, the events and negotiations leading to this Agreement, any of the transactions contemplated herein or any other potential sale or transfer of control transaction involving the Company and its Subsidiaries.

"Recent Balance Sheet" means the consolidated balance sheet of the Company and its Subsidiaries as of September 30, 2017.

"Recent Balance Sheet Date" means September 30, 2017.

"Recent Financial Statements" means the Recent Balance Sheet and the related consolidated unaudited statements of operations and cash flows of the Company and its Subsidiaries for the nine (9) months ended as of September 30, 2017.

"Reference Amount" means $13,173,524.

"Retention Amount" means $4,756,000.

"Sales Taxes" means Taxes imposed on the Company or its Subsidiaries with respect to the Company's or any of its Subsidiary's retail sale of tangible personal property and other items subject to such Tax in a relevant jurisdiction.

"Schedules" means the disclosure schedules delivered by the Company to Parent and Newco in connection with this Agreement.

"Seller Expenses" means (i) any investment banking, accounting, attorney or other professional fees incurred by the Company or the Former Holders on or prior to Closing with respect to the transactions contemplated by this Agreement plus (ii) any management or transaction fees (including any accelerated management fees) incurred by the Company or the Former Holders on or prior to Closing in connection with any of the transactions contemplated by this Agreement, plus (iii) all sale, transaction, or change of control payments to current or former directors, officers, consultants, employees of the Company or its Subsidiaries or other service providers that are payable by the Company or any of its Subsidiaries upon, in whole or in part by reason of, the consummation of the transactions contemplated hereby (and in no event as a result of a "double trigger" provision where the Closing is the first such trigger), plus (iv) the Expense Funds, plus (v) the premium and all costs and expenses for the R&W Insurance Policy, plus (vi) the premium for the D&O Insurance Tail Policy; in all cases to the extent (A) as in effect as of immediately prior to the Closing and (B) unpaid at or immediately prior to Closing. For the avoidance of doubt, Transaction Incentive Awards paid in accordance with the terms of the applicable letter agreement shall not constitute Seller Expenses.

"Series A Preferred Stock" means the Series A Preferred Stock, par value $0.01 per share, of the Company.

"Series B-1 Preferred Stock" means the Series B-1 Preferred Stock, par value $0.01 per share, of the Company.

"Series B-2 Preferred Stock" means the Series B-2 Preferred Stock, par value $0.01 per share, of the Company.

"Shareholders Agreement" means that certain Amended and Restated Shareholders Agreement, dated March 28, 2014, by and among IWCO Direct Holdings Inc., Court Square Capital Partners II, L.P., Court Square Capital Partners II-A, L.P., Court Square Capital Partners (Executive) II, L.P., Court Square Capital Partners (Offshore) II, L.P., WAM Holdings, LLC, ACP/IWCO Holdings, LLC, ACP IWCO Splitter, L.P., Avista Capital Partners (Offshore), L.P., the Senior Executives (as defined therein) and the Management Investors (as defined therein).

"Stockholders" means the owners of Company Stock.

"Subsidiary" means, with respect to any Person, any corporation, partnership, association or other business entity of which (i) if a corporation, a majority of the total voting power of shares of capital stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof, or (ii) if a partnership, association or other business entity, a majority of the partnership or other similar ownership interests thereof is at the time owned or controlled, directly or indirectly, by any Person or one or more Subsidiaries of that Person or a combination thereof, including, without limitation, with respect to the Company, (i) Instant Web LLC, a Delaware limited liability company, (ii) United Mailing, Inc., a Minnesota corporation, (iii) Victory Envelope, Inc., a Minnesota corporation, (iv) IWCO Direct New York, Inc., a Delaware corporation, (v) IWCO Direct North Carolina, Inc., a Minnesota corporation, and (vi) IWCO Direct TWIN LLC, a Delaware limited liability company. For purposes hereof, a Person or Persons shall be deemed to have a majority ownership interest in a partnership, association or other business entity if such Person or Persons shall be allocated a majority of partnership, association or other business entity gains or losses or shall be or control the managing director, managing member, general partner or other managing Person of such partnership, association or other business entity. Unless the context requires otherwise, each reference to a Subsidiary shall be deemed to be a reference to a Subsidiary of the Company.

"Tax" means any federal, state, local or foreign income, gross receipts, franchise, estimated, alternative minimum, add on minimum, sales, use, transfer, real property gains, registration, value added, excise, severance, stamp, transfer, occupation, windfall profits, customs, duties, real property, personal property, capital stock, social security, employment, unemployment, disability, payroll, license, withholding, or other tax, of any kind whatsoever, including any interest, penalties or additions to tax or similar items in respect of the foregoing.

"Tax Representations" means any representation or warranty in Section 3.10 (Taxes).

"Tax Return" means any return, statement, form, report, declaration, claim for refund, information return or other document (including any related or supporting schedule, statement or information) filed or required to be filed in connection with the determination, assessment or collection of any Tax of any party or the administration of any Laws relating to any Tax (including any amendment thereof).

"Transaction Incentive Awards" means outstanding awards granted by the Company to employees pursuant to letter agreements with the recipients thereof.

"Transaction Incentive Award Closing Amount" means the aggregate amount of Closing Date Payments payable to holders of Transaction Incentive Awards at Closing pursuant to the terms of such awards.

"Transaction Incentive Award Distribution Amount" means, with respect to any Distribution, the aggregate amount of such Distribution payable to holders of Transaction Incentive Awards pursuant to the terms of such awards based on the aggregate Distribution Percentage set forth on Section 1.1(a) of the Schedules applicable to the Transaction Incentive Awards.

"Transaction Tax Deductions" means the sum of all items of loss or deduction for U.S. federal income Tax purposes resulting from or attributable to (a) any sale, retention, or similar bonus or change of control or other payments or benefits to current or former directors, officers, consultants, employees or other service providers payable by the Company or any of its Subsidiaries in connection with the consummation of the transaction contemplated by this Agreement (including, without limitation, amounts payable in respect of the Transaction Incentive Awards), (b) any fees, expenses and interest (including unamortized original issue discount and any other amounts treated as interest for U.S. federal income tax purposes), and any prepayment penalty or breakage fees paid in connection with the consummation of the transaction contemplated by this Agreement, unamortized debt issuance costs or deferred reorganization costs of the Company or any of its Subsidiaries as of the Closing Date, (c) any Seller Expenses not included in clauses (a) or (b), in each case to the extent there is substantial authority, in the reasonable judgment of the Representative and Parent, that such item is deductible for U.S. federal income tax purposes, and (d) the amounts listed on Section 1.1(c) of the Schedules.

Section 1.2. Interpretation.

(a) Unless otherwise indicated to the contrary herein by the context or use thereof: (i) the words, "herein," "hereto," "hereof," "hereunder" and words of similar import refer to this Agreement as a whole and not to any particular Section or paragraph hereof; (ii) the word "including" means "including, but not limited to"; (iii) the word "or" is used in the inclusive sense of "and/or"; (iv) masculine gender shall also include the feminine and neutral genders, and vice versa; (v) words importing the singular shall also include the plural, and vice versa; and (vi) accounting terms which are not otherwise defined in this Agreement shall have the meanings given to them under GAAP.

(b) Unless the context of this Agreement otherwise requires and except for references in the Schedules, references to agreements and other documents shall be deemed to include all subsequent amendments and other modifications thereto.

(c) Unless the context of this Agreement otherwise requires, references to statutes shall include all regulations promulgated thereunder and references to statutes or regulations shall be construed as including all statutory and regulatory provisions consolidating, amending or replacing the statute or regulation.

(d) References in this Agreement to dollar amount thresholds shall not be deemed to be evidence of a Material Adverse Effect or materiality.

(e) References to documents or other materials "provided" or "made available" to Parent or Newco or similar phrases shall mean that such documents or other materials were present in the online data room (the "Data Room") maintained by the Company or the Former Holders for purposes of the transactions contemplated by this Agreement prior to the date hereof.

(f) The parties intend that each representation, warranty, covenant and agreement contained herein shall have independent significance. If any party has breached any representation, warranty, covenant or agreement contained herein in any respect, the fact that there exists another representation, warranty, covenant or agreement relating to the same subject matter (regardless of the relative levels of specificity) that the party has or has not breached shall not (i) detract from or mitigate the fact that the party is in breach of such representation, warranty, covenant or agreement or (ii) prevent or in any way limit recovery pursuant to this Agreement for breach of such representation, warranty, covenant or agreement.

ARTICLE II

MERGER

Section 2.1. **The Merger**. Upon the terms and subject to the conditions of this Agreement, at the Effective Time, Newco shall, pursuant to the provisions of the Delaware General Corporation Law (as amended from time to time, the "DGCL"), be merged with and into the Company (the "Merger"), and the separate corporate existence of Newco shall thereupon cease in accordance with the provisions of the DGCL. The Company shall be the surviving corporation in the Merger and shall continue to exist as said surviving corporation under its present name pursuant to the provisions of the DGCL. The separate corporate existence of the Company with all its rights, privileges, powers and franchises shall continue unaffected by the Merger. The Merger shall have the effects specified in the DGCL. Without limiting the generality of the foregoing, and subject thereto, from and after the Effective Time, all property, rights, privileges, immunities, powers, franchises, licenses and authority of the Company and Newco shall vest in the Surviving Corporation, and all debts (other than Funded Indebtedness), Liabilities, restrictions and duties of each of the Company and Newco shall become the debts, Liabilities, restrictions and duties of the Surviving Corporation. From and after the Effective Time, the Company is sometimes referred to herein as the "Surviving Corporation." Notwithstanding Section 251 of the Delaware General Corporation Law, as amended, no Former Holder shall be entitled to any consideration pursuant to this Agreement unless and until such Former Holder has entered into a Support Agreement, which agreements are part of the terms and conditions of the Merger.

Section 2.2. **Certificate of Merger**. On the Closing Date, the parties hereto shall cause the Merger to be effected by executing and filing a certificate of merger substantially in the form attached hereto as Exhibit C (the "Certificate of Merger"), in accordance with the relevant provisions of the DGCL to be properly executed and filed in accordance with the DGCL and shall make all other filings or recordings required under the DGCL in connection with the Merger. The Merger shall be effective on the Closing Date at the time of the filing of the Certificate of Merger in accordance with the DGCL (the "Effective Time").

Section 2.3. **Certificate of Incorporation**. The certificate of incorporation attached hereto as Exhibit G hereto shall be the certificate of incorporation of the Surviving Corporation and shall continue in full force and effect until further amended in the manner prescribed by the provisions of the DGCL.

Section 2.4. **Bylaws**. The bylaws of the Company as in effect immediately prior to the Effective Time shall be the bylaws of the Surviving Corporation until amended in accordance with the provisions thereof and applicable Law.

Section 2.5. **Officers**. The officers of the Company immediately prior to the Effective Time shall be the officers of the Surviving Corporation and will hold office until their successors are duly elected or appointed and qualify in the manner provided in the certificate of incorporation or bylaws of the Surviving Corporation or as otherwise provided by Law, or until their earlier death, resignation or removal.

Section 2.6. **Directors**. The directors of Newco immediately prior to the Effective Time and Jim Andersen shall be the directors of the Surviving Corporation and will serve until their successors are duly elected or appointed and qualify in the manner provided in the certificate of incorporation or bylaws of the Surviving Corporation or as otherwise provided by Law, or until their earlier death, resignation or removal.

Section 2.7. **Merger Consideration**.

(a) Merger Consideration. The aggregate consideration for the Company Stock pursuant to the Merger shall be a dollar amount equal to (i) $475,600,000, plus (ii) the Net Working Capital Adjustment (which may be a negative number), minus (iii) the amount of Closing Date Funded Indebtedness, minus (iv) the amount of any Seller Expenses, minus (v) the Transaction Incentive Award Closing Amount (the "Merger Consideration").

(b) Estimated Merger Consideration. Attached hereto as Exhibit D is a statement prepared by the Company (the "Estimated Merger Consideration Statement") consisting of a good faith estimate by the Company of (i) the Merger Consideration (the "Estimated Merger Consideration") and (ii) a consolidated balance sheet of the Company and its Subsidiaries as of the opening of business on the Closing Date (the "Estimated Balance Sheet") but without giving effect to the Closing, in the same form and including the same line items as the Recent Balance Sheet and prepared in accordance with GAAP Consistently Applied. The Estimated Merger Consideration and such balance sheet shall be determined by the Company based upon the Recent Financial Statements while taking into account changes in the Company's financial position since the Recent Balance Sheet Date. In connection with determining the Estimated Merger Consideration, the Company shall (A) estimate the amount of the Net Working Capital Adjustment (the "Estimated Net Working Capital Adjustment"), (B) estimate the amount of Closing Date Funded Indebtedness (including the amount of Cash and Cash Equivalents as of the opening of business on the Closing Date), (C) estimate the Seller Expenses and (D) set forth the amounts of each of the Closing Date Payments (as defined below).

(c) Closing Date Payments. On the Closing Date, contemporaneously with the filing of the Certificate of Merger, Parent shall make the following payments in cash on behalf of Parent (collectively, the "Closing Date Payments"):

(i) The Closing Date Bank Debt and Defaulted Funded Indebtedness shall be paid to the holders thereof on behalf of the Company as specified in each holder's applicable payoff letter, by wire transfer of immediately available funds to such account or accounts as directed in the applicable payoff letter or as directed by the Company in writing to Parent;

(ii) The Surviving Corporation shall pay on the Closing Date any Seller Expenses not paid by the Company prior to the Closing;

(iii) The Surviving Corporation shall receive by wire transfer of immediately available funds, for further distribution to the holders of Transaction Incentive Awards, an amount equal to the Transaction Incentive Award Closing Amount as set forth in the Estimated Merger Consideration Statement;

(iv) The Adjustment Escrow Amount shall be deposited on behalf of Parent for the benefit of the Former Holders of Series A Preferred Stock and the holders of the Transaction Incentive Awards into a non-interest bearing escrow account (the "Escrow Account"), which shall be established pursuant to the Escrow Agreement;

(v) $200,000 shall be delivered to the Representative to cover costs and expenses incurred by the Representative in its capacity as the Representative (the "Expense Reserve"); and

(vi) Each Former Holder of Series A Preferred Stock shall receive by wire transfer of immediately available funds an amount equal to the Per Share Series A Preferred Closing Consideration for each share of Series A Preferred Stock owned by such Former Holder subject to and in accordance with Sections 2.8 and 2.9, in each case as set forth in the Estimated Merger Consideration Statement.

(d) Determination of the Final Merger Consideration.

(i) As soon as practicable, but no later than 60 days after the Closing Date, Parent shall prepare and deliver to the Representative a statement (the "Proposed Final Merger Consideration Statement") consisting of (x) a consolidated balance sheet of the Surviving Corporation and its Subsidiaries as of the opening of business on the Closing Date but without giving effect to the Closing, in the same form and including the same line items as the Recent Balance Sheet and prepared in accordance with GAAP Consistently Applied (the "Closing Balance Sheet") and (y) a proposed calculation in reasonable detail of the Merger Consideration (the "Proposed Final Merger Consideration"), which shall include a calculation of the proposed Net Working Capital Adjustment, the proposed Closing Date Funded Indebtedness (including the amount of Cash and Cash Equivalents as of the opening of business on the Closing Date) and the proposed Seller Expenses. During the 30-day period following the Representative's receipt of the Proposed Final Merger Consideration Statement, the Representative and its accountants (which may be the Company's current auditors or accounting consultants) shall, at the Representative's expense, be permitted reasonable access to review the books and records (including, working papers, appropriate personnel and outside advisors) of Parent and Parent's independent accountant relating to the Proposed Final Merger Consideration Statement as may be reasonably requested by the Representative.

(ii) If the Representative does not give a written notice of dispute setting forth in reasonable detail the items and amounts in dispute (a "Merger Consideration Dispute Notice") to Parent within 30 days after receiving the Proposed Final Merger Consideration Statement, the parties hereto agree that the Proposed Final Merger Consideration Statement shall become final, binding and conclusive upon the parties. If the Representative gives a Merger Consideration Dispute Notice to Parent (the items and amounts in dispute, the "Disputed Merger Consideration Items") within such 30-day period, the Representative and Parent shall use reasonable efforts to resolve the Disputed Merger Consideration Items during the 30-day period commencing on the date Parent receives such Merger Consideration Dispute Notice. If the parties reach agreement with respect to any Disputed Merger Consideration Items within such 30-day period, Parent shall revise the Proposed Final Merger Consideration Statement to reflect such agreement, which shall be final, binding and conclusive upon the parties. If the Representative and Parent do not obtain a final written resolution of all Disputed Merger Consideration Items within such 30-day period, then the unresolved Disputed Merger Consideration Items (the "Unresolved Merger Consideration Items") shall be submitted immediately to the New York, New York office of Deloitte (the "Accounting Firm"). The Accounting Firm shall be required to render a determination regarding the Unresolved Merger Consideration Items within 30 days after referral of the matter to the Accounting Firm, or as soon as practicable thereafter, which determination must be in accordance with the terms of this Agreement and in writing and must set forth, in reasonable detail, the basis therefor. The determination of the Accounting Firm shall be conclusive and binding upon the Representative, Parent and the other parties hereto absent manifest error, and judgment may be entered upon the determination of the Accounting Firm in any court having jurisdiction over the party against which such determination is to be enforced.

(iii) The Accounting Firm shall act as an expert and not as an arbitrator, shall make a determination only with respect to the Unresolved Merger Consideration Items and in a manner consistent with this Section 2.7 and the requirements of this Agreement, and in no event shall its determination of Unresolved Merger Consideration Items be for an amount outside the range of the parties' disagreement. Each party shall use its reasonable best efforts to furnish to the Accounting Firm such work papers and other documents and information pertaining to the Unresolved Merger Consideration Items as the Accounting Firm may request. If possible, the Accounting Firm shall make its determination based solely on presentations by Parent and the Representative; provided, that if the Accounting Firm is unable to reach a conclusion on this basis, the Accounting Firm shall review such additional information provided by Parent and the Representative upon request of the Accounting Firm and perform such additional procedures as the Accounting Firm deems reasonably necessary. In the event Parent or the Representative does not comply with the procedural and time requirements contained herein or such other procedural or time requirements as required by the Accounting Firm or as Parent or the Representative otherwise elect in writing, the Accounting Firm shall render a decision based solely on the evidence it has which was timely submitted by such parties. The scope of the disputes to be arbitrated by the Accounting Firm is limited to those items or calculations specifically in dispute between Parent and the Representative; and the Accounting Firm is not to make any other determination, including whether the agreed upon dollar amount of the Reference Amount is correct or appropriate.

(iv) Parent shall revise the Proposed Final Merger Consideration Statement to reflect the determination of the Accounting Firm pursuant to Section 2.7(d)(ii). The "Final Merger Consideration" shall mean the Proposed Final Merger Consideration as finally revised pursuant to this Section 2.7(d).

(v) The fees and expenses of the Accounting Firm shall be borne in the same proportion as the aggregate dollar amount of the Unresolved Merger Consideration Items that are unsuccessfully disputed by each party (as finally determined by the Accounting Firm) bears to the aggregate dollar amount of all of the Unresolved Merger Consideration Items submitted to the Accounting Firm.

(vi) Until the Final Merger Consideration is determined, each of Parent and the Surviving Corporation shall, and shall cause its respective Subsidiaries to, provide to the Representative and its accountants (which may be the Company's current auditors or accounting consultants) and other representatives, at the Representative's expense, reasonable access to review the books and records (including, working papers) and access to employees relating to the Proposed Final Merger Consideration Statement as may be reasonably requested by the Representative.

(e) Post-Closing Final Merger Consideration Payment. No later than three Business Days after the date on which the Final Merger Consideration is finally determined pursuant to Section 2.7(d):

(i) if the Final Merger Consideration exceeds the Estimated Merger Consideration, Parent shall pay the amount by which the Final Merger Consideration exceeds the Estimated Merger Consideration to the Former Holders of Series A Preferred Stock and the holders of Transaction Incentive Awards in accordance with their respective Distribution Percentages; or

(ii) if the Estimated Merger Consideration exceeds the Final Merger Consideration, then the Stockholders shall cause to be paid to Parent an amount equal to the amount by which the Estimated Merger Consideration exceeds the Final Merger Consideration. Such payment shall be distributed to Parent solely from the Adjustment Escrow Amount pursuant to the Escrow Agreement, and Parent shall have no recourse against the Representative, the Stockholders or holders of Transaction Incentive Awards in respect of such payment. Subject to Section 7.3(d), any Adjustment Escrow Amount remaining in the Escrow Account after such distribution shall be distributed to the Former Holders of Series A Preferred Stock and the holders of Transaction Incentive Awards in accordance with their respective Distribution Percentages, in each case in accordance with the Escrow Agreement.

(f) Any amounts paid or distributed pursuant to this Agreement that are attributable to the Transaction Incentive Awards, including any amounts distributed from the Escrow Account or paid pursuant to this Section 2.7, shall be paid to the Surviving Corporation based on their Distribution Percentages of such amount. The Surviving Corporation shall in turn pay to the applicable holders of Transaction Incentive Awards as of the Closing Date his or her pro rata portion of any such (i) Transaction Incentive Award Closing Amount (less any applicable deductions or withholding Taxes applicable to payments to such holder), in accordance with the terms of the applicable Transaction Incentive Award, as promptly as practicable thereafter, but in no event later than 15 days following the receipt thereof, through the Surviving Corporation's payroll system; and (ii) Transaction Incentive Award Distribution Amount (less any applicable deductions or withholding Taxes applicable to payments to such holder), in accordance with the terms of the applicable Transaction Incentive Award, through the Surviving Corporation's payroll system.

Section 2.8. Conversion or Cancellation of Shares.

(a) Conversion of Company Stock. As of the Effective Time, by virtue of the Merger, and without any action on the part of any holder thereof or any party hereto, each share of Series A Preferred Stock issued and outstanding immediately prior to the Effective Time (other than shares held in the Company's treasury or by any of its Subsidiaries) shall be canceled and converted into the right to receive the Per Share Series A Preferred Closing Consideration and, with respect to any future Distributions, the applicable Distribution Per Share Amount payable, in cash to the holders thereof, without interest thereon, upon surrender of the Certificate formerly representing such share, all in accordance with Section 2.7 and Section 2.9 and shall otherwise cease to exist.

(b) Cancellation of Company Stock. As of the Effective Time, by virtue of the Merger and without any action on the part of any holder thereof or any party hereto:

(i) each share of Common Stock issued and outstanding immediately prior to the Effective Time shall be canceled without any consideration therefor and shall otherwise cease to exist;

(ii) each share of Series B-1 Preferred Stock issued and outstanding immediately prior to the Effective Time shall be canceled without any consideration therefor and shall otherwise cease to exist; and

(iii) each share of Series B-2 Preferred Stock issued and outstanding immediately prior to the Effective time shall be canceled without any consideration therefor and shall otherwise cease to exist.

(c) Withholding. Parent or the Surviving Corporation shall be entitled to deduct and withhold from the applicable Closing Date Payments and any Distributions otherwise payable pursuant to this Agreement to any Former Holder in respect of their Company Stock such amount as Parent or the Surviving Corporation is required to deduct and withhold with respect to such payment under the Code, or any provision of applicable state, local or foreign Law; provided, that (except with respect to any Transaction Incentive Awards) Parent or the Surviving Corporation, as the case may be, shall notify the Representative of any intention to so deduct and withhold, and the legal basis therefor prior to the Closing. To the extent that amounts are so withheld or deducted and timely paid by Parent or the Surviving Corporation, as applicable, to the applicable Governmental Authority, such withheld or deducted amounts shall be treated for all purposes of this Agreement as having been paid to the Former Holder or holder of Transaction Incentive Awards in respect of which such deduction or withholding was made. For the avoidance of doubt, any amounts payable pursuant to this Agreement to holders of Transaction Incentive Awards that are considered compensatory for Tax purposes shall be processed and paid through the payroll system of the Surviving Corporation as described in Section 2.7(f).

(d) Treasury Shares. Each share of Company Stock held in the treasury of the Company or by any Subsidiary of the Company immediately prior to the Effective Time shall, by virtue of the Merger and without any action on the part of the holders thereof, be canceled, retired and cease to exist as of the Effective Time and no payment shall be made with respect thereto.

(e) Newco Shares. As of the Effective Time, each share of capital stock of Newco issued and outstanding immediately prior to the Effective Time shall, without any action on the part of Newco, be converted into one share of common stock of the Surviving Corporation.

(f) Holders of Certificates. From and after the Effective Time, the holders of Certificates (other than Certificates representing Dissenting Shares) shall cease to have any rights with respect to such Certificates, except the right to receive the applicable Closing Date Payments and the Distribution Amount (if any) with respect to each of the shares represented thereby in accordance with Section 2.8 and Section 2.9.

(g) Options. The Company's 2007 Equity Incentive Plan and all options issued pursuant thereto shall be terminated as of the Effective Time and no payment shall be made with respect thereto.

Section 2.9. Exchange of Certificates.

(a) Upon (i) with respect to each Signing Stockholder, delivery of the items set forth in Sections 2.11(b)(i), (ii) and (iii) or (ii) with respect to each Former Holder, other than the Signing Stockholders, surrender of any Certificates (other than Certificates representing Dissenting Shares), together with a duly executed letter of transmittal in the form attached as Exhibit E hereto (a "Letter of Transmittal") and a duly executed Support Agreement to Parent or the Surviving Corporation, then, in each such case, the holder of each Certificate shall receive from the Surviving Corporation and/or Parent in exchange for each share of Company Stock evidenced thereby, the applicable Closing Date Payment to which such holder is entitled pursuant to Section 2.7 and Section 2.8 in respect of its shares of Company Stock, in the form of cash by wire transfer of immediately available funds (or by check if so indicated by any such holder in his or her Letter of Transmittal). Each Certificate surrendered in accordance with the provision of this Section 2.9 shall be canceled; provided that, notwithstanding the cancellation of such Certificate, the Former Holder shall remain entitled to receive, for each share of Company Stock evidenced thereby, the applicable Closing Date Payment and any applicable Distribution Per Share Amount. If payment or delivery is to be made to a Person other than the Person in whose name a Certificate so surrendered is registered, it shall be a condition of payment that the Certificate so surrendered shall be properly endorsed or otherwise in proper form for transfer, that the signatures on the certificate or any related stock power shall be properly guaranteed and that the Person requesting such payment either pay any transfer or other Taxes required by reason of the payment to a Person other than the registered holder of the Certificate so surrendered or establish to the satisfaction of the Surviving Corporation that such Tax has been paid or is not applicable. Until surrendered in accordance with the provisions of this Section 2.9, each Certificate (other than Certificates canceled pursuant to Section 2.8(b) and Certificates representing Dissenting Shares) shall represent for all purposes only the right to receive the applicable Closing Date Payment and any applicable Distribution Per Share Amount (if any), in the form provided for by this Agreement, without interest.

(b) In the event that any Certificate (other than any Certificate representing Dissenting Shares) shall have been lost, stolen or destroyed, upon the making of an affidavit of that fact and indemnity by the registered holder of such lost, stolen or destroyed Certificate in form and substance reasonably acceptable to the Company (if such affidavit is accepted before the Effective Time) or the Surviving Corporation (if such affidavit is accepted after the Effective Time), the Surviving Corporation will deliver in exchange for such lost, stolen or destroyed Certificate the applicable Closing Date Payment and any applicable Distribution Per Share Amount in respect thereof in the manner set forth in Section 2.7 and Section 2.8.

(c) If Certificates are not surrendered prior to the date that is two (2) years after the Effective Time (or such earlier date, immediately prior to such time when the amounts would otherwise escheat to or become property of any Governmental Authority), unclaimed amounts (including interest thereon) of the Closing Date Payments and any Distributions, as applicable, shall, to the extent permitted by applicable Law, become the property of the Surviving Corporation and may be commingled with the general funds of the Surviving Corporation, free and clear of all claims or interest of any Person previously entitled thereto. Notwithstanding the foregoing, any Stockholders who have not theretofore complied with the provisions of this Section 2.9 shall thereafter look only to the Surviving Corporation or Parent, as applicable, and only as general creditors thereof for payment for their claims in the form and amounts to which such Stockholders are entitled.

(d) After the Effective Time, there shall be no transfers on the stock transfer books of the Surviving Corporation of the shares of Company Stock that were outstanding immediately prior to the Effective Time. Subject to Section 2.9(c), if, after the Effective Time, Certificates (other than Certificates representing Dissenting Shares) are presented to the Surviving Corporation, they shall be canceled and exchanged for the consideration as provided for, and in accordance with, the provisions of this Agreement.

Section 2.10. Dissenting Shares. Each share of Company Stock issued and outstanding immediately prior to the Effective Time held by Stockholders who shall have properly exercised their appraisal rights with respect thereto under Section 262 of the DGCL ("Dissenting Shares") shall not be converted into the right to receive the applicable form of consideration pursuant to the Merger, but shall be entitled to receive payment of the fair value of such shares in accordance with the provisions of Section 262 of the DGCL, except that each Dissenting Share held by a Stockholder who shall thereafter withdraw his or her demand for appraisal or shall fail to perfect or otherwise waive or lose his or her right to such payment as provided in such Section 262 shall be deemed to be converted, as of the Effective Time, into the right to receive the applicable consideration in the form such Stockholder otherwise would have been entitled to receive as a result of the Merger in accordance with this Agreement. The Company will enforce any contractual waivers that Stockholders have granted regarding appraisal rights that would apply to the Merger.

Section 2.11. Closing.

(a) The closing of the transactions contemplated hereby (the "Closing") shall take place concurrently with the execution of this Agreement on the date hereof and shall be effective as of the Effective Time. The time and date of the Closing is herein called the "Closing Date." The Closing shall be held by the remote exchange of documents unless another method or place is agreed to in writing by the Company and Parent.

(b) At or prior to the Closing, the Company shall deliver to Parent the following documents:

(i) this Agreement, duly executed by the Company, the Signing Stockholders and the Representative;

(ii) the Certificates held by the Signing Stockholders accompanied by executed stock powers or other instruments of transfer;

(iii) a Support Agreement, duly executed by each Signing Stockholder and the Company;

(iv) resignations of all officers, directors and managers of the Company and its Subsidiaries;

(v) copies of each consent, waiver, authorization and approval set forth on Schedule 2.10(b)(v);

(vi) copies of the (x) written consent of the stockholders of the Company voting in favor of the adoption of this Agreement and approval of the transactions contemplated by this Agreement (the "Written Consent"), which consent shall constitute approval of this Agreement by the requisite percentage of stockholders for purposes of the DGCL and pursuant to the Certificate of Incorporation and Shareholders Agreement; and (y) written consent or resolutions of the Board of Directors of the Company approving this Agreement and the transactions contemplated hereby, each certified to be true, complete, correct and in full force and effect by the Secretary of the Company;

(vii) Certificates of Good Standing of the Company and each Subsidiary issued by the Secretary of State of its state of organization and each state where such entity is qualified to do business in such state, each dated within five (5) calendar days of the Closing;

(viii) copies of (x) the certified certificate of incorporation or articles of incorporation, as applicable, of the Company and each of its Subsidiaries, including all amendments thereto, and (ix) the bylaws or operating agreement, as applicable, of the Company and each of its Subsidiaries, including all amendments thereto, each certified to be true, complete, correct and in full force and effect by the Secretary of the Company;

(ix) evidence that all of the arrangements required to be disclosed on Section 3.19 of the Schedules, including all Transaction Incentive Awards, the Shareholders Agreement, the Company's Amended and Restated Registration Rights Agreement and the Company's 2007 Equity Incentive Plan and all options and other equity grants issued pursuant thereto, have been terminated with no Liability to Parent or the Surviving Corporation;

(x) if applicable, evidence reasonably satisfactory to Parent that any payments or benefits that constitute, separately or in the aggregate, a payment referred to in Code Section 280G(b)(2), to the extent such payments would also constitute "excess parachute payments" under Code Section 280G(b)(1) shall be exempt from Code Section 280G(a) under Code Section 280G(b)(5)(B), or, in the absence of such evidence, each Person who would otherwise have been entitled to any such payments or benefits shall have duly executed and delivered to Parent a waiver of all payments or benefits that may result in any "excess parachute payments" under Code Section 280G, in form and substance reasonably satisfactory to Parent;

(xi) a certificate, in the form and substance required under Treasury Regulation §1.897-2(h), so that Parent is exempt from withholding any portion of the Merger Consideration pursuant to Treasury Regulation §1.1445-2; provided, however, that Parent's only recourse for the Company's failure to provide such certificate or any defect in such certificate shall be the ability to withhold tax from the Merger Consideration as required by applicable Law;

(xii) a direction letter directing payment of the Closing Date Bank Debt, Defaulted Funded Indebtedness and the Seller Expenses, including setting forth the amount of the Closing Date Bank Debt, Defaulted Funded Indebtedness and the Seller Expenses and the parties to which such amounts are payable;

(xiii) payoff letters for each instrument evidencing all outstanding Defaulted Funded Indebtedness from the obligees thereunder setting forth the amounts necessary to pay off all such Defaulted Funded Indebtedness under such instrument as of the Closing Date along with the per diem interest amount with respect thereto, and evidence reasonably satisfactory to Parent of the release of, or commitment to release upon receipt of payment, all Liens on the Company's assets and UCC financing statements related thereto; and

(xiv) the Escrow Agreement, duly executed on behalf of the escrow agent and the Representative.

(c) At or prior to the Closing, Parent shall deliver to the Representative the following documents:

(i) this Agreement, duly executed by Parent and Newco;

(ii) copies of the (x) written consent or resolutions of the Board of Directors of Newco approving this Agreement and the transactions contemplated hereby; and (y) written consent or resolutions of the Board of Directors of Parent approving this Agreement and the transactions contemplated hereby, each certified to be true, complete, correct and in full force and effect by the Secretary of Parent;

(iii) a copy of the "buyer's" representations and warranties insurance policy from VALE Insurance Partners, LLC (the "R&W Insurance Policy"), substantially in the form attached hereto as Exhibit F, insuring Parent and the Surviving Corporation for Losses due to breaches of representations and warranties under Article III and Article V having a coverage limit of not less than $46,500,000; and

(iv) Escrow Agreement, duly executed on behalf of Parent and dated as of the Closing Date.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF THE COMPANY

The Company hereby represents and warrants to Parent and Newco as of the Closing Date as follows:

Section 3.1. Organization and Qualification. Each of the Company and its Subsidiaries is a corporation or limited liability company, as applicable, duly organized, validly existing and in good standing under the Laws of its jurisdiction of organization specified in Section 3.1(a) of the Schedules and has all requisite power and authority necessary to own or lease its property and assets and to carry on its business as presently conducted, and is duly qualified to do business and in good standing as a foreign corporation or limited liability company, as applicable, and is in good standing in each jurisdiction wherein the nature of its business or the ownership of its assets makes such qualification necessary, except where the failure to be so qualified and in good standing would not, individually or in the aggregate, reasonably be expected to be material to the Company and its Subsidiaries, taken as a whole, each such jurisdiction set forth in Section 3.1(b) of the Schedules. The Company has made available to Parent and Newco in the Data Room true and complete copies of (i) its Certificate of Incorporation and all amendments thereto or restatements thereof, (ii) its bylaws as currently in effect and (iii) true and complete copies of the certificate or articles of incorporation and bylaws (or equivalent organizational documents), as currently in effect, of each Subsidiary.

Section 3.2. Authorization. The Company has the corporate power and authority to execute and deliver this Agreement and each other Merger Document to which the Company is a party and to perform its obligations hereunder and thereunder, all of which have been duly authorized by all requisite corporate action (including any required stockholder approvals) and no other corporate or stockholder action on the part of the Company or its stockholders is necessary to authorize the execution, delivery and performance of this Agreement and each other Merger Document by the Company and the consummation by the Company of the Merger and the other transactions contemplated hereby and thereby. This Agreement and each other Merger Document to which the Company is a party has been duly authorized, executed and delivered by the Company and, assuming that this Agreement has been duly and validly authorized, executed and delivered by Parent and Newco, constitutes a valid and binding agreement of the Company, enforceable against the Company in accordance with its terms, except to the extent that the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or other Laws from time to time in effect relating to creditors' rights and remedies generally and general principles of equity.

Section 3.3. **Non-contravention**. Except as set forth in Section 3.3 of the Schedules, neither the execution and delivery of this Agreement or any other Merger Document, the consummation of the Merger and the other transactions contemplated hereby or thereby nor the fulfillment of and the performance by the Company of its obligations hereunder or thereunder will (i) contravene any provision contained in the Company's Certificate of Incorporation or bylaws, the organizational documents of the Company's Subsidiaries, (ii) conflict with, violate or result in a breach (with or without the lapse of time, the giving of notice or both) of, or constitute a default (with or without the lapse of time, the giving of notice or both) under (A) any Material Contract, license, permit or other instrument or obligation or (B) assuming satisfaction of the requirements set forth in Section 3.4 below, any judgment, Law or other restriction of any Governmental Authority, in each case to which the Company or any of its Subsidiaries is a party or by which any of them is bound or to which any of their respective assets or properties are subject, (iii) except as set forth in Section 3.3 of the Schedules, result in the acceleration of, or permit any Person to terminate, modify, cancel, accelerate or declare due and payable prior to its stated maturity, any obligation of the Company or any of its Subsidiaries under any Material Contract or (iv) result in the imposition of any Lien on the assets of the Company or any of its Subsidiaries (with or without the lapse of time, the giving of notice or both).

Section 3.4. **Consents**. No notice to, filing with, or authorization, registration, consent or approval of any Governmental Authority is necessary for the execution, delivery or performance of this Agreement, the other Merger Documents to which the Company is a party or the consummation of the transactions contemplated hereby or thereby by the Company, except for (i) filing and recordation of appropriate Merger Documents as required by the DGCL and (ii) any filings and approvals set forth in Section 3.4 of the Schedules. Based on the amount of Funded Indebtedness and the aggregate accrued preferred dividends on the Series A Preferred Stock as of immediately prior to the Closing, the "size of transaction" as used in the HSR Act will be less than $80,800,000.

Section 3.5. **Capitalization; Subsidiaries**.

(a) The Company's authorized capital stock consists solely of (i) 880,000 authorized shares of Common Stock, 625,000 shares of which are presently issued and outstanding, (ii) 1,190,000 authorized shares of Series A Preferred Stock, 768,072.29 shares of which are presently issued and outstanding and (iii) 12,000,000 authorized shares of Series B-1 Preferred Stock, 11,582,030 shares of which are presently issued and outstanding and (iv) 3,500,000 authorized shares of Series B-2 Preferred Stock, 2,901,493 shares of which are presently issued and outstanding, which shares are held of record by the Persons set forth in Section 3.5(a) of the Schedules in the amounts set forth opposite such Person's name. Except as set forth in this Section 3.5(a) or in Section 3.5(a) of the Schedules, the Company does not have (A) any shares of Company Stock reserved for issuance, (B) any shares of common stock, preferred stock, equity interests or other voting securities issued or outstanding, and there are no preemptive or other outstanding rights, subscriptions, options, warrants, stock appreciation rights, phantom equity or similar rights, redemption rights, repurchase rights, convertible, exercisable or exchangeable securities, or other Contracts, agreements, arrangements or commitments of any character relating to the issued or unissued capital stock or other ownership interest in the Company or any other securities or obligations convertible or exchangeable into or exercisable for, or giving any Person, directly or indirectly (whether with or without the occurrence of any contingency), a right to subscribe for or acquire, any securities or other equity interests of the Company, and no securities or other equity interests evidencing such rights are authorized, issued or outstanding, (C) voting trusts, proxies or other agreements among the Company's stockholders with respect to the voting or transfer of the Company's capital stock or governance of the Company, or (D) outstanding obligations of the Company or any of the its Subsidiaries to repurchase, redeem or otherwise acquire or retire any capital stock of the Company. All of the issued and outstanding shares of capital stock of the Company have been duly authorized, validly issued, are fully paid and are non-assessable, none of such shares were issued in violation of any preemptive or similar rights and all of them were issued in compliance with applicable federal and state securities Laws. The aggregate accrued preferred dividends on the Series A Preferred Stock as of immediately prior to the Closing is $87,837,604.

(b) All Subsidiaries of the Company are listed in Section 3.5(b) of the Schedules. All of the outstanding capital stock of, or other ownership interests in, each Subsidiary of the Company is owned beneficially and of record as set forth in Section 3.5(b) of the Schedules, is validly issued, fully paid and non-assessable and free and clear of any Liens. Except as set forth in Section 3.5(b) of the Schedules, there are no (i) shares of capital stock or other equity interests of the Company's Subsidiaries reserved for issuance, (ii) shares of common stock, preferred stock, equity interests or other voting securities issued or outstanding, any preemptive or other outstanding rights, subscriptions, options, warrants, stock appreciation rights, phantom equity or similar rights, redemption rights, repurchase rights, convertible, exercisable or exchangeable securities, or other Contracts, agreements, arrangements or commitments of any character relating to the issued or unissued capital stock or other ownership interest in the Company's Subsidiaries or any other securities or obligations convertible or exchangeable into or exercisable for, or giving any Person, directly or indirectly (whether with or without the occurrence of any contingency), a right to subscribe for or acquire, any securities or other equity interests of the Company's Subsidiaries, nor any securities or other equity interests evidencing such rights are authorized, issued or outstanding, (iii) voting trusts, proxies or other agreements among the Company's Subsidiaries' stockholders or members with respect to the voting or transfer of the Company's Subsidiaries' capital stock or other ownership interest or governance of a Subsidiary, or (iv) outstanding obligations of the Company or any of the Company's Subsidiaries to repurchase, redeem or otherwise acquire or retire any outstanding shares of capital stock or other ownership interests in any Subsidiary. All of the issued and outstanding shares of capital stock or other ownership interest of each of the Company's Subsidiaries have been duly authorized and validly issued, and are fully paid and non-assessable, none of such shares or ownership interest were issued in violation of any preemptive or similar rights and all of them were issued in compliance with applicable federal and state securities Laws.

Section 3.6. Financial Statements; Undisclosed Liabilities.

(a) Each of the financial statements of the Company listed in Section 3.6(a) of the Schedules (the "Financial Statements") present fairly and accurately, in all material respects, the consolidated financial position and consolidated results of operations and cash flows of the Company and its consolidated Subsidiaries as of the respective dates or for the respective periods set forth therein, have been prepared in all material respects in accordance GAAP during the periods involved, except as set forth on Section 3.6(a) of the Schedules, and subject, in the case of the Recent Financial Statements, to the absence of footnotes and to normal year-end adjustments (none of which will be material, individually or in the aggregate). The Financial Statements have been prepared based on the books and records of the Company.

(b) Neither the Company nor any of its Subsidiaries has any material Liabilities or Funded Indebtedness, except (i) Liabilities and Funded Indebtedness that are accrued, reserved against or reflected in the Recent Balance Sheet (and not in the notes thereto), (ii) Liabilities which have arisen since the Recent Balance Sheet Date that were incurred in the Ordinary Course of Business (none of which results from, arises out of, relates to, is in the nature of or was caused by any breach of Contract, breach of warranty, tort, infringement or violation of Law), all of which are reflected in the Estimated Balance Sheet, or (iii) Liabilities otherwise disclosed in Section 3.6(b) of the Schedules or within any dollar threshold contained in any other representation in this Agreement.

(c) The Company and its Subsidiaries maintain a system of internal accounting controls designed to provide reasonable assurance that (i) all material information concerning the Company and its Subsidiaries is made known on a timely basis to the individuals responsible for the preparation of the Financial Statements, (ii) transactions have been recorded as necessary to permit the preparation of the Financial Statements in conformity with GAAP in all material respects and (iii) transactions are executed with management's authorization and (iv) prevention or timely detection of unauthorized acquisition, use, or disposition of material assets. Neither the Company nor, to the Company's Knowledge, the Company's independent accountants, have, since December 31, 2015, identified or been made aware of (x) any significant deficiency or material weakness in the design or operation of internal control over financial reporting utilized by the Company or any of its Subsidiaries, (y) any illegal act or fraud, whether or not material, that involves the management of the Company or any of its Subsidiaries, or (z) any claim or allegation regarding any of the foregoing.

Section 3.7. **Absence of Certain Developments**. Since December 31, 2016, (i) there has not been any Material Adverse Effect and (ii) the Company has conducted its business in the ordinary and usual course consistent with past practices. Except as set forth in Section 3.7 of the Schedules or as otherwise contemplated by this Agreement, since the Recent Balance Sheet Date through the Closing Date, there has not occurred any of the following with respect to the Company or any of its Subsidiaries:

(a) amendment to its Certificate of Incorporation, Articles of Incorporation, bylaws, operating agreement or other organizational documents;

(b) incurrence of any Funded Indebtedness or mortgage, pledge or imposition of any Lien;

(c) loans or advances to, guarantees for the benefit of, or any investments in, any Person;

(d) cancellation, waiver, release, settlement, assignment or compromise of any debts or any claims or rights of material value;

(e) merger or consolidation with, or purchase of material assets of, or other acquisition of the business of, any Person outside the Ordinary Course of Business;

(f) damage or destruction affecting a material portion of its assets or properties;

(g) sale, transfer, lease or other disposition of any material assets other than in the Ordinary Course of Business;

(h) complete or partial liquidation, dissolution, merger, consolidation, restructuring, recapitalization or other reorganization, or adoption of a plan therefor;

(i) change of its fiscal year or of its accounting policies, procedures or methodologies;

(j) except in the Ordinary Course of Business, (i) acceleration of sales into a current period or deferral of any sales into a future period, (ii) delay or postponement of the repair or maintenance of any properties or assets, or (iii) variance in any inventory purchase practices in any material respect from past practices;

(k) issuance of any capital stock or other ownership interests or issuance or becoming a party to any subscriptions, warrants, rights, options, convertible securities or other agreements or commitments of any character relating to its issued or unissued capital stock or its other equity securities, if any, or grant any stock appreciation or similar rights;

(l) declaration or payment of any dividend or making of any other distribution to its stockholders or members in respect of its capital stock or other ownership interests or redeem, repurchase or otherwise reacquire any shares of its capital stock or other ownership interests;

(m) made, revoked or changed any material Tax election, filed any material amended Tax Return, entered into any closing agreement, or settled any material Tax claim or assessment;

(n) except for normal increases in the Ordinary Course of Business, increase in the compensation or benefits payable to any officers, directors or employees;

(o) grant of rights to severance or termination pay to, or entrance into any employment, consulting or severance agreement with, any current or former officers, directors, employees or independent contractor;

(p) establishment, entrance into, or amendment, modification or termination of, any Employee Benefit Plans, except as required by applicable Law, in connection with the renewal of any insurance contract or as required by the terms of any Employee Benefit Plan or collective bargaining agreement;

(q) except as set forth in the Company's 2017 budget for capital expenditures (as amended or supplemented through the date hereof), incurrence of any single capital expenditure in excess of $200,000; or

(r) agreement or commitment to do any of the foregoing.

Section 3.8. Compliance with Law; Governmental Authorizations; Licenses; Etc.

(a) Except as set forth in Section 3.8(a)(i) of the Schedules, each of the Company and its Subsidiaries, and the business of the Company and its Subsidiaries, are, and during the previous five (5) years have been, in material compliance with all applicable Laws, except for any such non-compliance that has been resolved. Except as set forth on Section 3.8(a)(ii) of the Schedules, neither the Company nor any of its Subsidiaries has received, at any time during the previous five (5) years, any written notice from any Governmental Authority alleging any actual, alleged, or potential violation of, or failure to comply with, any term or requirement of any Law, in each case which is pending and unresolved.

(b) Neither the Company, any of its Subsidiaries, nor any of their respective directors, officers, employees, agents, distributors, affiliates, representatives or any other Person, in each case acting on behalf of the Company or one of its Subsidiaries, has directly or indirectly made any bribes, rebates, payoffs, influence payments, kickbacks, illegal payments, illegal political contributions, or other payments, in the form of cash, gifts, or otherwise, or taken any other action, in violation of the Foreign Corrupt Practices Act of 1977.

(c) Except as set forth in Section 3.8(b)(i) of the Schedules, each of the Company and its Subsidiaries has all material permits, licenses, approvals, certificates and other authorizations, and has made all notifications, registrations, certifications and filings with all Governmental Authorities required by applicable Law for the operation of its business as currently conducted in all material respects. Section 3.8(c)(ii) of the Schedules sets forth a true and correct list of all material permits, licenses, approvals, certificates, other authorizations, notifications, registrations, certifications and filings owned or possessed by the Company and its Subsidiaries. Except as set forth in Section 3.8(c)(iii) of the Schedules, the consummation of the Merger and the transactions contemplated hereby shall not interrupt or give any Governmental Authority the right to modify, terminate or interrupt the continuation of any such permits, licenses, approvals, certificates, other authorizations, notifications, registrations, certifications and filings or the conduct of the business of the Company and its Subsidiaries. Except as set forth in Section 3.8(c)(iv) of the Schedules, the Company and its Subsidiaries is in material compliance with all terms, conditions and requirements of all such permits, licenses, approvals, certificates, other authorizations, notifications, registrations, certifications and filings, and no Action is pending or, to the Knowledge of the Company, threatened, relating to the revocation or limitation thereof.

Section 3.9. **Litigation**. Except as set forth in Section 3.9 of the Schedules, (a) there is no Action pending or, to the Company's Knowledge, threatened, against the Company or its Subsidiaries or affecting any of their assets or properties, (b) in the previous five (5) years, neither the Company nor any of its Subsidiaries has been a party to any Action which is no longer pending and which required any payment by the Company or any of its Subsidiaries in excess of $50,000, (c) neither the Company nor any of its Subsidiaries nor any of their assets or properties is subject to any Order and (d) there are no settlements to which the Company or any of its Subsidiaries is a party or by which any of their assets or properties are bound. The Company is not a party to any Action or threatened Action which would reasonably be expected to affect or prohibit the consummation of the transactions contemplated hereby.

Section 3.10. **Taxes** Except as set forth on Section 3.10 of the Schedules:

(a) Each of the Company and its Subsidiaries has duly and timely (taking into account applicable extensions) filed all Tax Returns required to be filed by it. Each such Tax Return has been prepared in compliance with all applicable Laws and is complete and correct and correctly reflects the taxable income or loss (or other measure of Tax) of the Company and its Subsidiaries. There are not now any extensions of time in effect with respect to the dates on which any Tax Returns of the Company or any Subsidiary were or are due to be filed. Neither the Company nor any of its Subsidiaries have incurred any Liability for Taxes outside the Ordinary Course of Business or otherwise inconsistent with past custom and practice.

(b) All Taxes owed by each of the Company and its Subsidiaries (whether or not shown as due and owing by the Company or its Subsidiaries on any Tax Returns) have been timely paid in full. The accrual for Taxes on the Recent Balance Sheet, as adjusted for the passage of time through the Closing Date in accordance with past practice, will be adequate to pay all unpaid Taxes of the Company and its Subsidiaries through the Closing Date.

(c) No federal, state, local, or non-U.S. tax audits or administrative or judicial Tax proceedings are pending or being conducted with respect to Company or any of its Subsidiaries. Neither Company nor any of its Subsidiaries has received from any federal, state, local, or non-U.S. taxing authority (including jurisdictions where Company or its Subsidiaries have not filed Tax Returns) any (i) written notice indicating an intent to open an audit or (ii) written notice of deficiency or proposed adjustment for any amount of Tax proposed, asserted, or assessed by any Governmental Authority against Company or any of its Subsidiaries. The Company has delivered, or otherwise made available, to Parent correct and complete copies of all federal income Tax Returns, examination reports, and statements of deficiencies assessed against or agreed to by Company or any of its Subsidiaries filed or received since December 31, 2013.

(d) Each of the Company and its Subsidiaries have withheld, collected and paid all Taxes required to have been withheld, collected and paid in connection with any amounts paid or owing to any employee, independent contractor, creditor, stockholder or other third party, or is properly holding for such payment, all Taxes required by Law to be withheld or collected.

(e) Neither the Company nor any of its Subsidiaries has waived any statute of limitations in respect of Taxes or consented to extend the time, or is the beneficiary of any extension of time, in which any Tax may be assessed or collected by any Governmental Authority.

(f) No Governmental Authority with which the Company does not file Tax Returns has asserted in writing that the Company is or may be required to pay Taxes to or file Tax Returns with that Governmental Authority.

(g) Except to the extent referred to in Section 2.11(x), neither Company nor any of its Subsidiaries is a party to any Contract, arrangement or plan that has resulted or could result, separately or in the aggregate, in the payment of (i) any ''excess parachute payment'' within the meaning of Code Section 280G (or any corresponding provision of state, local, or non-U.S. Tax law) or (ii) any amount that will not be fully deductible as a result of Code Section 162(m) (or any corresponding provision of state, local, or non-U.S. Tax law). Neither Company nor any of its Subsidiaries has been a United States real property holding corporation within the meaning of Code Section 897(c)(2) during the applicable period specified in Code Section 897(c)(1)(A)(ii).

(h) Neither Company nor any of its Subsidiaries is a party to or bound by any Tax allocation or sharing agreement. Neither Company nor any of its Subsidiaries (i) has been a member of an Affiliated Group filing a consolidated federal income Tax Return (other than a group the common parent of which was Target) or (ii) has any Liability for the Taxes of any Person (other than Company or any of its Subsidiaries) under Treasury Regulations Section 1.1502-6 (or any similar provision of state, local, or non-U.S. law), as a transferee or successor, by contract, or otherwise.

(i) Neither Company nor any of its Subsidiaries will be required to include any material item of income in, or exclude any material item of deduction from, taxable income for any taxable period (or portion thereof) ending on or after the Closing Date as a result of any:

(i) change in method of accounting for a taxable period ending on or prior to the Closing Date;

(ii) use of an improper method of accounting for a taxable period ending on or prior to the Closing Date;

(iii) "closing agreement" as described in Code Section 7121 (or any corresponding or similar provision of state, local, or non-U.S. income Tax law) executed on or prior to the Closing Date;

(iv) intercompany transaction or excess loss account described in Treasury Regulations under Code Section 1502 (or any corresponding or similar provision of state, local, or non-U.S. income Tax law);

(v) installment sale or open transaction disposition made on or prior to the Closing Date;

(vi) prepaid amount received on or prior to the Closing Date; or

(vii) election under Code §108(i).

(j) Within the past three (3) years, neither the Company nor any of its Subsidiaries has distributed stock of another Person, or had its stock distributed by another Person, in a transaction that was purported or intended to be governed in whole or in part by Section 355 of the Code

(k) Neither the Company nor any of its Subsidiaries is party to any "closing agreement" as described in Section 7121 of the Code (or any comparable provision or state or local Law). Neither the Company nor any of its Subsidiaries has received any letter ruling from the Internal Revenue Service (or any comparable ruling from any other Governmental Authority).

(l) Neither the Company nor any of its Subsidiaries has engaged in any "listed transaction" as defined in Treasury Regulations Section 1.6011-4.

(m) Neither Company nor any of its Subsidiaries (i) is a "controlled foreign corporation" as defined in Code Section 957, (ii) is a "passive foreign investment company" within the meaning of Code Section 1297, or (iii) has a permanent establishment (within the meaning of an applicable Tax treaty) or otherwise has an office or fixed place of business in a country other than the country in which it is organized.

Section 3.11. Environmental Matters.

(a) Except as set forth in Section 3.11 of the Schedules, the Company and its Subsidiaries are, and for the past five (5) years have been, in material compliance with all Environmental Laws, and have and are in material compliance with all permits required by Environmental Laws for the operation of their businesses as currently conducted, except for any failures to so comply or to have such permits that have been resolved.

(b) Except as set forth in Section 3.11 of the Schedules, the Company and its Subsidiaries have not received any written notice from any Governmental Authority or other Person regarding any actual or alleged material violation of Environmental Laws, or any material Liabilities or potential material Liabilities for personal injury, property damage or investigatory or cleanup obligations arising under Environmental Laws (including in connection with the release, disposal of or arrangement for disposal of any Hazardous Substance), in the last five (5) years, except for violations or Liabilities that have been resolved. Except as set forth in Section 3.11 of the Schedules, no material capital expenditures by the Company or any of its Subsidiaries will be required to establish or maintain compliance with any applicable Environmental Laws.

(c) Except as set forth in Section 3.11 of the Schedules, there are no material Actions by or before any Governmental Authority or material Orders in effect, pending or, to the Company's Knowledge, threatened, against the Company or any Subsidiary regarding compliance with or liability under Environmental Laws.

(d) Except as set forth in Section 3.11 of the Schedules, neither the Company nor its Subsidiaries has spilled, leaked or otherwise released any Hazardous Substance in material violation of Environmental Law, except for any such releases that have been resolved or would not reasonably be expected to result in the Company incurring material Liability. Except as set forth in Section 3.11 of the Schedules, no previous owner or tenant of the Property has spilled, disposed, discharged, emitted or released any Hazardous Materials into, upon or from any Property or into or upon the soil, ground or surface water thereof in violation of Environmental Law that would reasonably be expected to require remediation pursuant to Environmental Law, except for any such releases that have been resolved or would not reasonably be expected to result in the Company incurring material Liability.

(e) Except as set forth in Section 3.11 of the Schedules, neither the Company nor its Subsidiaries has assumed by Contract or operation of Law any material liability of any other Person pursuant to Environmental Law. Except as set forth in Section 3.11 of the Schedules, neither the Company nor its Subsidiaries has entered into any agreement with any Governmental Authority relating to any environmental matter or any environmental or Hazardous Materials cleanup (other than any environmental permits), which would reasonably be expected to result in the Company incurring a material Liability.

Section 3.12. Employee Matters.

(a) Except as set forth in Section 3.12(a) of the Schedules, (i) neither the Company nor any of its Subsidiaries is a party to any collective bargaining agreements with respect to its employees, (ii) none of the employees of the Company or any of its Subsidiaries are represented by a labor union with respect to their employment by the Company or any of its Subsidiaries, (iii) there is no labor strike or work stoppage or slowdown or lockout pending or, to the Company's Knowledge, threatened against or by the Company or any of its Subsidiaries and during the past five (5) years there has been no such action, (iv) to the Company's Knowledge, no union organization campaign is in progress against the Company or any of its Subsidiaries with respect to any of the employees of the Company or any of its Subsidiaries, (iv) there is no unfair labor practice charge or complaint pending or, to the Knowledge of the Company, threatened, against the Company or any of its Subsidiaries, (v) there is no charge against the Company or any of its Subsidiaries pending before or continuing obligations of the Company or any of its Subsidiaries pertaining to the Equal Employment Opportunity Commission or any other agency responsible for the prevention of unlawful or discriminatory employment practices, other than any obligations under applicable Laws, (vi) since January 1, 2013, neither the Company nor any of its Subsidiaries has received any notice of the intent of any Governmental Authority responsible for the enforcement of labor or employment Laws to conduct an investigation or other inquiry relating to the employment practices of the Company or any of its Subsidiaries or violation or enforcement of labor or employment Laws, and no such investigation or other inquiry is in progress, (vii) there is no Action pending or, to the Knowledge of the Company, threatened, in any forum by or on behalf of any present or former employee of the Company or any of its Subsidiaries, any applicant for employment or any class or classes of the foregoing, in each case, alleging breach of any express or implied Contract of employment, any Law governing employment or the termination thereof or other discriminatory, wrongful or tortious conduct in connection with the employment relationship and (vii) to the Knowledge of the Company, no key employees of the Company or any of its Subsidiaries has any current or immediate plans to terminate his or her employment within the 30 days following the Closing Date. Neither the Company nor any of its Subsidiaries has engaged in any employee layoff activities within the last five (5) years that would violate the Worker Adjustment and Retraining Notification Act of 1988, as amended, or any similar state or local mass layoff statute, rule or regulation.

(b) The Company and its Subsidiaries are in compliance in all material respects with all applicable employment Laws governing wages, hours, discrimination, retaliation, harassment, disability rights, occupational safety and health and plant closing.

(c) Except as listed on Section 3.12(c) of the Schedules, neither the Company nor any of its Subsidiaries has entered into any severance or similar arrangement with any employee that would result in any material Liability of the Company (including the Surviving Corporation) to make any payment to such employee upon a termination of service with the Company or its Subsidiaries.

(d) The Company and each of its Subsidiaries has maintained workers' compensation coverage as required by applicable Law through the purchase of insurance and not by self-insurance or otherwise.

(e) Section 3.12(e) of the Schedules contains a true and correct list of the current employees of the Company and each of its Subsidiaries as of the Closing Date and shows with respect to each such employee, the employee's name, position, base salary or hourly wage rate, actual and target incentive compensation (including, without limitation, bonus, commissions, and fringe benefits that are not provided to all employees as applicable) for 2016 and 2017, as applicable.

(f) Neither the Company nor any of its Subsidiaries is sponsoring any employee to work in the United States or any other country under a visa or work authorization, and no petition for admission of any alien under a non-immigrant or other visa, or for transfer of sponsorship of any such employee, is currently pending. Each employee of the Company and each of its Subsidiaries is authorized to work in the United States. The Company and each of its Subsidiaries has current Forms I-9 for all employees who work in the United States, and has complied with required processes with respect to obtaining such Forms I-9.

Section 3.13. Employee Benefit Plans.

(a) Section 3.13(a) of the Schedules lists all material Employee Benefit Plans. As applicable with respect to each material Employee Benefit Plan, the Company has made available to Parent and Newco true, complete and correct copies, to the extent applicable, of (i) the plan and trust documents (including any material amendments thereto) as in effect at any time during the past six (6) years, and the most recent summary plan description, together with the summaries of material modifications thereto, (ii) the six (6) most recently filed annual reports (Form 5500 series) including all schedules thereto, (iii) current Internal Revenue Service determination, advisory or opinion letter, (iv) all material written Contracts relating to each Employee Benefit Plan, including administrative service agreements and group insurance contracts, (v) all material or non-routine correspondence to or from any Governmental Authority relating to any Employee Benefit Plan; and (vi) all insurance pertaining to fiduciary liability insurance covering the fiduciaries for Employee Benefit Plan.

(b) Except as set forth in Section 3.13(b) of the Schedules, neither the Company, any of its Subsidiaries nor any ERISA Affiliate has, within the past six (6) years, maintained, been a participating employer in, has had any Liability (whether contingent or otherwise) with respect to or contributed to (i) any Multiemployer Plan; (ii) any multiple employer plan within the meaning of Section 4063 or 4064 of ERISA or Section 413(c) of the Code; or (iii) any other employee benefit plan, fund, program, contract or arrangement that is subject to Section 412 of the Code, Section 302 of ERISA or Title IV of ERISA.

(c) No Employee Benefit Plan provides and neither the Company nor any of its Subsidiaries have any Liability to provide health, life insurance or other welfare benefits to former employees of the Company or any of its Subsidiaries other than as required by COBRA. Neither Company nor any of its Subsidiaries has ever represented, promised or contracted (whether in oral or written form) to any employee (either individually or as a group) or any other Person that such employee(s) or other Person would be provided with retiree life insurance, retiree health benefit or other retiree employee welfare benefits, except to the extent required by COBRA.

(d) Each Employee Benefit Plan has been maintained and administered in compliance in all material respects (a) with the terms of such plan and (b) with the applicable requirements of ERISA, the Code and any other applicable Law, including the applicable tax qualification requirements under the Code. Each Employee Benefit Plan that is intended to be qualified under Section 401(a) of the Code is the subject of a current favorable determination, advisory or opinion letter from the Internal Revenue Service that it is so qualified and, to the Company's Knowledge, no circumstances exist which could result in the loss of such qualified status. The Company and each of its Subsidiaries has performed all obligations required to be performed by it under each Employee Benefit Plan and is not in default or violation of, and the Company has no Knowledge of any default or violation by any other party to, the terms of any Employee Benefit Plan. All contributions to, and payments from, any Employee Benefit Plan which may have been required to be made in accordance with the terms of such Employee Benefit Plan or applicable Law have been timely made, and all contributions for any period ending on or before the Closing Date which are not yet due are reflected as an accrued liability on the Company's financial statements in accordance with GAAP. Each Employee Benefit Plan that is a "plan" within the meaning of Section 3(3) of ERISA can be amended, terminated or otherwise discontinued after the date of this Agreement without liability to the Company or any of its Subsidiaries (other than ordinary administration expenses). There are no audits, formal inquiries by Governmental Authority or Actions pending or, to the Knowledge of the Company, threatened, by any Person with respect to any Employee Benefit Plan. All ERISA Affiliates who maintain, sponsor, contribute or have any Liability with respect to any Employee Benefit Plan are listed on Section 3.13(d) of the Schedules. There are no Employee Benefit Plans maintained outside the United States.

(e) Neither the Company nor any of its Subsidiaries, the employees or directors of the Company or any of its Subsidiaries, nor to the Company's Knowledge, any fiduciary, trustee or administrator of any Employee Benefit Plan, has engaged in, or in connection with the transactions contemplated by this Agreement will engage in, any transaction with respect to any Employee Benefit Plan which would subject any such Employee Benefit Plan, the Company, any of its Subsidiaries or Parent to a tax, penalty or liability for a "prohibited transaction" under Section 406 of ERISA or Section 4975 of the Code.

(f) Except as set forth in Section 3.13(f) of the Schedules, or the Transaction Incentive Awards, neither the execution, the delivery, nor the performance or consummation of the transactions contemplated by this Agreement will either alone or in connection with any other event(s) will or may (i) constitute an event that may result in any material payment (whether of severance pay or otherwise), acceleration, forgiveness of indebtedness, vesting, distribution, increase in payments or benefits or obligation to fund benefits to any current or former employee, director, officer, or independent contractor of the Company or any Subsidiary thereof, (ii) materially increase any amount of compensation or benefits otherwise payable under any Employee Benefit Plan, (iii) result in the acceleration of the time of any material payment, funding or vesting of any benefits under any Employee Benefit Plan, (iv) require any material contribution or payment to fund any obligation under any Employee Benefit Plan, (v) limit the right to merge, amend or terminate any Employee Benefit Plan or (vi) create or otherwise result in any material Liability with respect to any Employee Benefit Plan. Each Employee Benefit Plan in which any employee, officer or director of the Company or any of its Subsidiaries participates is either exempt from or has been established, documented, maintained and operated in compliance with Section 409A of the Code and the applicable guidance issued thereunder.

(g) Neither the Company nor any of its Subsidiaries is a party to or has any Liability under any Contract to indemnify or gross-up any Person for any Taxes.

(h) There are no pending or, to the Knowledge of the Company, threatened, audits or Actions against any of the Employee Benefit Plans, the assets of any of the Employee Benefit Plans, the Company, any of its Subsidiaries or, to the Knowledge of the Company, the Employee Benefit Plans administrator or any fiduciary of the Employee Benefit Plans with respect to such Employee Benefit Plans or asserting any rights or claims to benefits under such Company Employee Plan (other than routine, uncontested benefit claims), and, to the Knowledge of the Company, there are no facts or circumstances which could form the basis for any such Actions.

(i) Neither the Company nor any of its Subsidiaries maintains any voluntary employees' beneficiary association within the meaning of Sections 501(c)(9) and 505 of the Code or other welfare benefits trust or fund with respect to any Employee Benefit Plan.

(j) The Company and each ERISA Affiliate have complied in all material respects with the applicable provisions of the Patient Protection and Affordable Care Act of 2010 and the Health Care and Education Reconciliation Act of 2010 (collectively, the "ACA") including all provisions of the ACA applicable to the employees of the Company. The Company and each ERISA Affiliate have complied in all material respects with applicable information reporting requirements under Code Sections 6055 and 6056 (and all applicable regulations) with respect to the employees (and their covered dependents) of the Company and each ERISA Affiliate.

(k) With respect to each Employee Benefit Plan: (i) all premiums contributions or other payments required to have been made by Law or under its terms or any Contact relating thereto have been timely made; (ii) all reports, returns and similar documents required to be filed with any Governmental Authority or distributed to any plan participant have been duly and timely filed or distributed and (iii) there have been no acts or omissions by the Company or any ERISA Affiliates that have given or could give rise to any material fines, penalties, taxes or related charges under Sections 502 or 4071 of ERISA or Section 511 or Chapter 43 of the Code, or under any other applicable Law, for which the Company or any Subsidiary may have any Liabilities.

Section 3.14. Intellectual Property Rights; Software; Information Technology.

(a) Section 3.14(a) of the Schedules contains a complete and correct list of all Company Intellectual Property Rights registered with, or the subject of a pending application for registration with, any Governmental Authority, specifying as to each such item, as applicable, the name of the registered owner, jurisdiction of application and/or registration, application and/or registration number and date of application or registration.

(b) The Company Intellectual Property Rights identified in Section 3.14(a) of the Schedules are held and recorded in the name of the Company or its Subsidiaries, not subject to any pending cancellation, reexamination, inter partes review, or other similar legal proceeding (in the case of pending applications, other than prosecution in the ordinary course), and are owned by the Company and its Subsidiaries free and clear of any Liens (other than inbound Intellectual Property Licenses and (ii) granted by the Company and its Subsidiaries (expressly or implicitly) in the Ordinary Course of Business). The Company and its Subsidiaries either own or possess sufficient license rights to use and otherwise exploit the Company Intellectual Property Rights as used in the conduct of their respective businesses. To the Company's Knowledge, none of the personnel of Company or any Subsidiary is in violation thereof. All required filings and fees related to the Company Intellectual Property Rights registered or applied for have been timely filed with and paid to the relevant Governmental Authority and authorized registrars, and all such Company Intellectual Property Rights are in good standing.

(c) The products and services and the business of the Company and its Subsidiaries as currently conducted do not infringe or misappropriate or otherwise violate the Intellectual Property Rights of any third party and (ii) to the Company's Knowledge, no third party is infringing on or otherwise violating any material Company Intellectual Property Right. In the last two years the Company and its Subsidiaries have not sent any written notice to any Person alleging that such Person infringed or misappropriated any Company Intellectual Property Right. There is no Action pending, or threatened in writing, against the Company or any of its Subsidiaries and in the last five (5) years no third party has asserted any claim in writing against the Company and its Subsidiaries, alleging that the Company or its Subsidiaries have infringed, misappropriated or otherwise violated any Intellectual Property Right of any third party, or notifying the Company or any Subsidiary of such third party's rights and inviting further discussions to take a license, and to the Company's Knowledge, there are no facts in existence that would support such a claim or threat. Neither the Company nor any of its Subsidiaries has agreed to indemnify any third party against any charge of infringement or other violation with respect to any Intellectual Property Rights, except in Contracts with customers of the Company and its Subsidiaries.

(d) The Company and its Subsidiaries have taken commercially reasonable steps to protect and maintain all material Company Intellectual Property Rights and to preserve the confidentiality of any material trade secrets comprised in Company Intellectual Property Rights. Any access allowed to or disclosure by the Company or any of its Subsidiaries of any material trade secret to any third party has been pursuant to the terms of a written agreement with such Person or is otherwise lawful.

(e) All material Software owned, licensed, used, or otherwise held for use in the business of the Company and its Subsidiaries is in good working order and condition and is sufficient in all material respects for the purposes for which it is used in the business of the Company and its Subsidiaries as presently conducted. The Company and all of its Subsidiaries possess all necessary license and other rights to use all Software used by the Company and its Subsidiaries. Neither the Company nor its Subsidiaries have experienced any material defects in design, workmanship or material in connection with the use of such Software that have not been corrected. No such Software contains any computer code or any other procedures, routines or mechanisms which: (i) disrupt, disable, harm or impair in any material way such software's operation, (ii) cause such software to damage or corrupt any data, storage media, programs, equipment or communications of Company, its Subsidiaries, or its clients, or otherwise interfere with Company's or its Subsidiary's operations for a prolonged period or (iii) permit any third party to access any such software to cause material disruption, disablement, harm, impairment, damage erasure or corruption (sometimes referred to as "traps", "viruses", "access codes", "back doors" "Trojan horses," "time bombs," "worms," or "drop dead devices"). Other than any proprietary Software customized by or developed by the Company or its Subsidiaries or their respective contractors for use in connection with the business needs of the Company or its Subsidiaries (the "Proprietary Software"), all Software used by the Company in connection with the Company's business is commercially available and is licensed to the Company by a third party. All material Proprietary Software is set forth on Section 3.14(e) of the Schedules. The Company and its Subsidiaries have taken commercially reasonable and necessary steps to protect the Proprietary Software and its rights thereunder. Except as set forth on Section 3.14(e) of the Schedules, the Company and its Subsidiaries have, with respect to all Software (other than the Proprietary Software) used in the Company's and its Subsidiaries' business, sufficient and fully paid for licenses with such third parties for the number of users of that Software. The Company or its Subsidiaries is in actual possession of and has control over a complete and correct copy of the Source Code for all Proprietary Software, including all previous major releases. The Company and its Subsidiaries have created and have safely stored back-up copies of all its Proprietary Software.

(f) Except as specifically set forth on Section 3.14(f) of the Schedules, the Proprietary Software does not include any "open source" code (as defined by the Open Source Initiative) or "free" code (as defined by the Free Software Foundation), nor has it been created in such a way that it is compiled with or linked to any such code. To the extent that the Company Intellectual Property Rights includes the "open source" and "free" code identified on Section 3.14(f) of the Schedules, such code is not integrated in any way into any of the Proprietary Software which could result in a requirement for the Company or any of its Subsidiaries to make available the Source Code for any Proprietary Software other than those specific components of the Source Code which are "open source" or "free" code, or could otherwise impose any limitation, restriction, or condition on the right or ability of the Company or any of its Subsidiaries to use such Proprietary Software for its business purposes or in connection with the transaction contemplated by this Agreement.

(g) The Company's and its Subsidiary's practices with regard to the collection, dissemination and use of Company Data are and have been in accordance in all material respects with applicable Laws relating to data protection and any published privacy policies.

(h) The Company and its Subsidiaries have established, implemented and maintained (i) industry standard and reasonable safeguards against the destruction, loss or alteration of, and unauthorized access to, all Company Data, Personal Data, and other confidential information of the Company and its Subsidiaries; and (ii) industry standard and reasonable physical, network, electronic and internet security procedures, protocols, security gateways and firewalls with respect to all Company Data, Personal Data, and other confidential information, all in accordance with applicable industry standards and using state of the art resources. There are no actual material weaknesses or vulnerabilities with respect to the security of any Software or the Information Technology Infrastructure. There has been no actual or suspected unauthorized disclosure or use of, or access to, any of the Company Data, Personal Data, other information in the possession or control of the Company or any of its Subsidiaries, the Information Technology Infrastructure or Software, including any actual or suspected unauthorized access to or disclosure of any confidential information. The Company and its Subsidiaries have installed and updated all Software used in the Information Technology Infrastructure and business with patches, updates, fixes and upgrades made available or provided to Company or any of its Subsidiaries by its vendors that are necessary or recommended for the maintenance of security of such Software as it pertains to Company Data, Personal Data or confidential information of the Company and its Subsidiaries.

(i) The Company and each of its Subsidiaries is and has been in compliance in all material respects with all of its contractual obligations regarding Company Data and Personal Data, and with all applicable Laws relating to data security, privacy, data procurement, use and handling, data loss, theft, and breach of security notification obligations. The Company and its Subsidiaries and their respective contractors are not under investigation, subject to any monitoring or audit requirements that are ongoing or occurred in the last five (5) years or in receipt of any inquiries from regulatory authorities. The transactions contemplated by this Agreement and the other Merger Documents will not result in the loss or impairment of or payment of any additional amounts with respect to, nor require the consent of any other Person in respect of, or otherwise adversely affect any right, title or interest of Company or any of its Subsidiaries in and to any Company Intellectual Property.

(j) The Information Technology Infrastructure is operational and functioning consistent with the purposes for which it is being used by the Company and its Subsidiaries as of the date hereof, and is free from material defects or programming errors. Except as set forth on Section 3.14(j) of the Schedules, there are no material upgrades or additions required, or other material changes planned to be made to the Information Technology Infrastructure.

Section 3.15. Contracts. Section 3.15 of the Schedules sets forth all Contracts (except for purchase or service orders executed in the normal course of business and Employee Benefit Plans) to which, as of the Closing Date, the Company or any of its Subsidiaries is a party or is otherwise bound, of the type described below (collectively, such Contracts together with the Contracts listed on Section 3.12(c) of the Schedules and Section 3.13(a) of the Schedules, the "Material Contracts"), with all such Contracts identified by reference to the specific clause of this Section 3.15 to which such Contract relates:

(a) all Contracts for the purchase or lease (capital or operating) by the Company or any Subsidiary of vehicles, machinery, equipment or other personal property or Property;

(b) all Contracts (or group of related Contracts) for the furnishing or receipt of products or services, in each case, which provides for annual payments to or by the Company in excess of $4,000,000;

(c) all license, sublicense, or royalty Contracts relating to (i) any of the material Company Intellectual Property Rights owned by the Company or any Subsidiary and (ii) any material Intellectual Property Rights licensed by a third party to the Company or any of its Subsidiaries (other than any commercially available shrink wrap or similar off-the-shelf license for generally available Software for an annual license fee of no more than $50,000) (the "Intellectual Property Licenses");

(d) all Contracts that (i) prohibit the Company or any of its Subsidiaries from competing in a particular geographic area or freely engaging in any business, (ii) limit or restrains the Company or any of its Subsidiaries from soliciting any individual for employment, (iii) contain "most favored nation" pricing terms or grant any right of first offer or right of first refusal, or (iv) contain "take or pay" or "requirements" terms;

(e) all mortgages, indentures, notes, bonds or other Contracts relating to Funded Indebtedness or under which the Company or any of its Subsidiaries has permitted any of its assets to be subject to a Lien;

(f) all Contracts related to any partnership, joint venture, strategic alliance or sharing of profits or losses with any Person to which the Company and its Subsidiaries is a party;

(g) all Contracts with a Material Customer or a Material Supplier;

(h) all Contracts for any single capital expenditure in excess of $500,000;

(i) all Contracts involving amounts in excess of $3,000,000 per annum containing change-of-control provisions that would be triggered by the transactions contemplated herein; and

(j) all Contracts for the acquisition, sale, assignment, transfer or other acquisition or disposition of any business or any material assets of the Company or any of its Subsidiaries (in a single transaction or a series of related transactions, whether by merger, sale of stock, sale of assets or otherwise) and under which the Company or any of its Subsidiaries have any continuing liability, other than contracts entered into in the Ordinary Course of Business;

(k) all Contracts with any agency, dealer, distributor or sales representative;

(l) all Contracts with Governmental Authorities.

The Company has provided Parent with true and complete copies of all written Material Contracts and each amendment, supplement, waiver or modification thereto. As of the Closing Date, each Material Contract is a valid and binding agreement of the Company or one of its Subsidiaries, as the case may be, and to the Company's Knowledge, of each other party thereto, and enforceable in accordance with its terms and is in full force and effect. Except as set forth in in Section 3.15 of the Schedules, the Company or one of its Subsidiaries party thereto and, to the Company's Knowledge, each of the other parties thereto, are not in material default under any of such Material Contracts and no event has occurred which, with or without notice or lapse of time, or both, would constitute such a material default. Neither the Company nor any of its Subsidiaries has (i) received any notice of cancellation or termination or, other than pursuant to the terms of such Material Contract existing as of the Closing Date. Except as set forth on Section 3.3 of the Schedules, the consummation of the Merger and the other transactions contemplated by this Agreement shall not afford any other party the right to terminate any Material Contract.

Section 3.16. **Insurance**. Section 3.16 of the Schedules contains an accurate and complete list of all policies of fire, liability, workers' compensation, property, casualty and other forms of insurance owned or held by the Company and its Subsidiaries. All such policies are in full force and effect, all premiums due with respect thereto have been timely paid in full, the Company and its Subsidiaries are in material compliance with the terms and provisions thereof and neither the Company nor its Subsidiaries has received notice of default under, or cancellation or modification of any such policies. No notice of cancellation or termination has been received with respect to any such policies. There is no claim by the Company or its Subsidiaries pending under any such policies as to which coverage has been questioned, denied or disputed by the underwriters of any such policies and there is no basis for denial of any claim under any such policies. Neither the Company nor any of its Subsidiaries has received any notice from or on behalf of any insurance carrier issuing any such policies that insurance rates therefor shall hereafter be increased or that there shall hereafter be a cancellation or an increase in a deductible (or an increase in premiums in order to maintain an existing deductible) or non-renewal of any such policies. Neither the Company nor any of its Subsidiaries has experienced claims in excess of current coverage of such insurance. There are no outstanding bonds or other surety arrangements issued or entered into in connection with the assets, properties or business of the Company or its Subsidiaries. No bond is required to satisfy any contractual, statutory or regulatory requirement applicable to the Company or its Subsidiaries. The representations and warranties set forth in this Section 3.16 do not apply to insurance maintained or provided in connection with any Employee Benefit Plan.

Section 3.17. Real Property.

(a) Section 3.17(a)(i) of the Schedules sets forth (whether as lessee or lessor) a list of all leases of real property (such real property, the "Leased Property") to which the Company or any Subsidiary is a party or by which it is bound (each a "Material Lease," and collectively the "Material Leases"). Except as set forth in Section 3.17(a)(ii) of the Schedules, neither the Company nor any Subsidiary owns or has owned within the prior five (5) years, any real property.

(b) Except as set forth in Section 3.17(b) of the Schedules, (i) each Material Lease is valid and binding on the Company or one of its Subsidiaries, as applicable, and, to the Company's Knowledge, on the other parties thereto, is in full force and effect and is enforceable in accordance with its terms, (ii) the Company or one of its Subsidiaries has good, valid and marketable estate in all owned Property, free and clear of all Liens except Permitted Liens, (iii) the Company or one of its Subsidiaries has good, valid and marketable leasehold estate in all Leased Property, free and clear of all Liens except Permitted Liens, and (iv) the Company or one of its Subsidiaries and, to the Company's Knowledge, each of the other parties thereto, is not in material default under each Material Lease. During the past two (2) years, neither the Company nor any of its Subsidiaries has received written notice of any material default under any Material Lease, and no event has occurred, and no circumstance or condition exists, that (with or without notice or lapse of time, or both) will, or could reasonably be expected to, result in a material breach or violation of, or material default under, any Material Lease.

(c) None of the Property is subject to any lease, option to purchase, purchase agreement or grant to any Person of any right relating to the use, occupancy or enjoyment of such property or any portion thereof.

(d) The Property is not subject to any use restrictions, exceptions, reservations or limitations which interfere with or impair the present and continued use thereof as currently used by the Company and its Subsidiaries in the conduct of their respective businesses. No portion of the Property is operated as a nonconforming use.

(e) During the past five (5) years, neither the Company nor any of its Subsidiaries has received notice to the effect that any buildings, structures and improvements located on, fixtures contained in, and appurtenances attached to the Property violate in any material respect any applicable Laws. All such buildings, structures, improvements, fixtures and appurtenances are in good condition and repair in all material respects, subject to normal wear and tear and all necessary utilities are currently available to the Property in sufficient size and capacity to adequately serve the continued use thereof as currently used by the Company and its Subsidiaries in the conduct of their respective businesses.

(f) During the past five (5) years, neither the Company nor any of its Subsidiaries has received notice of any pending or threatened condemnation Actions relating to any of the Property.

(g) The Property is properly zoned to permit the continued use of the Property for the conduct of the respective businesses of the Company and its Subsidiaries.

Section 3.18. **Title to Assets**. Each of the Company and its Subsidiaries has good and marketable title to, or a valid leasehold interest in, all of its tangible assets and properties (including those reflected on the Recent Balance Sheet and those purchased after the Recent Balance Sheet Date, but excluding any such tangible assets and properties sold, consumed, or otherwise disposed of in the Ordinary Course of Business since the Recent Balance Sheet Date), free and clear of all Liens except for Permitted Liens and except as set forth in Section 3.18 of the Schedules. There are no material assets or property used in the operation of the respective businesses of the Company and its Subsidiaries other than the assets and properties reflected on the Recent Balance Sheet or purchased or leased in the Ordinary Course of Business since the Recent Balance Sheet Date. All material properties and assets used or useful in the operation of the business of the Company and its Subsidiaries are in good operating condition and repair (except for ordinary wear and tear and routine maintenance in the Ordinary Course of Business), are adequate for the purposes for which they are presently used in the conduct of the business of the Company and its Subsidiaries, are usable in a manner consistent with their current use.

Section 3.19. **Related Party Transactions**. Except as set forth in Section 3.19 of the Schedules, none of the Company's or any of its Subsidiaries' stockholders, directors, officers or employees (or any Affiliate, equity holder, director, officer or family member thereof) is involved or has been involved during the prior twelve (12) months in any business arrangement, relationship or Contract with the Company or its Subsidiaries other than employment arrangements entered into in the Ordinary Course of Business, and none of the Company's stockholders, directors, officers or employees (or any Affiliate, equity holder, director, officer or family member thereof) owns or has owned during the prior twelve (12) months any property or right, tangible or intangible, which is used by the Company or its Subsidiaries.

Section 3.20. **Brokers**. Except as set forth in Section 3.20 of the Schedules (which fees shall be paid and fully discharged by the Company and included in the Seller Expenses), no Person is or will be entitled to a broker's, finder's, investment banker's, financial adviser's or similar fee from the Company or its Subsidiaries in connection with this Agreement or any of the transactions contemplated hereby.

Section 3.21. **Customers and Suppliers**. Section 3.21 of the Schedules sets forth the ten (10) largest customers of the Company and its Subsidiaries, taken as a whole, based on revenue (with specification of revenues) during each of the last two (2) calendar years and the current calendar year though the Recent Balance Sheet Date (the "Material Customers"), and the ten (10) largest suppliers of the Company and its Subsidiaries, taken as a whole, based on payments from the Company and its Subsidiaries (with specification of expenditures) during each of the last two (2) calendar years and the current calendar year though the Recent Balance Sheet Date (the "Material Suppliers"). Except as set forth on Section 3.21 of the Schedules, since December 31, 2016, no Material Customer or Material Supplier has (a) terminated any Contract with the Company or any of its Subsidiaries, (b) materially reduced, or informed the Company or any Subsidiary that it intends to terminate or materially reduce its business relationship with the Company or any Subsidiary or (c) informed the Company or any Subsidiary of any material problem or dispute with respect to such Material Customer or Material Supplier.

Section 3.22. **Accounts Receivable**. The accounts receivable, notes receivable and other receivables of the Company and its Subsidiaries on the Recent Balance Sheet, and all of the Company's and its Subsidiaries' accounts receivable, notes receivable and other receivables since the Recent Balance Sheet Date arose from bona fide transactions, the goods involved have been sold and shipped to or on behalf of the account obligors and no further goods are required to be provided and no further services are required to be rendered in order to complete the sales reflected by such accounts receivable, notes receivable and other receivables. Except as set forth on Section 3.22 of the Schedules, no such receivable has been assigned or pledged, in whole or in part, to any Person. All outstanding accounts receivable, notes receivable and other receivables that are uncollectible in whole or in part have been reserved against on the Financial Statements in accordance with GAAP. Since the Recent Balance Sheet Date, neither the Company nor any of its Subsidiaries has cancelled, or has agreed to cancel, in whole or in part, any such receivables, except in the Ordinary Course of Business.

Section 3.23. **Inventory**. The inventory of the Company and its Subsidiaries consists of good, usable and merchantable quality in all material respects and none of such inventory is damaged or obsolete, except to the extent of reserves on the Recent Balance Sheet, as adjusted in accordance with GAAP in the Ordinary Course of Business since the date thereof. All of such inventory has been valued in a manner consistent with past practice (including, without limitation, the method of computing overhead and other indirect expenses applied to inventory) and in accordance with GAAP. All of such inventory conforms and was manufactured in accordance, in each case, in all material respects, with applicable Law.

Section 3.24. **Products**.

(a) Parent has been provided with complete and accurate copies of the standard terms and conditions of sale for each of the products of the Company and its Subsidiaries (containing applicable guaranty, warranty and indemnity provisions). Except for such standard terms and conditions of sale, no product sold or delivered by the Company or any of its Subsidiaries is subject to any guaranty, warranty or other indemnity, express or implied, beyond such standard terms and conditions.

(b) Neither the Company nor its Subsidiaries has any material Liability of any nature whether based on strict liability, negligence, breach of warranty (express or implied), breach of contract or otherwise, in respect of any product or other item sold, designed or produced prior to the Closing by the Company or any of its Subsidiaries that is not otherwise fully and adequately reserved against as reflected on the face of the Recent Balance Sheet. All products or other items sold, designed or produced prior to the Closing by the Company or any of its Subsidiaries have been manufactured and sold in compliance with all Laws in all material respects.

(c) Except as set forth on Section 3.24 of the Schedules, neither the Company nor any of its Subsidiaries has entered into, or offered to enter into, any Contract pursuant to which the Company or any of its Subsidiaries is or shall be obligated to make any rebates, discounts, promotional allowances or similar payments or arrangements with or to any customer or other business relation. The Company and its Subsidiaries have paid all rebates, discounts, promotional allowances or similar payments or arrangements due and owing by it, and has adequately accrued for any such rebates, discounts, promotional allowances or similar payments or arrangements on the Recent Balance Sheet.

Section 3.25. **Banking Facilities; Powers of Attorney**. Section 3.25 of the Schedules sets forth a true, correct and complete list of: (a) each bank, savings and loan or similar financial institution with which the Company or any of its Subsidiaries has an account or safety deposit box or other arrangement, and any numbers or other identifying codes of such accounts, safety deposit boxes or such other arrangements maintained by the Company or any of its Subsidiaries thereat; (b) the names of all Persons authorized to draw on any such account or to have access to any such safety deposit box facility or such other arrangement; and (c) any outstanding general or special powers of attorney executed by or on behalf of the Company or any of its Subsidiaries.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF PARENT AND NEWCO

Parent and Newco hereby jointly and severally represent and warrant to the Company as of the Closing Date as follows:

Section 4.1. **Organization**. Each of Parent and Newco is a corporation duly organized, validly existing and in good standing under the Laws of the State of Delaware and has all requisite corporate power and authority to own, lease and operate its property and assets and to carry on its business as presently conducted. Each of Parent and Newco has delivered or made available to the Company true and complete copies of its certificate of incorporation (and all amendments thereto) and bylaws (as currently in effect).

Section 4.2. **Authorization**. Each of Parent and Newco has the corporate power and authority to execute and deliver this Agreement and each other Merger Document to which it is a party and to perform its obligations hereunder and thereunder, all of which have been duly authorized by all requisite corporate action (including any required stockholder approvals) and no other corporate or stockholder action on the part of Parent or its stockholders is necessary to authorize the execution, delivery and performance of this Agreement and each other Merger Document by Parent or Newco and the consummation by Parent or Newco of the Merger and the other transactions contemplated hereby and thereby. This Agreement and each other Merger Agreement to which Parent or Newco is a party has been duly authorized, executed and delivered by Parent and Newco and, assuming that this Agreement has been duly and validly authorized, executed and delivered by the Company and the Stockholders, constitutes a valid and binding agreement of Parent and Newco, enforceable against Parent and Newco in accordance with its terms, except to the extent that the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or other Laws from time to time in effect relating to creditors' rights and remedies generally and general principles of equity.

Section 4.3. **Non-contravention**. The execution, delivery and performance by Parent and Newco of this Agreement and each other Merger Document to which it is a party, the consummation of the Merger and each of the other transactions contemplated hereby and thereby will not (i) contravene any provision contained in such entity's certificate of incorporation or bylaws, (ii) conflict with, violate or result in a material breach (with or without the lapse of time, the giving of notice or both) of or constitute a material default (with or without the lapse of time, the giving of notice or both) under (A) any Contract, license, permit or other instrument or obligation or (B) assuming satisfaction of the requirements set forth in Section 4.4 below, any judgment, Law or other restriction of any Governmental Authority, in each case to which such entity is a party or by which it is bound or to which any of its assets or properties are subject or (iii) result in the acceleration of, or permit any Person to terminate, modify, cancel, accelerate or declare due and payable prior to its stated maturity any material obligation of such entity.

Section 4.4. **No Consents**. No notice to, filing with, or authorization, registration, consent or approval of any Governmental Authority is necessary for the execution, delivery or performance of this Agreement, the other Merger Documents to which Parent or Newco is a party or the consummation of the transactions contemplated hereby or thereby by Parent or Newco, except for filing and recordation of appropriate Merger Documents as required by the DGCL.

Section 4.5. **Litigation**. Neither Parent nor Newco is party to any litigation or threatened litigation which would reasonably be expected to affect or prohibit the consummation of the transactions contemplated hereby.

Section 4.6. **Brokers**. No Person is or will be entitled to a broker's, finder's, investment banker's, financial adviser's or similar fee from Parent or Newco in connection with this Agreement or any of the transactions contemplated hereby.

Section 4.7. **Solvency**. As of the Closing, Parent shall have taken all measures necessary, including, without limitation, the contribution of capital to Newco, to ensure that, after giving effect to the transactions contemplated by this Agreement, including the payment of the Final Merger Consideration and the satisfaction of all Liabilities of the Surviving Corporation, (a) the Surviving Corporation (or its successors and assigns) will be Solvent and (b) the Present Fair Saleable Value of the assets of the Surviving Corporation will exceed its debt, plus its total "capital," as such term is determined in accordance with Section 154 of the DGCL. For purposes of this Agreement, "Solvent" when used with respect to the Surviving Corporation (or its successors and assigns), means that, as of any date of determination (i) the amount of the Present Fair Saleable Value of their assets will, as of such date, exceed all of its Liabilities, contingent or otherwise, as of such date, (ii) the Surviving Corporation will not have, as of such date, an unreasonably small amount of capital for the business in which it is engaged or will be engaged and (iii) the Surviving Corporation (or its successors and assigns) will be able to pay its debts as they become absolute and mature, taking into account the timing of and amounts of cash to be received by the Surviving Corporation and the timing of and amounts of cash to be payable on or in respect of its indebtedness, in each case after giving effect to the transactions contemplated by this Agreement. For purposes of the definition of "Solvent," (i) "debt" means Liability on a "claim" and (ii) "claim" means (A) any 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 (B) the right to an equitable remedy for breach on performance if such breach gives rise to a right to payment, whether or not such equitable remedy is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured.

Section 4.8. **NO ADDITIONAL REPRESENTATIONS**. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN ARTICLE III AND ARTICLE V OF THIS AGREEMENT (AS QUALIFIED BY THE SCHEDULES) AND IN THE OTHER MERGER DOCUMENTS, INCLUDING THE L/T REPRESENTATIONS, THE FORMER HOLDERS AND THE COMPANY EXPRESSLY DISCLAIM ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND OR NATURE, EXPRESS OR IMPLIED. EACH OF PARENT AND NEWCO ACKNOWLEDGES AND AGREES THAT IT IS NOT RELYING ON ANY STATEMENT OR REPRESENTATION MADE BY OR ON BEHALF OF THE FORMER HOLDERS OR THE COMPANY EXCEPT AS SPECIFICALLY SET FORTH IN ARTICLE III OR ARTICLE V HEREOF (AS QUALIFIED BY THE SCHEDULES AS SUPPLEMENTED OR AMENDED) AND IN THE OTHER MERGER DOCUMENTS, INCLUDING THE L/T REPRESENTATIONS, AND THAT NO PERSON HAS BEEN AUTHORIZED BY THE FORMER HOLDERS OR THE COMPANY TO MAKE ANY REPRESENTATION OR WARRANTY RELATING TO THE FORMER HOLDERS, THE COMPANY OR ANY OF ITS SUBSIDIARIES, THE BUSINESSES OF THE COMPANY OR ANY OF ITS SUBSIDIARIES OR OTHERWISE IN CONNECTION WITH THE TRANSACTIONS CONTEMPLATED HEREBY EXCEPT AS SET FORTH IN ARTICLE III OR ARTICLE V HEREOF (AS QUALIFIED BY THE SCHEDULES) AND IN THE OTHER MERGER DOCUMENTS, INCLUDING THE L/T REPRESENTATIONS, AND, IF MADE, ANY SUCH REPRESENTATION OR WARRANTY MUST NOT BE RELIED UPON. EACH OF THE COMPANY AND THE FORMER HOLDERS ARE RELYING UPON PARENT AND NEWCO'S REPRESENTATIONS IN THIS SECTION 4.8 IN ENTERING INTO THIS AGREEMENT OR THE LETTERS OF TRANSMITTAL. EACH OF PARENT AND NEWCO FURTHER ACKNOWLEDGES THAT NEITHER THE FORMER HOLDERS, THE COMPANY NOR ANY OTHER PERSON OR ENTITY WILL HAVE OR BE SUBJECT TO ANY LIABILITY TO PARENT OR NEWCO RESULTING FROM THE DISTRIBUTION TO PARENT, NEWCO OR THEIR REPRESENTATIVES OR PARENT'S OR NEWCO'S USE OF ANY INFORMATION REGARDING THE COMPANY OR ITS BUSINESSES NOT EXPRESSLY SET FORTH IN THIS AGREEMENT OR THE OTHER MERGER DOCUMENTS, INCLUDING ANY PROJECTIONS OR OTHER INFORMATION PROVIDED BY OR ON BEHALF OF THE COMPANY OR SET FORTH IN THE COMPANY'S CONFIDENTIAL INFORMATION MEMORANDUM OR MANAGEMENT PRESENTATIONS RELATING TO THE TRANSACTIONS CONTEMPLATED HEREBY.

ARTICLE V

REPRESENTATIONS AND WARRANTIES OF THE STOCKHOLDERS

Each Stockholder hereby represents and warrants to Parent and Newco as of the Closing Date as follows:

Section 5.1. **Organization and Qualification**. If such Stockholder is an entity, such Stockholder is a trust, limited liability company or limited partnership, as applicable, duly organized, validly existing and in good standing under the Laws of its jurisdiction of organization and has all requisite power and authority necessary to own or lease its property and assets and to carry on its business as presently conducted.

Section 5.2. **Authorization**. Such Stockholder has the legal capacity, power and authority to execute and deliver this Agreement and each other Merger Document to which such Stockholder is a party and to perform its obligations hereunder and thereunder, all of which have been duly authorized by all requisite action and no other action on the part of such Stockholder and, if such Stockholder is an entity, its equity holders, is necessary to authorize the execution, delivery and performance of this Agreement and each other Merger Document by such Company and the consummation by such Stockholder of the transactions contemplated hereby and thereby. This Agreement and each other Merger Document to which such Stockholder is a party has been duly authorized, executed and delivered by such Stockholder and, assuming that this Agreement has been duly and validly authorized, executed and delivered by Parent and Newco, constitutes a valid and binding agreement of such Stockholder, enforceable against such Stockholder in accordance with its terms, except to the extent that the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or other Laws from time to time in effect relating to creditors' rights and remedies generally and general principles of equity.

Section 5.3. **Non-contravention**. Neither the execution and delivery of this Agreement or any other Merger Document, the consummation of the transactions contemplated hereby or thereby nor the fulfillment of and the performance by such Stockholder of its obligations hereunder or thereunder will (i) if such Stockholder is an entity, contravene any provision contained in such Stockholder's organizational documents (ii) conflict with, violate or result in a breach (with or without the lapse of time, the giving of notice or both) of, or constitute a default (with or without the lapse of time, the giving of notice or both) under (A) any Contract, license, permit or other instrument or obligation or (B) assuming satisfaction of the requirements set forth in Section 5.4 below, any judgment, Law or other restriction of any Governmental Authority, in each case to which such Stockholder is a party or by which it is bound or to which any of its respective assets or properties, including any Company Stock, are subject, or (iii) result in the acceleration of, or permit any Person to terminate, modify, cancel, accelerate or declare due and payable prior to its stated maturity, any obligation of such Stockholder, (iv) result in the imposition of any Lien on the Company Stock owned by such Stockholder (with or without the lapse of time, the giving of notice or both); which, in the case of clauses (ii) and (iii) above, would, individually or in the aggregate, reasonably be expected to prevent such Stockholder from entering into this Agreement or any Merger Document, performing its obligations under this Agreement or any Merger Document or consummating the transactions contemplated hereby or thereby.

Section 5.4. **Consents**. No notice to, filing with, or authorization, registration, consent or approval of any Governmental Authority is necessary for the execution, delivery or performance of this Agreement, the other Merger Documents to which such Stockholder is a party or the consummation of the transactions contemplated hereby or thereby by such Stockholder, except for filing and recordation of appropriate Merger Documents as required by the DGCL and those the failure of which to make or obtain would not, individually or in the aggregate, reasonably be expected to affect the ability of such Stockholder to enter into, or prevent such Stockholder from entering into, this Agreement or any Merger Document, performing its obligations under this Agreement or any Merger Document or consummating the transactions contemplated hereby or thereby.

Section 5.5. **Litigation**. Such Stockholder is not a party to any litigation or threatened litigation which would, individually or in the aggregate, reasonably be expected to prevent such Stockholder from entering into this Agreement or any Merger Document, performing its obligations under this Agreement or any Merger Document or consummating the transactions contemplated hereby or thereby.

Section 5.6. **Brokers**. Except as set forth in Section 3.20 of the Schedules (which fees shall be paid and fully discharged by the Company and included in the Seller Expenses), no Person is or will be entitled to a broker's, finder's, investment banker's, financial adviser's or similar fee from such Stockholder in connection with this Agreement or any of the transactions contemplated hereby.

Section 5.7. **Title to Company Stock**. Such Stockholder (a) has good and marketable title to, and is the record and beneficial owner of, all of the Company Stock listed as held by such Stockholder on Section 3.5(a) of the Schedules, (b) has complete and unrestricted power and unqualified right to sell, convey, assign, transfer and deliver all such Company Stock, except for any restrictions under the Shareholders Agreement, which shall be terminated at the Closing, and (c) except pursuant to this Agreement, has not directly or indirectly, granted any option, warrant or other right which is in effect to any Person to acquire any Company Stock.

ARTICLE VI

COVENANTS AND AGREEMENTS

Section 6.1. **Retention of Information**. After the Effective Time, Parent shall make available, and shall cause the Surviving Corporation to make available, to the Representative and its accountants, agents and representatives, any and all books, records, contracts and other information of the Company and its Subsidiaries existing at the Effective Time to the extent reasonably requested by the Representative in connection with any purposes contemplated by this Agreement. Parent will cause the Surviving Corporation to hold all of the books and records of the Company and its Subsidiaries existing on the Closing Date and not destroy or dispose of any thereof for a period of seven years from the Closing Date or such longer time as may be required by Law, and thereafter, if it desires to destroy or dispose of such books and records, will offer first in writing at least 60 days prior to such destruction or disposition to surrender them to the Representative.

Section 6.2. **Public Announcements**. The timing and content of all announcements regarding any aspect of this Agreement or the Merger, including to the financial community, government agencies, employees or the general public shall be mutually agreed upon in advance by the Representative and Parent; provided that each party hereto may make any such announcement which it in good faith believes, based on advice of counsel, is required by Law or any applicable securities exchange rules or regulations. Notwithstanding the foregoing, each party shall use its reasonable efforts to consult with the Parent and the Representative prior to any such announcement to the extent practicable, and shall in any event promptly provide the other parties hereto with copies of any such announcement.

Section 6.3. **Employee Benefits**.

(a) Parent shall provide, or cause to be provided, to each individual who is an actively employed employee of the Company or any of its Subsidiaries immediately prior to the Effective Time (a "Company Employee"), for a period of one (1) year following the Closing Date, (i) during his or her employment, (x) base salary level or base wages that are comparable to those provided by the Company or any of its Subsidiaries to such Company Employee immediately prior to the Effective Time, and (y) employee benefits that are substantially similar in the aggregate to those offered to similarly situated employees of Parent, and (ii) to the extent his or her employment is terminated during such one (1) year period, severance benefits at least as favorable as those offered by the Company or its Subsidiaries to similarly situated employees immediately prior to the Effective Time as set forth on Schedule 6.3(a). After the Closing, Parent and the Surviving Corporation shall continue to implement and adhere to the terms and conditions of the 2017 IWCO Direct Management Incentive Plan.

(b) For purposes of eligibility for participation, vesting, paid time off and severance, each Company Employee shall be credited under each benefit plan of Parent or its Affiliates (including the Surviving Corporation and its Subsidiaries), other than any equity plans, to which such Company Employee is entitled to participate (a "Parent Benefit Plan") with all years of service with the Company or its Subsidiaries before the Closing Date, except to the extent such credit would result in a duplication of benefits. In addition: (i) for any Parent Benefit Plan to which a Company Employee is entitled to participate and which replaces coverage under comparable Employee Benefit Plans in which such Company Employee participated, such Company Employee shall be immediately eligible to participate, without any waiting time; (ii) for purposes of each Parent Benefit Plan providing medical, dental, pharmaceutical and/or vision benefits to any Company Employee, Parent shall use commercially reasonable efforts to cause all preexisting condition exclusions and actively-at-work requirements of such Parent Benefit Plan to be waived for such Company Employee and his or her covered dependents, and (iii) Parent shall use commercially reasonable efforts to cause any eligible expenses incurred by such Company Employee and his or her covered dependents during the portion of the plan year of the Employee Benefit Plan ending on the Closing Date, to be taken into account under such Parent Benefit Plan for the remainder of the Parent Benefit Plan year in which the Closing Date occurs for purposes of satisfying all deductible, coinsurance and maximum out-of-pocket requirements applicable to such Company Employee and his or her covered dependents for the applicable plan year as if such amounts had been paid in accordance with such Parent Benefit Plan.

(c) Parent or the Surviving Corporation or their Subsidiaries, as applicable, shall (i) to the extent reflected as a current liability in the Net Working Capital, credit each of the Company Employees with an amount of paid time off days following the Closing equal to the amount of paid time off days each such Company Employee has accrued but not yet used or cashed out as of the Closing under the Company's paid time off policies as in effect immediately prior to the Closing, and (ii) allow each of the Company Employees to use such accrued paid time off days at such times as each would have been allowed under the Company's paid time off policies as in effect immediately prior to the Closing.

(d) This Section 6.3 shall be binding upon and inure solely to the benefit of each party hereto (and not any current or former officer, employee or service provider of the Company or any of its Subsidiaries or Parent), and for the avoidance of doubt, nothing in this Agreement is intended to (i) confer upon any current or former employee or other service provider of the Company or any of its Subsidiaries any right to employment or continued employment or continued service with Parent or any of its Subsidiaries (including, the Surviving Corporation (if applicable) or any Subsidiary thereof (if applicable)), (ii) constitute or create an employment agreement with, or modify the at-will status of any, employee or other service provider, (iii) amend or create any rights under an Employee Benefit Plan or Parent Benefit Plan or (iv) amend or cause a creation of any employee benefit plan or other compensatory arrangements of Parent or any of its Subsidiaries (including, the Surviving Corporation (if applicable) or any Subsidiary thereof (if applicable)).

Section 6.4. Indemnification of Directors and Officers.

(a) The Company has obtained a six-year "tail" policy providing coverage substantially similar to the Company's existing officers' and directors' liability insurance coverage (the "D&O Insurance Tail Policy"), a copy of which has been made available to Parent.

(b) After the Effective Time through the sixth anniversary of the Effective Time, the Surviving Corporation shall indemnify and hold harmless any present (as of the Effective Time) or former officer or director or employee of the Company and its Subsidiaries (the "D&O Indemnified Persons"), to the extent that any D&O Indemnified Person becomes subject to any claims, losses, liabilities, damages, judgments, fines and reasonable fees, costs and expenses (including attorneys' fees and expenses) incurred in connection with any claim, action, proceeding or investigation, whether civil, criminal, administrative or investigative, arising out of or pertaining to (i) the fact that the D&O Indemnified Person is or was an officer, director or employee of the Company or any of its Subsidiaries at or prior to the Effective Time or (ii) matters existing or occurring at or prior to the Effective Time (including this Agreement and the transactions and actions contemplated hereby), whether asserted or claimed prior to, at or after the Effective Time, to the fullest extent permitted under applicable Law.

(c) Parent hereby acknowledges that certain D&O Indemnified Persons may have rights to indemnification, advancement of expenses and/or insurance provided by Persons other than the Company or its Subsidiaries (collectively, the "Indemnitors"). Parent hereby agrees (i) that the D&O Insurance Tail Policy is primary and any obligation of the Indemnitors are secondary and (ii) Parent and the Surviving Corporation irrevocably waive, relinquish and release the Indemnitors from any and all claims against the Indemnitors for contribution, subrogation or any other recovery of any kind in respect thereof to the extent covered by the D&O Insurance Tail Policy. Each of Parent and the Surviving Corporation further agree that no advancement or payment by an Indemnitor on behalf of a D&O Indemnified Person with respect to any claim for which a D&O Indemnified Person has sought recovery under the D&O Insurance Tail Policy shall affect the foregoing and the applicable Indemnitor shall have a right of contribution and/or be subrogated to the extent of such advancement or payment to all of the rights of recovery of the D&O Indemnified Person under the D&O Insurance Tail Policy. Parent and the D&O Indemnified Persons agree that the Indemnitors are express third party beneficiaries of the terms of this Section 6.4(b).

(d) Parent shall cause the Surviving Corporation and its Subsidiaries to maintain in effect in its certificate of incorporation and bylaws (or similar governing documents) for a period of six (6) years after the Effective Time, the current provisions as in effect immediately prior to the Effective Time regarding elimination of liability of directors and indemnification of, and advancement of expenses to, officers, directors and employees contained in the certificate of incorporation and bylaws of the Company and its Subsidiaries.

(e) In the event that the Surviving Corporation (i) consolidates with or merges into any other Person and shall not be the continuing or surviving corporation or entity of such consolidation or merger or (ii) transfers or conveys all or substantially all of its properties and assets to any Person, then, and in each such case, proper provision shall be made so that the successors or assigns of the Surviving Corporation shall succeed to the obligations set forth in this Section 6.4.

Section 6.5. Tax Matters.

(a) Tax Cooperation and Reporting. Parent and the Representative shall reasonably cooperate with each other in connection with the preparation of Tax Returns related to the Company and each of its Subsidiaries and shall preserve all information, returns, books, records and documents relating to any liabilities for Taxes with respect to any taxable period until the later of the expiration of all applicable statutes of limitation and extensions thereof or a final determination with respect to Taxes for such period, and shall not destroy or otherwise dispose of any record without first providing the other party a reasonable opportunity to review and copy the same.

(b) Preparation of Tax Returns; Refund Forms.

(i) Parent shall cause the Surviving Corporation and any Subsidiary to prepare all Tax Returns of the Surviving Corporation and any Subsidiary for any Pre-Closing Tax Period (including any Straddle Period) due on or after the Closing Date (the "Parent Prepared Tax Returns"). Parent shall deliver, or cause to be delivered, to the Representative drafts of each Parent Prepared Tax Return (other than any Sales Tax Returns with respect to the Company Tax Liability) and each Refund Form no later than 30 days prior to the due date of such Parent Prepared Tax Return or Refund Form (taking into account any extensions thereof) for the Representative's review and consent; provided, that Representative's consent shall not be unreasonably withheld, conditioned, or delayed with respect to any position taken on a Parent Prepared Tax Return if, and solely to the extent, such position could not adversely impact any Refund Forms or Refund Amounts. The Representative shall review and comment on such Tax Returns within fifteen (15) days of receipt thereof. If the Representative does not submit comments within such period, then the Representative will be deemed to have approved such Tax Returns as prepared by Parent. If the Representative delivers comments to Parent within such period, Parent shall incorporate any reasonable comments provided by Representative relating any Refund Forms or Refund Amounts; provided that, in the event the Representative and Parent disagree with respect to such comments, such dispute shall be referred to the Accounting Firm for resolution in accordance with the general procedures set forth in Section 2.7(d); provided, further, that parties hereto acknowledge that the Transaction Tax Deductions set forth on Section 1.1(c) of the Schedules have been agreed to except for amounts reflected on such Schedule incurred in the tax year ending with the Closing, which amounts the Parties agree are reasonable estimates of Transaction Tax Deductions incurred in the tax year ending with the Closing and shall be subject to Parent's reasonable review and verification.. Parent shall timely file, or cause to be timely filed, any such Parent Prepared Tax Returns and shall cause the Surviving Corporation and any Subsidiary to timely pay all Taxes shown as due on a Parent Prepared Tax Return, if any.

(ii) Except as set forth in Section 6.5(h), Parent shall cause the Surviving Corporation and its Subsidiaries or the Parent Group, as applicable, to (A) file or cause to be filed an IRS Form 4466 (Corporation Application for Quick Refund of Overpayment of Estimated Taxes) and any analogous state and local forms (if applicable) to claim a refund with respect to any overpayments of estimated Tax by the Company and its Subsidiaries for the Tax year ending on the Closing Date, (B) file or cause to be filed an IRS Form 1139 (Corporation Application for Tentative Refund) and any analogous state and local forms (if applicable) (the forms described in this clause (B) and the preceding clause (A), collectively, the "Refund Forms") to claim a refund with respect to the carryback of any net operating loss of the Company and its subsidiaries for the taxable period ending on the Closing Date (a "Pre-Closing Net Operating Loss") and (C) not waive or cause to be waived the carryback period for a Pre-Closing Net Operating Loss, it being understood that any refund claimed in connection with any Refund Forms shall be claimed in cash rather than as a credit against future Tax liabilities (to the extent permitted by applicable Law). Any such Refund Forms shall be treated as a Parent Prepared Tax Return that is subject to analogous review, comment, dispute resolution and filing procedures to those set forth in Section 6.5(b)(i).

(c) Closing of the Tax Year. Notwithstanding anything to the contrary in this Agreement (including Section 6.15(d)), Parent shall cause the Company and its Subsidiaries to become members of the affiliated group filing a consolidated federal income Tax Return to which Parent is a member (the "Parent Group"), such that the taxable year of the Company shall terminate on the Closing Date for federal (and applicable state and local) income Tax purposes. With respect to any Parent Prepared Tax Returns, Parent and Representative, and their respective Affiliates shall, to the extent permitted by applicable Law, cause the Company and its Subsidiaries and the Parent Group, as applicable, to (i) allocate all items accruing on the Closing Date for federal income tax purposes to the taxable period of the Company and its Subsidiaries ending on the Closing Date pursuant to Treasury Regulations § 1.1502-76(b)(1) and (not pursuant to the ratable allocation method under Treasury Regulations §§ 1.1502-76(b)(2)(ii) or 1.1502-76(b)(2)(iii)), (ii) treat all deductions described in in the definition of Transaction Tax Deductions that accrue on or prior to the Closing Date as being deductible by the Company and its Subsidiaries in the taxable period of the Company and its Subsidiaries ending on the Closing Date and not to utilize the "next day rule" in Treasury Regulations §1.1502-76(b)(1)(ii)(B) (or any similar provision of state, local or foreign law), (iii) report all transactions not in the ordinary course of business (as reasonably determined by Parent and Representative) that occur on the Closing Date after the Closing as having occurred on the day following the Closing Date to the extent permitted by applicable Law, (iv) make the election to deduct 70% of any success-based fees incurred in connection with the transactions contemplated by this Agreement in accordance with Revenue Procedure 2011-29 on the Tax Return of the Company and its Subsidiaries (or the parent of the Parent Group) for the taxable period ending on the Closing Date.

(d) Straddle Period. Subject to Section 6.5(c), the parties agree to treat (and to cause the Company and each of its Subsidiaries to treat) each Tax year of the Company and each of its Subsidiaries as ending at the end of the day on the Closing Date, unless such election is not permitted in a jurisdiction under applicable Law. If any Tax year of the Company or any Subsidiary does not end at the end of the day on the Closing Date pursuant to the preceding sentence (each, a "Straddle Period"), the, with respect to any specific Tax that the Company or any Subsidiary is required to file a Tax Return for a Straddle Period, the parties agree to utilize the following conventions for determining the amount of Taxes attributable to the portion of the Straddle Period ending at the end of the day on the Closing Date (including for purposes of preparing any Tax Returns and Refund Forms in accordance with Section 6.5(b)): (i) in the case of property Taxes and other similar Taxes imposed on a periodic basis, the amount attributable to the portion of the Straddle Period ending at the end of the day on the Closing Date shall equal the Taxes for the entire Straddle Period multiplied by a fraction, the numerator of which is the number of calendar days in the portion of the period ending at the end of the day on the Closing Date and the denominator of which is the number of calendar days in the entire Straddle Period; and (ii) in the case of all other Taxes (including income Taxes, Sales Taxes, employment Taxes and withholding Taxes), the amount attributable to the portion of the Straddle Period ending at the end of the day on the Closing Date shall be determined as if the Company or any Subsidiary filed a separate Tax Return with respect to such Taxes for the portion of the Straddle Period ending at the end of the day on the Closing Date using a "closing of the books methodology".

(e) Tax Contests. Parent shall notify the Representative in writing within ten (10) days after receipt by Parent, the Surviving Corporation or any of their Affiliates of any official inquiry, examination audit or proceeding regarding any Taxes of the Company, the Surviving Corporation or any of their Affiliates (i) relating to any Refund Forms, or (ii) that could adversely impact any refund claimed on any Refund Form or any Pre-Closing Net Operating Loss (each a "Tax Contest"). Upon providing written notice to Parent, the Representative shall have the option to exercise, on behalf of the Stockholders and at the expense of the Stockholders, control over the handling, disposition or settlement of any issue raised in any such Tax Contest relating to any item described in clauses (i) or (ii) of the preceding sentence; provided, that Parent shall have the right at its expense to participate in, any such Tax Contest controlled by the Representative and the Representative shall keep Parent informed of all material developments relating to such Tax Contest on a timely basis (including providing copies of all correspondence with and any submissions to the relevant Governmental Authority). The Representative shall not settle any such Tax Contest or related issue raised in any such Tax Contest controlled by the Representative without the prior written consent of Parent (such consent not to be unreasonably withheld, conditioned or delayed). If the Representative does not exercise its option to control the handling, disposition or settlement of any issued raised in any such Tax Contest as provided in this Section 6.5(b), or fails to notify Parent of its intent to exercise its option within twenty-one (21) days of receiving notice from Parent of such Tax Contest, then Parent shall have the right to control the handling, disposition or settlement of any such issue; provided that the Representative shall be entitled to participate in any such Tax Contest controlled by Parent, and Parent shall keep the Representative informed of all material developments relating to such Tax Contest on a timely basis (including providing copies of all correspondence with and any submissions to the relevant Governmental Authority). Parent shall not settle any Tax Contest controlled by Parent without the prior written consent of the Representative (such consent not to be unreasonably withheld, conditioned, or delayed).

(f) Tax Refunds. Except as set forth in Section 6.5(h), Parent shall promptly, but in any event no later than five (5) Business Days of receipt, pay and transfer, or cause to be paid and transferred to the Representative (for further distribution to the Former Holders of Series A Preferred Stock) and the holders of Transaction Incentive Award Amounts in the manner provided in Section 2.7(f), in each case in accordance with their respective Distribution Percentages, the amount of any cash Tax refund that is received by the Surviving Corporation, Parent, the Parent Group, or any of their respective Affiliates with respect to (i) the taxable period ending on the Closing Date or (ii) the filing of a Refund Form, in each case with respect to clauses (i) and (ii) to the extent the amount of any such Tax refund is attributable to the Transaction Tax Deductions (including any refund of estimated tax payments attributable to Transaction Tax Deductions or any refund resulting from the carryback of any Pre-Closing Net Operating Loss attributable to the Transaction Tax Deductions) (the amounts described in clauses (i) and (ii), each a "Refund Amount"), net of any reasonable out-of-pocket costs incurred by Surviving Corporation, Parent, the Parent Group, or any of their respective Affiliates in connection with preparing and filing such Refund Forms and obtaining such Tax refunds. For purposes of this Section 6.5(f), the aggregate amount of the Refund Amounts shall not exceed the aggregate amount of the Refund Amounts calculated by taking into account the difference between the aggregate Tax refunds, if any, that would have been received by the Surviving Corporation, Parent, the Parent Group, or any of their respective Affiliates with respect to the taxable period ending on the Closing Date and the filing of any Refund Forms without any Transaction Tax Deductions, and the actual aggregate amount of such Tax refunds received by the Surviving Corporation, Parent, the Parent Group, or any of their respective Affiliates with respect to the taxable period ending on the Closing Date and the filing of such Refund Forms taking into account the Transaction Tax Deductions, it being the intention that the payment of Tax refunds to the Representative be limited to Tax refunds attributable only to the Transaction Tax Deductions.

(g) Post-Closing Actions. Except with respect to the Company Tax Liability, Parent and its Affiliates shall not, and shall cause the Company, the Surviving Corporation, their respective Affiliates, and the Parent Group to not, without the prior written consent of the Representative (which such consent not to be unreasonably withheld, conditioned or delayed): (i) file, refile, amend, revoke or otherwise modify any Tax Return or any Tax election for any Pre-Closing Tax Period or any Straddle Period, (ii) waive any carryback of any Pre-Closing Net Operating Loss or other Tax attribute of the Company or any of its Subsidiaries arising in any Pre-Closing Tax Period, (iii) extend or waive, any statute of limitations or other period for the assessment of any Taxes of the Company or any of its Subsidiaries for any Pre-Closing Tax Period, or (iv) initiate any discussions or examinations with, or otherwise provide information to, any Governmental Authority with respect to any Taxes of the Company or any of its Subsidiaries for any Pre-Closing Tax Period, in each case (clauses (i), (ii), (iii) and (iv)), only to the extent that it could adversely impact any Refund Form, any Refund Amount, or any Pre-Closing Net Operating Loss. For avoidance of doubt, and except for matters that are expressly governed by other provisions of this Agreement (including Section 6.5(b)(i) and Section 6.5(e)), Parent, the Surviving Corporation and its Subsidiaries shall have sole control all other matters related to any Pre-Closing Tax Period.

(h) Company Tax Liability. Notwithstanding anything to the contrary in this Section 6.5, Parent, the Surviving Corporation and its Subsidiaries (and not the Representative or any Stockholder) shall be entitled to (i) receive any Tax refunds and other Tax benefits arising from, related to or associated with the Company Tax Liability and (ii) shall have sole control over any inquiry, examination audit or proceeding regarding any Taxes of the Company, the Surviving Corporation or any of their Affiliates arising from, related to or associated with the Company Tax Liability. Parent shall be solely entitled to, and may cause the Surviving Corporation and any Subsidiary to, prepare and file all Tax Returns of the Surviving Corporation and any Subsidiary arising from, related to or associated with the Company Tax Liability or payment of any Taxes related thereto, including, without limitation, (A) filing, refiling, amending, revoking or otherwise modifying any Tax Return or any Tax election for any Pre-Closing Tax Period or any Straddle Period, (B) filing any Tax refund form, (C) extending or waiving, any statute of limitations or other period for the assessment of any Taxes of the Company or any of its Subsidiaries for any Pre-Closing Tax Period, and (D) initiating any discussions or examinations with, or otherwise providing information to, any Governmental Authority. Any such Tax Returns shall not be subject to any analogous review, comment, dispute resolution and filing procedures to those set forth in Section 6.5(b)(i).

Section 6.6. Stockholder Matters. As a condition precedent to receiving its consideration pursuant to this Agreement, each Former Holder has entered (or will enter prior to receiving its consideration) a Support Agreement. The parties hereto acknowledge and agree that (i) the Support Agreements are an integral part of the transactions contemplated by this Agreement and the other Merger Documents, (ii) the Support Agreements are part of the terms and conditions of this Agreement and (iii) each stockholder of the Company (or Former Holder, as the case may be) must enter into a Support Agreement prior to receiving any consideration pursuant to this Agreement (or otherwise in connection with the Merger). Parent and Newco hereby acknowledge receipt of Support Agreements from the Stockholders.

Section 6.7. Restrictions on Dissolution. Each of Court Square Capital Partners II, L.P., Court Square Capital Partners II-A, L.P., Court Square Capital Partners (Executive) II, L.P., Court Square Capital Partners (Offshore) II, L.P., ACP/IWCO Holdings LLC and ACP/IWCO Splitter, L.P. agree not to dissolve and liquidate for a period of sixty (60) days following the Closing.

ARTICLE VII

SURVIVAL; INDEMNIFICATION

Section 7.1. **Survival of Representations**. The Fundamental Representations shall survive the Closing for a period of three (3) years and the representations and warranties in Section 3.11 (Environmental Matters) and Section 3.13 (Employee Benefit Matters) shall survive the Closing for a period of six (6) years. No other representations and warranties of the parties hereunder or in any Letter of Transmittal shall survive the Closing, except in the case of a Fundamental Payout Amount. If a Fundamental Payment Amount occurs at any time, then all representations and warranties in Article III and Article V, in each Letter of Transmittal and in each Support Agreement shall be deemed to survive the Closing for a period of three (3) years (except that the Tax Representations and the representations and warranties in Section 3.11 (Environmental Matters) and Section 3.13 (Employee Benefit Matters) survive the Closing for a period of six (6) years). The covenants and obligations contained in this Agreement that, by their terms, provide for performance following the Closing Date shall survive the Closing in accordance with their terms. No indemnifying party shall have any liability hereunder with respect to any claim for breach of any such representation, warranty or covenant, unless notice of such claim is first given in accordance with Section 7.3 before the end of the survival period specified therefor in this Section 7.1 and such notice specifies in reasonable detail the matter giving rise to the claim, the nature of the claim and, to the extent then known, the amount of the claim. Any representation, warranty or covenant subject to a notice of a claim first given in accordance with Section 7.3 before the end of the survival period (or deemed survival period) specified therefor in this Section 7.1 shall, notwithstanding the provisions of this Section 7.1, survive until final resolution of each such claim.

Section 7.2. **Indemnification**.

(a) Subject to the provisions of this Article VII, the Stockholders and the holders of Transaction Incentive Awards, severally but not jointly, in accordance with their respective Distribution Percentages, agree to indemnify, defend and hold each of Parent, Newco, the Surviving Corporation and/or any of their respective officers, directors, employees, affiliates and/or agents (each a "Buyer Indemnitee" and together the "Buyer Indemnitees") harmless from any Actions, damages, losses, Liabilities, interest, costs or expenses (including, without limitation, reasonable attorneys' fees and expenses, but excluding punitive and exemplary damages (in each case other than such amounts payable to third parties in respect of Third Party Claims)) ("Loss") as a result of or arising out of (i) the breach or failure of any Company Fundamental Representation to be true and correct, (ii) the breach or failure of any representation or warranty in Article III or Article V, any L/T Representations, other than any Company Fundamental Representation, to be true and correct but only in case of this clause (ii) in the event that Losses are payable to the Buyer Indemnitees under the R&W Insurance Policy for a breach of a Company Fundamental Representation (such amount, the "Fundamental Payout Amount") and the coverage limit under the R&W Insurance Policy is exceeded, and then only to the extent of the Fundamental Payout Amount, (iii) any breach by any Former Holder or Representative of any of its covenants or agreements contained herein, in any Support Agreement or in any Letter of Transmittal, (iv) the exercise by any Former Holder of appraisal rights under Section 262 of the DGCL, including any amounts paid to the Former Holders, including any interest required to be paid thereon, that are in excess of what the Former Holders would have received hereunder; (v) any claim made by any Former Holder or any holder of Transaction Incentive Awards relating to such Person's rights with respect to the Merger Consideration or the calculations and determinations set forth on the Estimated Merger Consideration Statement Spreadsheet; (vi) any Closing Date Funded Indebtedness to the extent not taken into account in the Merger Consideration and (vii) any Seller Expenses to the extent not taken into account in the Merger Consideration; provided, however, that in the case of any breach or failure of a representation or warranty in Article V, any Support Agreement or any L/T Representation to be true and correct, each Stockholder and each holder of a Transaction Incentive Award shall only be liable for its own breach or misrepresentation.

(b) Subject to the provisions of this Article VII, each of Parent and the Surviving Corporation agrees to indemnify, defend and hold each of the Former Holders and their respective officers, directors, employees, partners, Affiliates and/or agents (each a "Seller Indemnitee" and together the "Seller Indemnitees") harmless from any Loss suffered or paid, directly or indirectly, as a result of or arising out of (i) the failure of any Fundamental Representation made by Parent or Newco to be true and correct as of the Closing Date (or on the date when made in the case of any representation or warranty which specifically relates to an earlier date), (ii) any breach by Parent or Newco of any of its covenants or agreements contained herein, (iii) any Company Tax Liability and (iv) any breach by the Surviving Corporation (including by way of being the successor of Newco and the Company) of any of its covenants or agreements contained herein which are to be performed by the Surviving Corporation after the Closing Date.

(c) For purposes of determining the existence of any inaccuracy in, breach of or failure of any representation, warranty or covenant in this Agreement, any Letter of Transmittal or any Support Agreement, or calculating the amount of any Loss incurred in connection therewith, any and all references to "material," "materially," and "materiality" (or other correlative or similar terms or qualifiers) shall be disregarded.

(d) All indemnification payments under this Article VII shall be adjustments to the Merger Consideration except as otherwise required by applicable law.

Section 7.3. Claims.

(a) Any party seeking indemnification under Section 7.2 (an "Indemnified Party") shall promptly give the party from whom indemnification is being sought (or, in the case of a Buyer Indemnitee seeking indemnification, such Buyer Indemnitee shall promptly notify the Representative in writing) (such notified party, the "Responsible Party") notice of any matter which such Indemnified Party has determined has given rise to a right of indemnification under this Agreement, within 30 days of such determination, stating in reasonable detail, the nature of the claim, a good-faith reasonable estimate of the Loss to the extent then known and method of computation thereof, and containing a reference to the provisions of this Agreement in respect of which such right of indemnification is claimed or arises; provided that, subject to the survival periods set forth in Section 8.1, the failure to so notify shall not relieve the Responsible Party of its obligations hereunder, except to the extent (and only to the extent) that the Responsible Party is actually materially prejudiced thereby. If the Responsible Party has disputed a claim for indemnification (including any Third-Party Claim), the Responsible Party and the Indemnified Party shall proceed in good faith to negotiate a resolution to such dispute. If the Responsible Party and the Indemnified Party cannot resolve such dispute in a reasonable period of time after notice is delivered, such dispute shall be resolved pursuant to the terms of Section 9.5.

(b) If an Action by a third party (a "Third Party Claim") is made against any Indemnified Party, and if such Indemnified Party intends to seek indemnity with respect thereto under this Article VII, such Indemnified Party shall promptly, and in any event within 30 days of the determination that a right to indemnification exists, notify the Responsible Party of such claims in writing; provided that, subject to the survival periods set forth in Section 7.1, the failure to so notify shall not relieve the Responsible Party of its obligations hereunder, except to the extent (and only to the extent) that the Responsible Party is actually materially prejudiced thereby. Except with respect to Exception Claims, the Responsible Party may, by delivery to the Indemnified Party of written notice acknowledging the Responsible Party's obligation to indemnify the Indemnified Party with respect to any Loss related to such Third Party Claim subject to the limitations set forth in this Article VII, assume the conduct and control, through counsel reasonably acceptable to the Indemnified Party at the expense of the Responsible Party, of the settlement or defense thereof, and the Indemnified Party shall cooperate with it in connection therewith in accordance with Section 7.3(c); provided that the Responsible Party shall permit the Indemnified Party to participate in such settlement or defense through counsel chosen by such Indemnified Party, at the Indemnified Party's own cost and expense. So long as the Responsible Party is reasonably contesting any such claim in good faith, the Indemnified Party shall not pay or settle any such claim. Notwithstanding the foregoing, the Indemnified Party shall have the right to pay or settle any such claim, provided that in such event it shall waive any right to indemnity therefor by the Responsible Party for such claim unless the Responsible Party shall have consented to such payment or settlement. If the Responsible Party does not elect to undertake the defense thereof or if such Third Party Claim is an Exception Claim, the Indemnified Party shall have the right to contest, settle or compromise the claim and shall not thereby waive any right to indemnity therefor pursuant to this Agreement. With respect to a Third Party Claim for which the Responsible Party has assumed the conduct and control, the Responsible Party shall not, except with the consent of the Indemnified Party, enter into any settlement (i) that does not include as an unconditional term thereof the giving by the person or persons asserting such claim to all Indemnified Parties of an unconditional release from all liability with respect to such claim or consent to entry of any judgment or (ii) that grants any relief other than money damages (which are paid by the Responsible Party to the extent provided herein). The Responsible Party may not pay or settle any other Third Party Claim. In the event of any conflict between this Section 7.3(b) and Section 6.5(b) with respect to any Tax Contests, the provisions of Section 6.5(b) shall control.

(c) With respect to a Third Party Claim for which the Responsible Party has assumed the conduct and control pursuant to Section 7.3(b), any Indemnified Party shall, at the expense of the Responsible Party, cooperate in all reasonable respects with the Responsible Party and its attorneys in the investigation, trial and defense of such Third Party Claim and any appeal arising therefrom and shall, at the expense of the Responsible Party, furnish such records, information and testimony, and attend such conferences, discovery proceedings, hearings, trials and appeals as may be reasonably requested in connection therewith. Such cooperation shall include reasonable access during normal business hours afforded to the Responsible Party and its agents and representatives to, and reasonable retention by the Indemnified Party of records and information which have been identified by the Responsible Party as being reasonably relevant to such Third Party Claim, and making mutually agreed upon employees available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder. The parties shall cooperate with each other in any notifications to insurers.

(d) The parties acknowledge and agree that any Losses related to claims for indemnification pursuant to Section 7.2(a)(iv) made on or prior to sixty (60) days following the Closing Date (an "Appraisal Claim") may, at the election of the Buyer Indemnitee, be paid from the Adjustment Escrow Amount remaining in the Escrow Account. In the event any Appraisal Claims remains unresolved as of date the Adjustment Escrow Amount is to be distributed to the Former Holders of Series A Preferred Stock and the holders of Transaction Incentive Awards pursuant to Section 2.7(e), any Adjustment Escrow Amount remaining in the Escrow Account shall remain in the Escrow Account until all Appraisal Claims have been fully resolved and any Losses related thereto fully paid. Within two (2) Business Days after an Appraisal Claim is resolved, Representative and Parent shall deliver to the Escrow Agent joint written instruction instructing the Escrow Agent to make payment of all Losses related to such Appraisal Claim to the applicable Buyer Indemnitee. The Buyer Indemnitees' remedy against the Escrow Account pursuant to this Section 7.3(d) is cumulative with any other remedies available pursuant to this Agreement, and not exclusive.

Section 7.4. **Limitations on Indemnification Obligations**. The rights of the Buyer Indemnitees to indemnification pursuant to the provisions of Section 7.2 are subject to the following limitations:

(a) The Buyer Indemnitees shall not be entitled to recover that portion of any Losses to the extent such Losses are specifically reflected or reserved for as a current liability in the calculation of Net Working Capital, as finally determined in accordance with Section 2.7;

(b) The Buyer Indemnitees' sole recourse for any claims or Losses pursuant to Section 7.2(a)(i) or Section 7.2(a)(ii) (with respect to Section 7.2(a)(ii), other than any Fundamental Payout Amount, but only to the extent of such Fundamental Payout Amount as set forth in Section 7.2(a)(ii)) is the R&W Insurance Policy except for claims or Losses pursuant to Section 7.2(a)(i) which are (x) in an aggregate amount up to the Retention Amount or (y) after the R&W Insurance Policy has been exhausted.

(c) The Buyer Indemnitees shall not be entitled to recover for any Losses that in the aggregate exceed the Indemnification Cap. In no event shall any Stockholder or holder of a Transaction Incentive Award be required to indemnify the Buyer Indemnitees for any Losses that in the aggregate exceed such Person's pro rata share (based on the amount of proceeds received by such Person in relation to the proceeds received by all Former Holders and holders of Transaction Incentive Awards) of the Indemnification Cap; provided, however, that, with respect to a holder of a Transaction Incentive Award who is not a Former Holder of Series A Preferred Stock, such holder shall not be required to indemnify the Buyer Indemnitees for any Losses that exceed the amount received by such holder pursuant to the Transaction Incentive Award.

Section 7.5. **Special Rule for Fraud**. Notwithstanding anything to the contrary contained in this Article VII or elsewhere in this Agreement, in the event of any breach of a representation or warranty constitutes Fraud (as finally determined by a court of competent jurisdiction), then (a) such representation or warranty shall survive indefinitely and (b) the limitations and conditions set forth Section 7.4, as applicable, shall not apply to any Loss that the Buyer Indemnitees may suffer, sustain or become subject to, as a result of, arising out of, relating to or in connection with any such breach; provided that the Buyer Indemnitees shall not be entitled to recover for any Losses that in the aggregate exceed the Indemnification Cap.

Section 7.6. **Exclusive Remedy**. Notwithstanding anything else contained in this Agreement to the contrary, indemnification pursuant to, and subject to the limitations provided in, this Article VII shall be the sole and exclusive remedy for the parties hereto for any misrepresentation or breach of any warranty, covenant or other provision contained in this Agreement and with respect to any and all claims by Buyer Indemnitees relating to this Agreement, the Company and its Subsidiaries and by Seller Indemnitees relating to this Agreement, other than as provided in Section 2.7(d), as provided in Section 6.5(e) with respect to Tax Contests, for specific performance under Section 9.12, in the case of Fraud. Without limiting the generality or effect of the foregoing, as a material inducement to the other parties hereto entering into this Agreement, Parent, Newco, Stockholders and Representative hereby unconditionally and irrevocably waive, on behalf of themselves, their Affiliates and their respective directors, officers, managers, partners and equity holders, any claim or cause of action (including known or unknown, foreseen or unforeseen) arising from this Agreement, the events giving rise to or subject matter of this Agreement and the transactions contemplated hereby, which it or any of its Affiliates (including the Surviving Corporation) may have against the other parties hereto or any of their respective successors, assigns, and any present or former directors, managers, officers, employees or agents of such Person, including without limitation under the common law or federal or state securities laws, trade regulation laws or other laws, except for claims or causes of action brought under and subject to the terms and conditions of this Article VII (other than as provided in Section 2.7(d), for specific performance under Section 9.12, in the case of Fraud).

Section 7.7. **Mitigation of Damages**. Each Indemnified Party shall use its reasonable efforts to mitigate any indemnifiable Loss as required by Law. In the event that an Indemnified Party fails to mitigate an indemnifiable Loss as required by Law, the Responsible Party shall have no liability for any portion of such Loss that reasonably could have been avoided had the Indemnified Party made such efforts.

Section 7.8. **Effect of Investigation or Knowledge**. Any claim by a Buyer Indemnitee for indemnification shall not be adversely affected by any investigation by or opportunity to investigate afforded to Parent, Newco or any of their respective Affiliates or any of their respective officers, directors, employees, investors, lenders, agents or representatives, nor shall such a claim be adversely affected by the knowledge of Parent, Newco or any of their respective Affiliates or any of their respective officers, directors, employees, investors, lenders, agents or representatives on or before the Closing Date of any breach or inaccuracy of any of the representations or warranties contained herein or of any state of facts that may give rise to such a breach.

ARTICLE VIII

REPRESENTATIVE OF THE STOCKHOLDERS OF THE COMPANY

Section 8.1. **Authorization of Representative**.

(a) CSC (and any successor of CSC or any assign of CSC) is hereby appointed, authorized and empowered to act as a representative (the "Representative"), for the benefit of the Former Holders and the holders of Transaction Incentive Awards, as the exclusive agent and attorney-in-fact to act on behalf of each Former Holder and each holder of an Transaction Incentive Award, in connection with and to facilitate the consummation of the transactions contemplated hereby, which shall include the power and authority:

(i) to execute and deliver the Escrow Agreement (with such modifications or changes therein as to which the Representative, in its sole discretion, shall have consented) and to agree to such amendments or modifications thereto as the Representative, in its sole discretion, determines to be desirable;

(ii) to execute and deliver such amendments, waivers and consents in connection with this Agreement and the Escrow Agreement and the consummation of the transactions contemplated hereby and thereby as the Representative, in its sole discretion, may deem necessary or desirable;

(iii) to determine, negotiate and agree upon the Net Working Capital Adjustment;

(iv) as Representative, to enforce and protect the rights and interests of the Former Holders and the holders of Transaction Incentive Awards and to enforce and protect the rights and interests of the Representative arising out of or under or in any manner relating to this Agreement and the Escrow Agreement and each other Merger Document or the transactions provided for herein or therein (including, without limitation, in connection with any and all claims for indemnification brought under Article VII hereof), and to take any and all actions which the Representative believes are necessary or appropriate under the Escrow Agreement and/or this Agreement for and on behalf of the Former Holders and the holders of Transaction Incentive Awards, including, without limitation, asserting or pursuing any Action (a "Claim") against Parent and/or Surviving Corporation, defending any Third Party Claims or Claims by the Buyer Indemnitees, consenting to, compromising or settling any such Third Party Claims or Claims, conducting negotiations with Parent, Surviving Corporation and their respective representatives regarding such Third Party Claims or Claims, and, in connection therewith, to (A) assert any claim or institute any Action; (B) investigate, defend, contest or litigate any Action initiated by Parent, the Surviving Corporation or any other Person, or by any Governmental Authority against the Representative and/or any of the Former Holders or the holders of Transaction Incentive Awards and/or the Adjustment Escrow Funds, and receive process on behalf of any or all of the Former Holders and the holders of Transaction Incentive Awards in any such Action and compromise or settle on such terms as the Representative shall determine to be appropriate, and give receipts, releases and discharges with respect to, any such Action; (C) file any proofs of debt, claims and petitions as the Representative may deem advisable or necessary; (D) settle or compromise any claims asserted under this Agreement or the Escrow Agreement; and (E) file and prosecute appeals from any decision, judgment or award rendered in any such action, proceeding or investigation, it being understood that the Representative shall not have any obligation to take any such actions, and shall not have any liability for any failure to take any such actions;

(v) to refrain from enforcing any right of the Former Holders and the holders of Transaction Incentive Awards or any of them and/or the Representative arising out of or under or in any manner relating to this Agreement, the Escrow Agreement or any other Merger Documents; and

(vi) to make, execute, acknowledge and deliver all such other agreements, guarantees, orders, receipts, endorsements, notices, requests, instructions, certificates, stock powers, letters and other writings, and, in general, to do any and all things and to take any and all action that the Representative, in its sole and absolute discretion, may consider necessary or proper or convenient in connection with or to carry out the transactions contemplated by this Agreement, the Escrow Agreement, and all other Merger Documents.

(b) The Representative shall not be entitled to any fee, commission or other compensation for the performance of its services hereunder, but shall be entitled to the payment of all its costs and expenses incurred as the Representative. In connection with the foregoing, the Representative shall be entitled to cover or recover the costs and expenses incurred by the Representative in its capacity as the Representative from the Expense Reserve. In addition, to the extent that the Expense Reserve is at any time insufficient (as determined by the Representative in its sole discretion) to cover all of the costs and expenses incurred by the Representative in its capacity as the Representative, then the Representative may, at its option, (i) retain such amount of the proceeds received by the Former Holders and the holders of Transaction Incentive Awards after the Closing Date under any term or provision of this Agreement (such amount together with the Expense Reserve, the "Expense Funds") or (ii) seek reimbursement of such costs and expenses directly from the Former Holders. Once the Representative determines, in its sole discretion, that the Representative will not incur any additional expenses in its capacity as the Representative, then the Representative will distribute the remaining unused Expense Funds (if any) to the Former Holders of Series A Preferred Stock and, for further distribution to the holders of Transaction Incentive Awards, the Surviving Corporation, in accordance with their respective Distribution Percentages. In connection with this Agreement, the Escrow Agreement and any other Merger Documents, and in exercising or failing to exercise all or any of the powers conferred upon the Representative hereunder (i) the Representative shall incur no responsibility whatsoever to any Former Holders or any holders of Transaction Incentive Awards by reason of any error in judgment or other act or omission performed or omitted hereunder or in connection with the Escrow Agreement or any such other Merger Documents, excepting only responsibility for any act or failure to act which represents bad faith or willful misconduct, and (ii) the Representative shall be entitled to rely in good faith on the advice of counsel, public accountants or other experts experienced in the matter at issue, and any error in judgment or other act or omission of the Representative pursuant to such advice shall in no event subject the Representative to liability to any Former Holders or any holders of Transaction Incentive Awards. Each Former Holder and holder of Transaction Incentive Awards shall indemnify, pro rata based upon such holder's Distribution Percentage, the Representative against all losses, damages, Liabilities, claims, obligations, costs and expenses, including reasonable attorneys', accountants' and other experts' fees and the amount of any judgment against them, of any nature whatsoever (including, but not limited to, any and all expense whatsoever reasonably incurred in investigating, preparing or defending against any litigation, commenced or threatened or any claims whatsoever), arising out of or in connection with any Action or in connection with any appeal thereof, relating to the acts or omissions of the Representative hereunder, or under the Escrow Agreement or otherwise; provided, however, that the foregoing indemnification shall not apply in the event of any action or proceeding which finally adjudicates the liability of the Representative hereunder for its bad faith or willful misconduct. Any amount payable to the Representative pursuant to this Section 8.1 shall (A) first be paid from the Expense Funds and (B) thereafter paid to the Representative by the Former Holders and the holders of Transaction Incentive Awards in accordance with their respective Distribution Percentages. In the latter case, upon written notice from the Representative to the Former Holders and the holders of Transaction Incentive Awards as to the existence of a deficiency toward the payment of any such indemnification amount, each Former Holder and holder of Transaction Incentive Awards shall promptly deliver to the Representative full payment of his, her or its ratable share of the amount of such deficiency based upon such holder's Distribution Percentage; provided, that no such holder shall be liable for any claim of indemnification by the Representative pursuant to this Section 8.1(b) which is, individually or in the aggregate, in excess of such holder's pro rata portion of the Merger Consideration to which such holder or participant is entitled pursuant to this Agreement.

(c) Parent, Newco, the Surviving Corporation may conclusively and absolutely rely, without inquiry, upon any consent, approval or action of the Representative as the consent, approval or action, as the case may be, of each Former Holder and each holder of Transaction Incentive Awards individually and all of the Former Holders and holders of Transaction Incentive Awards as a group in all matters referred to in this Section 8.1

(d) Notwithstanding the provisions of Section 8.1, all of the indemnities, immunities and powers granted to the Representative under this Agreement shall survive the Effective Time and/or any termination of the Escrow Agreement.

(e) The grant of authority provided for herein (i) is coupled with an interest and shall be irrevocable and survive the death, incompetency, bankruptcy or liquidation of any Former Holder or holder of a Transaction Incentive Award; and (ii) shall survive the consummation of the Merger.

ARTICLE IX

MISCELLANEOUS

Section 9.1. **Notices**. Any notice, request, instruction, or other document to be given hereunder by any party hereto to any other party shall be in writing and shall be delivered personally, by overnight delivery service, by facsimile, by email or sent by certified, registered or express air mail, postage prepaid (and shall be deemed given (a) when delivered, if delivered by hand, (b) one Business Day after deposited with an overnight delivery service, if delivered by overnight delivery, (c) upon electronic confirmation of receipt, if faxed during normal business hours, or upon transmission, if sent by email, in either case so long as written notice of such transmission is sent within three Business Days thereafter by another delivery method described in clauses (a), (b) or (d) confirming such transmission, and (d) five days after mailing if mailed), as follows:

If to Parent or the Surviving Corporation:

ModusLink Global Solutions, Inc.
1601 Trapelo Road, Suite 170
Waltham, MA 02451
Attention: Legal Department
Facsimile: (781) 663-5095
Email: info@moduslink.com

with a copy to (which shall not constitute notice):

Ice Miller LLP
One American Square, Suite 2900
Indianapolis, Indiana 46282
Attention: John R. Thornburgh, Esq.
Facsimile: (317) 592-4783
Email: John.Thornburgh@icemiller.com

If to the Representative:

CSC Shareholder Services LLC
c/o Court Square Capital Partners
Park Avenue Plaza
55 East 52nd Street, 34th Floor
New York, New York 10055
Facsimile: (212) 752-6184
Attention: John Civantos
Email: jcivantos@courtsquare.com

with a copy to (which shall not constitute notice):

Dechert LLP
Cira Centre
2929 Arch Street
Philadelphia, Pennsylvania 19104
Facsimile: (215) 994-2222
Attention: Craig L. Godshall, Esq.
Email: craig.godshall@dechert.com

If to any Stockholder or any holder of Transaction Incentive Awards, to the address set forth in the books and records of the Company,

or to such other address as any party hereto shall notify the other parties hereto (as provided above) from time to time.

Section 9.2. **Exhibits and Schedules**. All exhibits and schedules hereto, or documents expressly incorporated into this Agreement, are hereby incorporated into this Agreement and are hereby made a part hereof as if set out in full in this Agreement. For the purposes of this Agreement, any matter that is disclosed in a Schedule to this Agreement shall be deemed to have been included in the other Schedules, notwithstanding the omission of a cross reference thereto, so long as the relevance of such matter to such other Schedules is reasonably apparent from the plain reading of the disclosure as so made. Disclosure of any fact or item in any Schedule shall not necessarily mean that such fact or item is material to the Company or its Subsidiaries individually or taken as a whole. Certain facts and items disclosed in the Schedules may not be believed to be material or may not be required to be disclosed pursuant to the terms of the representations and warranties in the Agreement. Such facts and items are being disclosed for informational purposes only. No disclosure on any Schedule relating to a possible breach or violation of any contract or Law shall be construed as an admission or indication that a breach or violation exists or has actually occurred.

Section 9.3. **Time of the Essence; Computation of Time**. Time is of the essence for each and every provision of this Agreement. Whenever the last day for the exercise of any privilege or the discharge or any duty hereunder shall fall upon a Saturday, Sunday, or any date on which banks in New York City, New York are authorized to be closed, the party having such privilege or duty may exercise such privilege or discharge such duty on the next succeeding day which is a regular Business Day.

Section 9.4. **Expenses**. Except as otherwise provided herein, each party hereto shall pay its own expenses incident to this Agreement and the transactions contemplated herein. Parent and Newco understand and acknowledge that all out of pocket fees and expenses incurred or to be incurred by the Company in connection with the transactions contemplated hereby (including, without limitation, the Seller Expenses) will be paid by the Company in cash at or prior to the Closing or will be a part of the Seller Expenses. Parent, on the one hand, and the Stockholders, on the other hand, shall each be responsible for fifty percent (50%) of any transfer, documentary, sales, use, stamp, registration and other such Taxes ("Transfer Taxes"), and all conveyance fees, recording charges and other fees and charges (including any penalties and interest) incurred in connection with consummation of the transactions contemplated by this Agreement. Parent will, at its own expense, file all necessary Tax Returns and other documentation with respect to all such Transfer Taxes, fees and charges. The parties hereto agree to cooperate with Parent in the filing any such Tax Returns and other documentation, including promptly supplying any information in its possession reasonably requested by Parent that is reasonably necessary to complete such Tax Returns and other documentation.

Section 9.5. **Governing Law**. This Agreement shall be governed by, and construed in accordance with, the internal Laws of the State of New York, without reference to the choice of Law or conflicts of Law principles thereof, except to the extent that the DGCL is mandatorily applicable. The parties hereto hereby agree and consent to be subject to the exclusive jurisdiction of the United States District Court for the Southern District of New York, and in the absence of such Federal jurisdiction, the parties consent to be subject to the exclusive jurisdiction of the state courts located in New York City, and hereby waive the right to assert the lack of personal or subject matter jurisdiction or improper venue in connection with any such suit, action or other proceeding. In furtherance of the foregoing, each of the parties (i) waives the defense of inconvenient forum, (ii) agrees not to commence any suit, action or other proceeding arising out of this Agreement or any transactions contemplated hereby other than in any such court, and (iii) agrees that a final judgment in any such suit, action or other proceeding (including any appeals therefrom) shall be conclusive and may be enforced in other jurisdictions by suit or judgment or in any other manner provided by Law.

Section 9.6. **Assignment; Successors and Assigns; No Third Party Rights**. This Agreement may not, without the prior written consent of Parent and Representative, be assigned by operation of Law or otherwise, and any attempted assignment shall be null and void; provided, however, that (a) Parent and the Surviving Corporation may assign their rights to a Subsidiary of Parent upon written notice of the same to the Representative and (b) Parent and the Surviving Corporation may without such consent and upon written notice to Representative assign their rights hereunder or under the other Merger Documents as collateral security to any lender or any other debt financing source providing financing in connection with the transactions contemplated hereby, which assignment in either case of clause (a) or (b) above shall not relieve Parent or the Surviving Corporation of any of their obligations hereunder. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties hereto, the Former Holders, the holders of Transaction Incentive Awards and their respective heirs, successors, permitted assigns and legal representatives. This Agreement shall be for the sole benefit of the parties to this Agreement, the Former Holders, the holders of Transaction Incentive Awards and their respective heirs, successors, permitted assigns and legal representatives and is not intended, nor shall be construed, to give any Person, other than the parties hereto, the Former Holders, the holders of Transaction Incentive Awards and their respective heirs, successors, assigns and legal representatives, any legal or equitable right, remedy or claim hereunder, except that the Buyer Indemnitees and the Seller Indemnitees shall be intended third party beneficiaries of Article VII and the D&O Indemnified Persons shall be intended third party beneficiaries of Section 6.4.

Section 9.7. **Counterparts**. This Agreement may be executed in two or more counterparts for the convenience of the parties hereto, each of which shall be deemed an original and all of which together will constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this Agreement by facsimile or portable document format shall be effective as delivery of a manually executed counterpart to this Agreement.

Section 9.8. **Titles and Headings**. The titles, captions and table of contents in this Agreement are for reference purposes only, and shall not in any way define, limit, extend or describe the scope of this Agreement or otherwise affect the meaning or interpretation of this Agreement.

Section 9.9. **Entire Agreement**. This Agreement, including the Exhibits and Schedules attached thereto, and the other Merger Documents, constitute the entire agreement among the parties with respect to the matters covered hereby and supersede all previous written, oral or implied understandings among them with respect to such matters.

Section 9.10. **Severability**. The invalidity of any portion hereof shall not affect the validity, force or effect of the remaining portions hereof. If it is ever held that any restriction hereunder is too broad to permit enforcement of such restriction to its fullest extent, such restriction shall be enforced to the maximum extent permitted by Law.

Section 9.11. **No Strict Construction**. Each of the parties hereto acknowledges that this Agreement has been prepared jointly by the parties hereto, and shall not be strictly construed against either party. As a consequence, the parties do not intend that the presumptions of any Laws or rules relating to the interpretation of contracts against the drafter of any particular clause should be applied to this Agreement and therefore waive their effects.

Section 9.12. **Specific Performance**. The parties hereto agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed by the parties hereto in accordance with their specific terms or were otherwise breached. It is accordingly agreed that any party hereto shall be entitled to seek an injunction or injunctions to prevent breaches or threatened breaches of this Agreement and to enforce specifically the terms and provisions hereof in any court of competent jurisdiction set forth in Section 9.5. Such remedies shall, however, be cumulative and not exclusive and shall be in addition to any other remedies which any party may have under this Agreement or otherwise. The parties hereto agree that the right of specific performance and other equitable relief is an integral part of the transactions contemplated by this Agreement and without that right, no party hereto would have entered into this Agreement. Each of the parties hereto hereby waives (i) any defenses in any action for specific performance, including the defense that a remedy at Law would be adequate and (ii) any requirement under any Law to post a bond or other security as a prerequisite to obtaining equitable relief.

Section 9.13. **Waiver of Jury Trial**. TO THE EXTENT NOT PROHIBITED BY LAW, WHICH CANNOT BE WAIVED, EACH OF THE PARTIES HERETO WAIVES ANY RIGHT IT MAY HAVE TO TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON, ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY COURSE OF CONDUCT, COURSE OF DEALING, VERBAL OR WRITTEN STATEMENT OR ACTION OF ANY PARTY HERETO. EACH PARTY AGREES THAT IN ANY SUCH LITIGATION, THE MATTERS SHALL BE TRIED TO A COURT AND NOT TO A JURY.

Section 9.14. **Failure or Indulgence not Waiver**. No failure or delay on the part of any party hereto in the exercise of any right hereunder shall impair such right or be construed to be waiver of, or acquiescence in, any breach of any representation, warranty or agreement herein, nor shall any single or parties exercise of any such right preclude any other or further exercise thereof or any other right. To the maximum extent permitted by applicable Law, (a) no claim or right arising out of this Agreement or any of the other Merger Documents can be discharged by one party, in whole or in part, by a waiver or renunciation of the claim or right unless in writing signed by such party; (b) no waiver that may be given by a party will be applicable except in the specific instance for which it is given; and (c) no notice to or demand on one party will be deemed to be a waiver of any obligation of that party or of the right of the party giving such notice or demand to take further action without notice or demand as provided in this Agreement or any of the other Merger Documents. All rights and remedies existing under this Agreement are cumulative to, and not exclusive of, any rights or remedies otherwise available.

Section 9.15. **Amendments**. This Agreement may be amended by Parent and Representative. This Agreement (including the provisions of this Section 9.15) may not be amended or modified except by an instrument in writing signed by Parent and Representative.

Section 9.16. **Conflict Waiver**. Each of the parties to this Agreement, on its own behalf and on behalf of its directors, members, partners, officers, employees and Affiliates, and each of their successors and assigns (all such parties, the "Waiving Parties"), agree that (a) Dechert LLP may represent the Representative, the Former Holders and their Affiliates (collectively, the "Seller Group"), on the one hand, and the Company and its Subsidiaries, on the other hand, in connection with the negotiation, preparation, execution and delivery of this Agreement, the other Merger Documents and the consummation of the transactions contemplated hereby and thereby (such representation, the "Current Representation"), and (ii) Dechert LLP (or any successor) may represent the Representative, any and all members of the Seller Group or any director, member, partner, officer, employee or Affiliate of the Seller Group in connection with any dispute, Action or obligation arising out of or relating to this Agreement, any other Merger Documents or the transactions contemplated hereby or thereby (any such representation, the "Post-Closing Representation"), notwithstanding such pre-Closing representation of the Company and/or any of its Subsidiaries, and each of Parent, the Surviving Corporation, the Company and each of its Subsidiaries on behalf of itself and the Waiving Parties hereby consents thereto and waives (and will not assert) any conflict of interest or any objection arising therefrom or relating thereto. Parent, the Surviving Corporation, the Company and each of its Subsidiaries acknowledge that the foregoing provision applies whether or not Dechert LLP provides legal services to the Company or any of its Subsidiaries after the Closing Date. Parent, the Surviving Corporation, the Company and each of its Subsidiaries, for itself and the Waiving Parties, hereby irrevocably acknowledges and agrees that all communications among the Company (prior to the Closing), the Seller Group and their counsel, including Dechert LLP, made in connection with the negotiation, preparation, execution, delivery and performance under, or any dispute or Action arising out of or relating to, this Agreement, any other Merger Documents or the transactions contemplated hereby or thereby, or any matter relating to any of the foregoing, are privileged communications between the Seller Group and such counsel and none of Parent, the Surviving Corporation, the Company, any of its Subsidiaries or any of the Waiving Parties or any Person purporting to act on behalf of or through the Company, any of its Subsidiaries or any of the Waiving Parties, will seek to obtain the same by any process. From and after the Closing, each of Parent, the Surviving Corporation, the Company and its Subsidiaries, on behalf of itself and the Waiving Parties, waives and will not assert any attorney-client privilege with respect to any communication between Dechert LLP and the Company, its Subsidiaries or any Person in the Seller Group occurring during the Current Representation in connection with any Post-Closing Representation.

Section 9.17. **Protected Communication**. The Company and each of its Subsidiaries hereby agrees that, immediately prior to the Closing, without the need for any further action (a) all right, title and interest of the Company and its Subsidiaries in and to all Protected Communications shall thereupon transfer to and be vested solely in the Former Holders and their successors in interest, and (b) any and all protections from disclosure, including, but not limited to, attorney client privileges and work product protections, associated with or arising from any Protected Communications that would have been exercisable by the Company or its Subsidiaries shall thereupon be vested exclusively in the Former Holders and their successors in interest and shall be exercised or waived solely as directed by the Former Holders or their successors in interest. None of the Company or its Subsidiaries, Parent or any Person acting on any of their behalf shall, without the prior written consent of the Former Holders or their successors in interest, assert or waive or attempt to assert or waive any such protection against disclosure, including, but not limited to, the attorney-client privilege or work product protection, or to discover, obtain, use or disclose or attempt to discover, obtain, use or disclose any Protected Communications in any manner, including in connection with any dispute or legal proceeding relating to or in connection with this Agreement, the events and negotiations leading to this Agreement, or any of the transactions contemplated herein, provided, however, the foregoing shall neither prohibit the Company or its Subsidiaries or any Person acting on any of their behalf from seeking proper discovery of such documents nor the Former Holders from asserting that such documents are not discoverable to the extent that applicable attorney client privileges and work product protections have attached thereto. The Former Holders and their successors in interest shall have the right at any time prior to the Closing to remove, erase, delete, disable, copy or otherwise deal with any Protected Communications in whatever way they desire, and the Surviving Corporation and its Subsidiaries shall provide reasonable assistance at the expense of the Person requesting such assistance in order to give full force and effect to the rights of Seller and its successors in interest hereunder.

Section 9.18. **No Waiver of Privilege; Protection from Disclosure or Use.** The parties hereto understand and agree that nothing in this Agreement, including the foregoing provisions regarding the assertions of protection from disclosure and use, privilege and conflicts of interest, shall be deemed to be a waiver of any applicable attorney-client privilege or other protection from disclosure or use. The parties understand and agree that the consummation of the transactions contemplated by this Agreement could result in the inadvertent disclosure of information that may be confidential, eligible to be subject to a claim of privilege, or otherwise protected from disclosure. The parties hereto further understand and agree that any disclosure of information that may be confidential, subject to a claim of privilege, or otherwise protected from disclosure will not constitute a waiver of or otherwise prejudice any claim of confidentiality, privilege, or protection from disclosure, including, but not limited to, with respect to information involving or concerning the same subject matter as the disclosed information. The parties hereto agree to use reasonable best efforts to return any inadvertently disclosed information to the disclosing party promptly upon becoming aware of its existence. Each of the parties hereto further agree that promptly after the return of any inadvertently disclosed information, the party returning such information shall destroy any and all copies, summaries, descriptions and/or notes of such inadvertently disclosed information, including electronic versions thereof, and all portions of larger documents or communications that contain such copies, summaries, descriptions or notes.

* * * * * * *

IN WITNESS WHEREOF, the parties hereto have caused this Agreement and Plan of Merger to be duly executed as of the day and year first above written.

"PARENT"

MODUSLINK GLOBAL SOLUTIONS, INC.

By: /s/ Jim Henderson
Name: Jim Henderson
Title: Chief Executive Officer

"NEWCO"

MLGS MERGER COMPANY, INC.

By: /s/ Jim Henderson
Name: Jim Henderson
Title: Chief Executive Officer

"COMPANY"

IWCO DIRECT HOLDINGS INC.

By: /s/ Joseph Morrison
Name: Joseph Morrison
Title: President

"REPRESENTATIVE"

CSC SHAREHOLDER SERVICES, LLC

By: /s/ John Civantos
Name: John Civantos
Title: Authorized Signatory

"STOCKHOLDERS"

COURT SQUARE CAPITAL PARTNERS II, L.P.

By: Court Square Capital GP, LLC, its General Partner

By: /s/ John Civantos
John Civantos, Partner

COURT SQUARE CAPITAL PARTNERS II-A, L.P.

By: Court Square Capital GP, LLC, its General Partner

By: /s/ John Civantos
John Civantos, Partner

COURT SQUARE CAPITAL PARTNERS (EXECUTIVE) II, L.P.

By: Court Square Capital GP, LLC, its General Partner

By: /s/ John Civantos
John Civantos, Partner

COURT SQUARE CAPITAL PARTNERS (OFFSHORE) II, L.P.

By: Court Square Capital GP, LLC, its General Partner

By: /s/ John Civantos
John Civantos, Partner

"STOCKHOLDERS"

ACP/IWCO HOLDINGS LLC

By: /s/ Ben Silbert
Ben Silbert, Authorized Signatory

ACP/IWCO SPLITTER, L.P.

By: /s/ Ben Silbert
Ben Silbert, Authorized Signatory

"STOCKHOLDERS"

WAM HOLDINGS, INC.

By: /s/ James N. Anderson
Name: James N. Anderson
Title: Chief Manager

/s/ James N. Andersen
James N. Andersen

/s/ **Joseph Morrison**
Joseph Morrison

THOMAS C. WICKA & ANGELA M. WICKA, TTEE, UA/DTD, FEB. 27, 2006, THOMAS C. WICKA, 2006 GRAT

By: /s/ Thomas C. Wicka
Name: Thomas C. Wicka
Title: Trustee

THOMAS C. WICKA, TRUSTEE UA/DTD, 10/3/05 TOM WICKA REVOCABLE TRUST

By: /s/ Thomas C. Wicka
Name: Thomas C. Wicka
Title: Trustee

DISCLOSURE SCHEDULES TO THE
AGREEMENT AND PLAN OF MERGER*

Section 1.1(a) - Distribution Percentage

Section 1.1(b) - Net Working Capital

Section 1.1(c) - Transaction Tax Deduction

Section 2.10(b)(v) - Required Consents

Section 3.1(a) - Organization and Qualification

Section 3.1(b) - Jurisdictions

Section 3.3 - Non-contravention

Section 3.4 - Consents

Section 3.5(a) - Capitalization

Section 3.5(b) – Subsidiaries

Section 3.6(a) - Financial Statements

Section 3.6(b) - Undisclosed Liabilities

Section 3.7 - Absence of Certain Developments

Section 3.8(a) - Compliance with Law

Section 3.8(c) - Permits

Section 3.9 - Litigation

Section 3.10 - Taxes

Section 3.11 - Environmental Matters

Section 3.12(a) - Employee Matters

Section 3.12(c) - Severance Arrangements

Section 3.12(e) - Current Employees

Section 3.13(a) - Employee Benefit Plans

Section 3.13(b) - Employee Benefit Plan Matters

Section 3.13(c) - Employee Benefit Plan Matters

Section 3.13(d) - ERISA Affiliates

Section 3.13(f) - Acceleration of Rights

Section 3.14(a) - Intellectual Property Rights

Section 3.14(e) - Software

Section 3.14(f) - Proprietary Software

*Schedules and exhibits have been omitted pursuant to Item 601(b)(2) of Regulation S-K. The Company hereby agrees to furnish supplementary copies of any of the omitted schedules or exhibits upon request by the Securities and Exchange Commission.

Section 3.14(j) - Information Technology Infrastructure

Section 3.15 - Contracts

Section 3.16 - Insurance

Section 3.17(a) - Real Property

Section 3.17(b) - Real Property

Section 3.18 - Title to Assets

Section 3.19 - Related Party Transactions

Section 3.20 - Brokers

Section 3.21 - Customers and Suppliers

Section 3.22 - Accounts Receivable

Section 3.24 - Products

Section 3.25 - Bank Accounts

Section 6.3(a) - Employee Benefits

EXHIBITS TO THE
AGREEMENT AND PLAN OF MERGER*

Exhibit A – Form of Support Agreement

Exhibit B – Form of Escrow Agreement

Exhibit C – Certificate of Merger

Exhibit D – Estimated Merger Consideration Statement

Exhibit E – Form of Letter of Transmittal

Exhibit F – R&W Insurance Policy

*Schedules and exhibits have been omitted pursuant to Item 601(b)(2) of Regulation S-K. The Company hereby agrees to furnish supplementary copies of any of the omitted schedules or exhibits upon request by the Securities and Exchange Commission.

CERTIFICATE OF DESIGNATIONS, PREFERENCES AND RIGHTS

OF

SERIES C CONVERTIBLE PREFERRED STOCK

OF

MODUSLINK GLOBAL SOLUTIONS, INC.

(Pursuant to Section 151 of the Delaware General Corporation Law)

ModusLink Global Solutions, Inc. (the "**Corporation**"), a corporation organized and existing under the laws of the State of Delaware, hereby certifies that, pursuant to authority conferred on its Board of Directors (the "**Board**") by the Restated Certificate of Incorporation of the Corporation, as amended (the "**Certificate of Incorporation**"), and in accordance with Section 141 of the Delaware General Corporation Law, the following resolution was adopted by the Board at a meeting of the Board duly held on December 6, 2017, which resolution remains in full force and effect on the date hereof:

RESOLVED, that the Board of Directors of the Corporation, pursuant to authority expressly vested in it by the provisions of the Restated Certificate of Incorporation of the Corporation, as amended, hereby authorizes the issuance of a series of preferred stock designated as the Series C Convertible Preferred Stock, par value $0.01 per share, of the Corporation and hereby fixes the designation, number of shares, powers, preferences, rights, qualifications, limitations and restrictions thereof (in addition to any provisions set forth in the Restated Certificate of Incorporation of the Corporation, as amended, which are applicable to the Corporation's preferred stock of all classes and series) as follows:

1. Designation, Amount and Par Value. Pursuant to this Certificate of Designations, Preferences and Rights of Series C Convertible Preferred Stock of the Corporation (this "**Certificate of Designations**"), there is hereby designated a series of the Corporation's authorized preferred stock having a par value of $0.01 per share (the "**Preferred Stock**"), which series shall be designated as "Series C Convertible Preferred Stock" (the "**Series C Preferred Stock**"), and the number of shares so designated shall be 35,000. Each share of Series C Preferred Stock shall have a par value of $0.01 per share. The "**Stated Value**" for each share of Series C Preferred Stock shall initially equal $1,000.00.

2. Definitions. In addition to the terms defined elsewhere in this Certificate of Designations, the following terms have the meanings indicated. Capitalized terms used but not defined in this Certificate of Designations shall have the respective meanings given to them in the Purchase Agreement (as defined below):

"**Affiliate**" of a Person means any other Person that, directly or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the first Person.

"**Amended Provision**" has the meaning set forth in Section 14.

"**Bankruptcy Event**" means any of the following events: (a) the Corporation or any Significant Subsidiary commences a case or other proceeding under any bankruptcy, reorganization, arrangement, adjustment of debt, relief of debtors, dissolution, insolvency or liquidation or similar law of any jurisdiction relating to the Corporation or any Significant Subsidiary thereof; (b) there is commenced against the Corporation or any Significant Subsidiary any such case or proceeding that is not dismissed within 60 days after commencement; (c) the Corporation or any Significant Subsidiary is adjudicated insolvent or bankrupt or any order of relief or other order approving any such case or proceeding is entered; (d) the Corporation or any Significant Subsidiary suffers any appointment of any custodian or the like for it or any material part of its property that is not discharged or stayed within 60 days; (e) the Corporation or any Significant Subsidiary makes a general assignment for the benefit of creditors; (f) the Corporation or any Subsidiary fails to pay, or states in writing that it is unable to pay or is unable to pay, any Indebtedness in an amount exceeding $500,000 generally as any such Indebtedness becomes due, which is not cured within the greater of (x) the time permitted by the agreements governing such Indebtedness, or (y) 30 days, other than pursuant to a good faith dispute relating to such Indebtedness; or (g) the Corporation or any Significant Subsidiary, by any act or failure to act, expressly indicates its consent to, approval of or acquiescence in any of the foregoing or takes any corporate or other action for the purpose of effecting any of the foregoing.

"**Board**" has the meaning set forth in the preamble to this Certificate of Designations.

"**Breach Event**" has the meaning set forth in Section 9(a).

"**Business Day**" means any day except Saturday, Sunday and any day which is a federal legal holiday or a day on which banking institutions in the State of New York are authorized or required by law or other governmental action to close.

"**Certificate of Designation**" has the meaning set forth in Section 1.

"**Certificate of Incorporation**" has the meaning set forth in the preamble to this Certificate of Designations.

"**Closing Bid Price**" means the last closing bid price for the Common Stock on the Principal Market (or, if the Common Stock is not traded on the Principal Market, on the Eligible Market on which the Common Stock is then traded), as reported by Bloomberg, L.P., or, if the Principal Market (or, if the Common Stock is not traded on the Principal Market, on the Eligible Market on which the Common Stock is then traded) begins to operate on an extended hours basis and does not designate the closing bid price or the closing trade price, as the case may be, then the last bid price of the Common Stock prior to 4:00 p.m., New York Time, as reported by Bloomberg, L.P., or if the foregoing do not apply, the average of the bid prices of any market makers for the Common Stock as reported in the "pink sheets" by Pink Sheets LLC (formerly the National Quotation Bureau, Inc.).

"**Common Stock**" means the common stock of the Corporation, par value $0.01 per share, and any securities into which such common stock may hereafter be reclassified.

"**Common Stock Equivalents**" means, collectively, Options and Convertible Securities.

"**Control**" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

"**Conversion Date**" means an Optional Conversion Date or a Mandatory Conversion Date.

"**Conversion Dividends**" has the meaning set forth in Section 7(d)(i).

"**Conversion Price**" has the meaning set forth in Section 7(c).

"**Convertible Securities**" means any stock or securities (other than Options) directly or indirectly convertible into or exercisable or exchangeable for Common Stock.

"**Corporation**" has the meaning set forth in the preamble to this Certificate of Designations.

"**Dividend Payment Date**" has the meaning set forth in Section 3(a).

"**Dividend Price**" means the arithmetic average of the VWAP of the Common Stock for the 20 Trading Days immediately prior to the applicable Dividend Payment Date.

"**Dividend Rate**" has the meaning set forth in Section 3(a).

"**DTC**" means The Depository Trust Corporation.

"**Eligible Market**" means any of the following: the Principal Market, the New York Stock Exchange, the NYSE MKT, The NASDAQ Global Select Market, The NASDAQ Capital Market or the OTC Bulletin Board.

"**Exchange Act**" means the Securities Exchange Act of 1934, as amended.

"**Fractional Cash Payment**" has the meaning set forth in Section 7(h).

"**Holder**" means any holder of Series C Preferred Stock.

"**Indebtedness**" of any Person means (i) all indebtedness representing money borrowed which is created, assumed, incurred or guaranteed in any manner by such Person or for which such Person is responsible or liable (whether by guarantee of such indebtedness, agreement to purchase indebtedness of, or to supply funds to or invest in, others), (ii) any direct or contingent obligations of such Person arising under any letter of credit (including standby and commercial), bankers acceptances, bank guaranties, surety bonds and similar instruments, (iii) all indebtedness secured by any Lien existing on property or assets owned by such Person and (iv) any shares of capital stock or other securities having a redemption or repayment feature; provided that the Series C Preferred Stock, and any obligations due in respect thereof in accordance with this Certificate of Designations, as in effect on the date hereof, shall not be deemed to be Indebtedness pursuant to this definition.

"**Junior Securities**" means the Common Stock and all other equity or equity equivalent securities of the Corporation other than the Series C Preferred Stock.

"**Liquidation Event**" means any of the following: (i) any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, (ii) any merger or consolidation in which the Corporation is a constituent party or a Significant Subsidiary is a constituent party and the Corporation issues shares of its capital stock pursuant to such merger or consolidation such that the stockholders of the Company prior to such merger or consolidation hold less than 50.0% of the aggregate voting securities of the Company following such merger or consolidation, or (iii) any sale of all or substantially all of the assets or capital stock of the Corporation or one or more Significant Subsidiaries if substantially all of the assets of the Corporation are held by such Significant Subsidiary or Significant Subsidiaries.

"**Majority Holders**" means, as of any date of determination, the holders of a majority of the then outstanding shares of Series C Preferred Stock.

"**Mandatory Conversion**" has the meaning set forth in Section 7(b)(i).

"**Mandatory Conversion Allocation Percentage**" has the meaning set forth in Section 7(b)(ii).

"**Mandatory Conversion Certification**" has the meaning set forth in Section 7(b)(i).

"**Mandatory Conversion Conditions**" has the meaning set forth in Section 7(b)(i).

"**Mandatory Conversion Conditions Failure**" has the meaning set forth in Section 7(b)(i).

"**Mandatory Conversion Date**" has the meaning set forth in Section 7(b)(i).

"**Mandatory Conversion Notice**" has the meaning set forth in Section 7(b)(i).

"**Mandatory Conversion Notice Date**" has the meaning set forth in Section 7(b)(i).

"**Material Adverse Effect**" means any material adverse effect on the business, properties, assets, operations, results of operations, or condition (financial or otherwise) of the Corporation and its Subsidiaries, taken as a whole, or on the transactions contemplated by the Transaction Documents, or on the authority or ability of the Corporation to perform its obligations under the Transaction Documents; provided, however, that any effect(s) to the extent arising out of or resulting from any of the following will not be taken into account (provided, that, with respect to clauses (i), (ii), (iii) and (iv), any effect does not disproportionately adversely affect the Corporation or its Subsidiaries compared to other companies of similar size operating in the industry in which the Corporation and its Subsidiaries operate): (i) general economic conditions; (ii) conditions in the securities markets, financial markets or currency markets; (iii) political conditions or acts of war, sabotage or terrorism; and (iv) acts of God, natural disasters, weather conditions or other calamities.

"**Maximum Permitted Rate**" has the meaning set forth in Section 6(c).

"**Optional Conversion Date**" has the meaning set forth in Section 7(a).

"**Optional Conversion Notice**" has the meaning set forth in Section 7(a).

"**Options**" means any rights, warrants or options to, directly or indirectly, subscribe for or purchase Common Stock or Convertible Securities.

"**Original Issue Date**" with respect to any share of Series C Preferred Stock means the date of the first issuance of such share of the Series C Preferred Stock, regardless of the number of transfers of any particular shares of Series C Preferred Stock thereafter and regardless of the number of certificates that may be issued to evidence shares of Series C Preferred Stock.

"**Person**" means an individual or corporation, partnership, trust, incorporated or unincorporated association, joint venture, limited liability company, joint stock corporation, government (or an agency or subdivision thereof) or other entity of any kind.

"**Preferred Stock**" has the meaning set forth in Section 1.

"**Pre-Stockholder Approval Maximum Common Stock Issuance Amount**" has the meaning set forth in Section 3(e).

"Principal Market" means The NASDAQ Global Market.

"**Prohibited Issuance**" means the issuance of: (A) any shares of Common Stock at a purchase price less than the then-existing Conversion Price or the issuance of any Common Stock Equivalents with a conversion price or exercise price less than the then-existing Conversion Price, except under any stockholder approved equity incentive plan; (B) any Common Stock Equivalents consisting of Indebtedness that is convertible into or exchangeable or exercisable for Common Stock at a price below the then-existing Conversion Price; (C) any preferred stock of the Corporation that is senior to or pari passu with the Preferred Stock with respect to rights, preferences or privileges as to dividends, liquidation preference or redemption or contains a greater than 1x liquidation preference or is a "participating" preferred stock; (D) any shares of Common Stock or Common Stock Equivalents to the extent the effective purchase or conversion price or the number of underlying shares floats or resets or otherwise varies or is subject to adjustment (directly or indirectly) based on market prices of the Common Stock; or (E) any warrants or other rights to purchase Common Stock that, when valued on a black scholes basis, decreases the purchase price for such warrants or other rights below the then-existing Conversion Price.

"**Pro Rata Mandatory Conversion Amount**" has the meaning set forth in Section 7(b)(ii).

"**Pro Rata Portion**" means, with respect to a Holder, the number of shares of Series C Preferred Stock held by such Holder divided by the number of shares of Series C Preferred Stock held by all of the Holders.

"**Purchase Agreement**" means the Preferred Stock Purchase Agreement, dated on or about the date hereof, between the Corporation and the Purchaser, as amended from time to time.

"**Purchaser**" means SPH Group Holdings LLC.

"**Redemption Date**" has the meaning set forth in Section 8(a).

"**Redemption Notice**" has the meaning set forth in Section 8(a).

"**Redemption Price**" has the meaning set forth in Section 8(a).

"**Securities Act"** means the Securities Act of 1933, as amended.

"**Series C Preferred Dividends**" has the meaning set forth in Section 3(a).

"**Series C Preferred Stock**" has the meaning set forth in Section 1.

"**Series C Preferred Stock Liquidation Preference**" has the meaning set forth in Section 6(a).

"**Series C Preferred Stock Register**" has the meaning set forth in Section 4.

"**Significant Subsidiary**" means any Subsidiary that would be a "significant subsidiary" as defined in Article I, Rule 1-02 of Regulation S-X.

"**Stated Value**" has the meaning set forth in Section 1.

"**Subsidiary**" means at any time, any Person (other than a natural person or Governmental Authority) which the Corporation (either alone or through or together with any other Subsidiary), owns, directly or indirectly, more than a majority of the capital stock or equity interests the holders of which are generally entitled to vote for the election of the board of directors or other governing body of such Person.

"**Trading Day**" means any day on which the Common Stock is traded on the Principal Market (or, if not traded on the Principal Market, on the Eligible Market on which the Common Stock is then traded); provided that "Trading Day" shall not include any day on which the Common Stock is scheduled to trade on the Principal Market (or, if not traded on the Principal Market, in any applicable Eligible Market) for less than 4.5 hours or any day that the Common Stock is suspended from trading during the final hour of trading on the Principal Market (or, if not traded on the Principal Market, on the Eligible Market on which the Common Stock is then traded) does not designate in advance the closing time of trading on such exchange or market, then during the hour ending at 4:00 p.m., New York Time).

"**Transaction Documents**" means this Certificate of Designations, the Purchase Agreement, and any other documents, certificates or agreements executed or delivered in connection with the transactions contemplated by the Purchase Agreement.

"**Triggering Event**" means any of the following events: (a) the Common Stock is not listed or quoted, or is suspended from trading, on the Principal Market (or, if not traded on the Principal Market, on the Eligible Market on which the Common Stock is then traded) for a period of forty-five (45) or more consecutive Trading Days or for more than an aggregate of sixty (60) Trading Days in any in any 12-month period; (b) the Corporation fails for any reason to deliver a certificate evidencing any shares of Common Stock to a Purchaser after delivery of such certificate is required pursuant to this Certificate of Designations (including upon conversion of any Series C Preferred Stock by a Holder pursuant to this Certificate of Designations), which failure is not cured within ten (10) Business Days, or the right of any Holder to convert the shares of Series C Preferred Stock held by such Holder into Common Stock is suspended for any reason; (c) the Corporation fails to have full authority, including under all laws, rules and regulations of the Principal Market (or, if not traded on the Principal Market, of the Eligible Market on which the Common Stock is then traded), to issue Underlying Shares, subject to any limitation on issuance of Underlying Shares set forth in Section 3(c) and Section 3(e); (d) at any time after the Closing Date, any Common Stock issuable pursuant to the Transaction Documents is not listed on an Eligible Market; or (e) the Closing Bid Price is less than $0.10 (as adjusted for any stock split, stock dividend, stock combination or other similar transactions with respect to the Common Stock) for forty-five (45) or more consecutive Trading Days or for more than an aggregate of sixty (60) Trading Days in any in any 12-month period.

"**Underlying Shares**" means the shares of Common Stock issued or issuable (i) upon conversion of the Series C Preferred Stock pursuant to this Certificate of Designations, or (ii) in satisfaction of any other obligation or right of the Corporation to issue shares of Common Stock pursuant to this Certificate of Designations, and in each case, any securities issued or issuable in exchange for or in respect of such securities.

"**Voting Period**" has the meaning set forth in Section 9(b)(ii).

"**VWAP**" means on any particular Trading Day or for any particular period the volume weighted average trading price per share of Common Stock on such date or for such period on the Principal Market (or, if not traded on the Principal Market, on the Eligible Market on which the Common Stock is then traded) as reported by Bloomberg L.P., through its "Volume at Price" functions, or, if the foregoing does not apply, the average of the highest Closing Bid Price and the lowest closing ask price of any of the market makers for the Common Stock as reported in the "pink sheets" by Pink Sheets LLC (formerly the National Quotation Bureau, Inc.); provided, however, that during any period the VWAP is being determined, the VWAP shall be subject to adjustment from time to time for stock splits, stock dividends, combinations and similar events, as applicable.

3. Dividends.

(a) Each Holder, in preference and priority to the holders of all Junior Securities, shall be entitled to receive, with respect to each share of Series C Preferred Stock then outstanding and held by such Holder, out of funds legally available therefor, and the Corporation shall pay, cumulative dividends at the rate (as a percentage of the Stated Value per share) of (the "**Dividend Rate**") six percent (6%) per annum (the "**Series C Preferred Dividends**"), accruing on a daily basis and payable by the Corporation quarterly, in arrears, with payments commencing on March 31,2018, and thereafter on each June 30, September 30, December 31 and March 31, except if such day is not a Trading Day, in which case such dividend shall be payable on the next succeeding Trading Day (each, a "**Dividend Payment Date**"). Dividends on the shares of Series C Preferred Stock shall be calculated on the basis of a 360-day year, shall accrue daily commencing on the Original Issue Date of the applicable shares of Series C Preferred Stock until the date when such shares are no longer outstanding, and shall be deemed to accrue with respect to such shares from such date whether or not earned or declared and whether or not there are profits, surplus or other funds of the Corporation legally available for the payment of dividends.

(a) Subject to the conditions and limitations set forth herein, the Corporation shall, at the election of the Corporation, pay the Series C Preferred Dividends at each Dividend Payment Date to any Holder in either (i) cash by wire transfer of immediately available funds to the account of such Holder as designated by the Holder in accordance with the terms hereof or (ii) Common Stock to the extent, and only to the extent, such payment in Common Stock to any such Holder would not violate any of the limitations set forth in this Certificate of Designations (including Section 3(c), Section 3(d), and Section 3(e)). For purposes of determining the dividends payable to each Holder on each Dividend Payment Date, the Corporation shall aggregate all shares of Series C Preferred Stock held by such Holder and, to the extent a dividend is paid in Common Stock, the number of shares of Common Stock to be issued shall be (i) determined by dividing the total dividend then being paid to such Holder in shares of Common Stock by the Dividend Price, and (ii) paid to such Holder in accordance with Section 3(g) and Section 3(h) below. In no event shall the Corporation be required to issue or cause to be issued fractional shares of Common Stock to any Holder in payment for dividends.

(b) Notwithstanding the foregoing, the Corporation shall not, without the prior approval of its stockholders as required pursuant to the rules and regulations of the Principal Market, issue shares of Common Stock under the Transaction Documents (whether upon conversion of the Series C Preferred Stock pursuant to Section 7, payment of Series C Preferred Dividends pursuant to Section 3(a), or payment of the Conversion Dividends pursuant to Section 7) to any Holder that, together with such Holder's Affiliates and any other persons acting as a group together with such Holder and any of such Holder's Affiliates, immediately prior to the applicable Dividend Payment Date, Optional Conversion Date or Mandatory Conversion Date, as applicable, beneficially owns more than 19.99% of the outstanding shares of Common Stock (as such ownership is calculated pursuant to the rules of The NASDAQ Global Market), if such Holder (together with such Holder's Affiliates and any other persons acting as a group together with such Holder and any of such Holder's Affiliates) is not the largest beneficial owner of the Common Stock (as such ownership is calculated pursuant to the rules of The NASDAQ Global Market) immediately prior to the applicable Dividend Payment Date, Optional Conversion Date or Mandatory Conversion Date, as applicable, but, as a result of such issuance of Common Stock to such Holder, such Holder (together with such Holder's Affiliates and any other persons acting as a group together with such Holder's and any of such Holder's Affiliates) would (X) become the largest beneficial owner of the Common Stock (as such ownership is calculated pursuant to the rules of The NASDAQ Global Market) immediately after giving effect to the issuance of such Common Stock or (Y) become the beneficial owner of a number of shares of Common Stock (as such ownership is calculated pursuant to the rules of The NASDAQ Global Market) immediately after giving effect to the issuance of such Common Stock which, had such Common Stock been received by such Holder as of the date such Holder entered into its binding commitment to purchase the Series C Preferred Stock, would have caused such Holder to become the largest beneficial owner of Common Stock (as such ownership is calculated pursuant to the rules of The NASDAQ Global Market) as of such earlier date. Immediately following the date (if ever) that the Corporation obtains the requisite stockholder approval required pursuant to the rules and regulations of the Principal Market, the restrictions in this Section 3(c) shall terminate and be of no further force or effect.

(c) Notwithstanding the foregoing, the Corporation may not pay dividends, including Conversion Dividends, by issuing Common Stock to any Holder unless, at such time, the number of authorized but unissued and otherwise unreserved shares of Common Stock is sufficient for such issuance.

(d) Notwithstanding the foregoing, without the prior approval of its stockholders as required pursuant to the rules and regulations of the Principal Market, the aggregate number of shares of Common Stock actually issued by the Corporation under the Transaction Documents (whether upon conversion of the Series C Preferred Stock pursuant to Section 7, payment of Series C Preferred Dividends pursuant to Section 3(a) or payment of the Conversion Dividends pursuant to Section 7) shall not exceed 19.99% of the Common Stock outstanding as of the Original Issue Date (the "**Pre-Stockholder Approval Maximum Common Stock Issuance Amount**"), for purposes of NASDAQ Listing Rule 5635(d), at a price, determined in accordance with the rules and regulations of the Principal Market, that is less than the greater of book or market value on the Principal Market on the closing date of the purchase of the Series C Preferred Stock (subject to adjustment from time to time for stock splits, stock dividends, stock combinations and similar events, as applicable, with respect to the Common Stock) . Immediately following the date (if ever) that the Corporation obtains the requisite stockholder approval required pursuant to the rules and regulations of the Principal Market, the restrictions in this Section 3(e) shall terminate and be of no further force or effect.

(e) With respect to dividends other than Conversion Dividends, in the event that the Corporation elects to pay dividends in shares of Common Stock, and is permitted to do so pursuant to Sections 3(c), (d), and (e), the number of shares of Common Stock to be issued to each applicable Holder as such dividend shall be (i) determined by dividing the total dividend then being paid to such Holder in shares of Common Stock by the Dividend Price, and rounding down to the nearest whole share, and (ii) paid to such Holder in accordance with Section 3(g) below.

(f) In the event that any dividends, including Conversion Dividends, are paid in Common Stock the Corporation shall, on or before the third (3rd) Trading Day following the applicable Dividend Payment Date, (i) credit the number of shares of Common Stock to which such Holder shall be entitled based on the dividend being paid in Common Stock to such Holder's or its designee's balance account with DTC through its Deposit Withdrawal Agent Commission System, or (ii) in the event that clause (i) is not applicable, issue and deliver to each applicable Holder a certificate, registered in the name of such Holder or its designee, for the number of shares of Common Stock to which such Holder shall be entitled. Notwithstanding the foregoing, the Corporation shall, upon request of the Holder, use its reasonable best efforts to deliver the shares of Common Stock electronically through the DTC.

(g) The Corporation shall not be required to issue or cause to be issued fractional shares of Common Stock in payment of dividends on the Series C Preferred Stock. If any fraction of a Common Stock would, except for the provisions of this Section 3(h), be issuable upon the issuance of shares of Common Stock in payment of dividends on the Series C Preferred Stock, the number of shares of Common Stock to be issued will be rounded down to the nearest whole share, and the Corporation shall, in lieu of issuing any fractional share, pay an amount of cash equal to the product of such fraction multiplied by the Dividend Price on the date of payment.

(h) So long as any shares of Series C Preferred Stock are outstanding, the Corporation shall not pay or declare any dividend (whether in cash or property), or make any other distribution on the Common Stock or any other capital stock of the Corporation, until all accrued and unpaid dividends as set forth in Section 3(a) above on the Series C Preferred Stock shall have been paid.

(i) Except (A) with respect to cash payments for fractional shares of Common Stock otherwise issuable in respect of any dividend payment or (B) with respect to any limitations set forth in this Certificate of Designations (including those set forth in Section 3(c) and Section 3(e)) on paying dividends to a Holder in Common Stock, dividends payable to each Holder shall be paid in the same form as the dividends paid to any other Holder or in the same proportion of Common Stock, cash or Series C Preferred Stock among all the Holders.

4. Registration of Issuance and Ownership of Series C Preferred Stock. The Corporation shall register the issuance and ownership of shares of the Series C Preferred Stock, upon records to be maintained by the Corporation for that purpose (the "**Series C Preferred Stock Register**"), in the name of the record Holders thereof from time to time. The Corporation may deem and treat the registered Holder as the absolute owner thereof for the purpose of any distribution to such Holder, and for all other purposes, absent actual notice to the contrary.

5. Registration of Transfers. The Corporation shall register the transfer of any shares of Series C Preferred Stock in the Series C Preferred Stock Register, upon surrender of certificates evidencing such shares to the Corporation at its address specified herein. Upon any such registration or transfer, a new certificate evidencing the shares of Series C Preferred Stock so transferred shall be issued to the transferee and a new certificate evidencing the remaining portion of the shares not so transferred, if any, shall be issued to the transferring Holder.

6. Liquidation.

(a) Upon the occurrence of any Liquidation Event, the Holders shall be entitled to receive, prior and in preference to any distribution of any of the assets or funds of the Corporation to the holders of Junior Securities by reason of their ownership thereof, an amount per share in cash equal to the sum of (i) one hundred percent (100%) of the Stated Value per share of Series C Preferred Stock then held by them (as adjusted for any stock split, stock dividend, stock combination or other similar transactions with respect to the Series C Preferred Stock), plus (ii) 100% of all declared but unpaid dividends, and all accrued but unpaid dividends on each such share of Series C Preferred Stock (including, for the avoidance of doubt, any Series C Preferred Dividends applicable to such share of Series C Preferred Stock that have accrued thereon), in each case as of the date of such Liquidation Event (clauses (i) and (ii) together, the "**Series C Preferred Stock Liquidation Preference**").

(b) If, upon the occurrence of a Liquidation Event, the assets and funds distributed among the Holders shall be insufficient to permit the payment to such Holders of the full Series C Preferred Stock Liquidation Preference, then (x) the Corporation shall take any action necessary or appropriate, to the extent permissible under applicable law and reasonably within its control, to remove promptly any impediments to its ability to pay the total Series C Preferred Stock Liquidation Preference, including to the extent permissible under applicable law, reducing the stated capital of the Corporation or causing a revaluation of the assets of the Corporation to create sufficient surplus to make such payment, and (y) the entire assets and funds of the Corporation legally available for distribution shall be distributed ratably among the Holders in proportion to the aggregate Series C Preferred Stock Liquidation Preference that would otherwise be payable to each of such Holders with respect to the Series C Preferred Stock.

(c) In the event that the Series C Preferred Stock Liquidation Preference is not paid with respect to any shares of Series C Preferred Stock as required to be paid pursuant to this Section 6, (i) such shares shall continue to be entitled to dividends thereon as provided in Section 3, and (ii) such event shall constitute a Breach Event. In the event that the Series C Preferred Stock Liquidation Preference is not paid with respect to any shares of Series C Preferred Stock as required to be paid pursuant to this Section 6, all such shares shall remain outstanding and entitled to all the rights and preferences provided herein, and the Corporation shall pay interest on the Series C Preferred Stock Liquidation Preference and any dividends accruing after the date payment thereof is due pursuant to this Section 6 with respect to such shares, at an aggregate rate per annum equal to the prime corporate rate announced from time to time at the end of each calendar month by the Wall Street Journal plus ten percent (10%) (increased by one percent (1%) at the end of each six (6) month period thereafter up to a maximum of 19%, until the Series C Preferred Stock Liquidation Preference, and any interest thereon, is paid in full), with such interest to accrue daily in arrears and to be compounded monthly; provided that in no event shall such interest exceed the maximum permitted rate of interest under applicable law; and provided further that the Corporation shall make all filings necessary to raise such rate to the maximum permitted rate of interest under applicable law (the "**Maximum Permitted Rate**"). In the event that fulfillment of any provision hereof results in such rate of interest being in excess of the Maximum Permitted Rate, the amount of interest required to be paid hereunder shall automatically be reduced to eliminate such excess; provided that any subsequent increase in the Maximum Permitted Rate shall be retroactively effective to the date payment of the Series C Preferred Stock Liquidation Preference is due pursuant to this Section 6 to the extent permitted by law.

(d) To the extent not prohibited by applicable law, upon the occurrence of a Liquidation Event, following completion of the distributions required by Section 6(a) (including without limitation the payment in full of the Series C Preferred Stock Liquidation Preference), if assets or surplus funds remain in the Corporation, no further payments shall be due with respect to the Series C Preferred Stock and the holders of the Common Stock and other Junior Securities shall share in all remaining assets of the Corporation.

(e) The Corporation shall provide written notice of any Liquidation Event to each record Holder, if practicable, not less than 30 days prior to the payment date or effective date thereof, or, if not practicable to provide prior notice, promptly upon the occurrence thereof.

(f) In the event that, immediately prior to the closing of a Liquidation Event, the cash distributions required by Section 6(a) have not been made, the Corporation shall forthwith either: (i) make payment of such distributions upon or immediately following the closing of such Liquidation Event; (ii) cause such closing to be postponed until such time as such cash distributions have been made; or (iii) cancel such transaction, in which event the rights, preferences and privileges of the Holders shall revert to and be the same as such rights, preferences and privileges existing immediately prior to the date of the first notice by the Corporation required under Section 6(e) and no additional amounts shall be due and owing by the Corporation pursuant to Section 6(c).

(g) Notwithstanding anything herein, the Corporation shall not, directly or indirectly, without the prior affirmative vote or prior written consent of the Majority Holders, consummate or be subject to the occurrence of a Liquidation Event.

7. Conversion Rights.

Subject to Sections 3(c) and 3(e), the holders of the Series C Preferred Stock shall have the following rights and restrictions with respect to the conversion of the Series C Preferred Stock into shares of Common Stock:

(a) Optional Conversion. At the option of any Holder, any Series C Preferred Stock held by such Holder may be converted into Common Stock based on the applicable Conversion Price then in effect for the Series C Preferred Stock. A Holder may convert Series C Preferred Stock into Common Stock pursuant to this paragraph at any time, and from time to time, after the Original Issue Date for the applicable shares of Series C Preferred Stock, by delivering to the Corporation a conversion notice (the "**Optional Conversion Notice**"), in the form attached hereto on Annex A, properly completed and duly executed, and the date any such Optional Conversion Notice is delivered to the Corporation (as determined in accordance with the notice provisions hereof) is an "**Optional Conversion Date**."

(b) Mandatory Conversion.

(i) If at any time the Closing Bid Price of the Common Stock exceeds 170% of the Conversion Price for at least five consecutive trading days (subject to appropriate adjustments for any stock dividend, stock split, stock combination, reclassification or similar transaction) (the "**Mandatory Conversion Condition**"), the Corporation shall have the right to require each Holder to convert all, or any whole number, of shares of Series C Preferred Stock, in each case as designated in the Mandatory Conversion Notice, into such number of fully paid, validly issued and nonassessable shares of Common Stock (as determined pursuant to Section 7(d)(i)) in accordance with this Section 7(b)(i) as of the Mandatory Conversion Date (a "**Mandatory Conversion**"). The Corporation may exercise its right to require conversion under this Section 7(b)(i) by delivering a written notice thereof to all, but not less than all, of the holders of shares of Series C Preferred Stock and the Corporation's transfer agent (the "**Mandatory Conversion Notice**" and the date on which such notice is deemed given to all of the Holders pursuant to Section 12 hereof is referred to as the "**Mandatory Conversion Notice Date**"). The Mandatory Conversion Notice shall be irrevocable except with respect to a Mandatory Conversion Conditions Failure (as defined below). The Mandatory Conversion Notice shall state: (i) the Trading Day selected for the Mandatory Conversion in accordance with this Section 7(b)(i), which Trading Day shall be the fifth (5th) Trading Day following the Mandatory Conversion Notice Date (the "**Mandatory Conversion Date**"); (ii) the aggregate number of shares of Series C Preferred Stock and any accrued and unpaid Series C Preferred Dividends thereon subject to Mandatory Conversion from such Holder and the other Holders pursuant to this Section 7(b)(i); (iii) the number of shares of Common Stock to be issued to such Holder on the Mandatory Conversion Date; and (iv) that the Mandatory Conversion Condition has been satisfied. The Corporation shall deliver to each Holder a certificate signed by the Chief Financial Officer of the Corporation (the "**Mandatory Conversion Certification**") no later than 10:00 a.m., New York time, on the Mandatory Conversion Date, certifying that the Mandatory Conversion Condition has been met; provided, that to the extent the Corporation is deemed to have not given the foregoing Mandatory Conversion Certification by such deadline (a "**Mandatory Conversion Conditions Failure**"), such Mandatory Conversion Certification shall instead state, unless such Holder waives any such conditions, that the conditions have not been met and that such Mandatory Conversion Notice is revoked and null and void; provided, further, that a failure by the Corporation to deliver a Mandatory Conversion Certification to such Holder on the Mandatory Conversion Date shall be deemed to be a Mandatory Conversion Conditions Failure. Notwithstanding the foregoing, the Corporation may effect only one (1) Mandatory Conversion during any thirty (30) calendar day period. If there is a Mandatory Conversion Conditions Failure after the delivery by the Corporation of the Mandatory Conversion Notice Date and prior to the Mandatory Conversion Date, the Corporation shall promptly deliver to each Holder a notice of such Mandatory Conversion Conditions Failure and each Holder shall have the right to either (I) waive the Mandatory Conversion Conditions Failure, in which case the Corporation shall complete the Mandatory Conversion in accordance with this Section 7(b), or (II) elect that the conversion of such Holder's shares of Series C Preferred Stock pursuant to the Mandatory Conversion not occur. For the avoidance of doubt, upon any Mandatory Conversion of any shares of Series C Preferred Stock, the Common Stock delivered in connection with such Mandatory Conversion shall be accompanied by the payment to the Holder of the Conversion Dividends, in accordance in Section 7(d), with respect to the shares of Series C Preferred Stock being converted in accordance with this Section 7(b) as if such Mandatory Conversion Date was a "Dividend Payment Date" for all purposes hereunder.

(ii) Pro Rata Mandatory Conversion Requirement. If the Corporation elects to cause a conversion of any shares of Series C Preferred Stock pursuant to Section 7(b)(i), then it must simultaneously take the same action in the same proportion with respect to all holders of shares of Series C Preferred Stock, subject, however, to the limitations set forth in Section 3(c) and Section 3(e). If the Corporation elects a Mandatory Conversion pursuant to Section 7(b)(i) with respect to less than all of the number of shares of Series C Preferred Stock then outstanding, then the Corporation shall require conversion of shares of Series C Preferred Stock from each of the Holders equal to the product of (i) the aggregate shares of Series C Preferred Stock which the Corporation has elected to cause to be converted pursuant to Section 7(b)(i), multiplied by (ii) such Holder's Pro Rata Portion (such fraction with respect to each such holder is referred to as its "**Mandatory Conversion Allocation Percentage**", and such amount with respect to each Holder is referred to as its "**Pro Rata Mandatory Conversion Amount**"). In the event that the initial holder of any shares of Series C Preferred Stock shall sell or otherwise transfer any of such Holder's shares of Series C Preferred Stock, the transferee shall be allocated a pro rata portion of such Holder's Mandatory Conversion Allocation Percentage and the Pro Rata Mandatory Conversion Amount.

(iii) From and after the Mandatory Conversion Date, all rights of any Holder shall automatically cease and terminate with respect to any shares of Series C Preferred Stock so converted into Common Stock on the Mandatory Conversion Date, and all shares of Series C Preferred Stock so converted shall automatically be cancelled and shall no longer be outstanding.

(c) Conversion Price. The conversion price for the Series C Preferred Stock shall initially be $1.96 (the "**Conversion Price**"). Such initial Conversion Price shall be adjusted from time to time in accordance with Sections 7(e) and (f). All references to the Conversion Price herein shall mean the Conversion Price as so adjusted.

(d) Mechanics of Conversion.

(i) The number of shares of Common Stock issuable upon any conversion of shares of Series C Preferred Stock hereunder shall equal the quotient of (x) the product of (A) the Stated Value (as adjusted for any stock split of the Series C Preferred Stock, stock combination of the Series C Preferred Stock or other similar transaction of the Series C Preferred Stock) multiplied by, (B) the number of shares of Series C Preferred Stock to be converted, divided by, (y) the Conversion Price on the Conversion Date. The Corporation shall pay each Holder of shares of Series C Preferred Stock being converted pursuant to either Section 7(a), or Section 7(b), the amount of any accrued but unpaid dividends on such shares of Series C Preferred Stock held by such Holder on the Conversion Date (the "**Conversion Dividends**") in a manner consistent with the provisions governing the payment of Series C Preferred Dividends set forth in Section 3 of this Certificate of Designations.

(ii) Upon conversion of any shares of Series C Preferred Stock, the Corporation shall promptly (but in no event later than three (3) Trading Days after the Conversion Date) (i) credit the number of shares of Common Stock to which such Holder shall be entitled to such Holder's or its designee's balance account with DTC through its Deposit Withdrawal Agent Commission System, or (ii) in the event that clause (i) is not applicable, issue or cause to be issued and cause to be delivered to or upon the written order of the Holder and in such name or names as the Holder may designate a certificate for the Underlying Shares issuable upon such conversion. The Holder, or any Person so designated by the Holder to receive Underlying Shares, shall be deemed to have become holder of record of such Underlying Shares as of the Conversion Date.

(iii) The Holder shall not be required to deliver the original certificate(s) evidencing the Series C Preferred Stock being converted in order to effect a conversion of such Series C Preferred Stock hereunder. Execution and delivery of the Conversion Notice shall have the same effect as cancellation of the original certificate(s) and issuance of a new certificate evidencing the remaining shares of Series C Preferred Stock; provided that the cancellation of the original certificate(s) shall not be deemed effective until a certificate for such Underlying Shares is delivered to the Holder, or the Holder or its designee receives a credit for such Underlying Shares to its balance account with the DTC through its Deposit Withdrawal Agent Commission System. Upon surrender of a certificate following one or more partial conversions, the Corporation shall promptly deliver to the Holder a new certificate representing the remaining shares of Series C Preferred Stock.

(iv) The Corporation's obligations to issue and deliver Underlying Shares upon conversion of shares of Series C Preferred Stock in accordance with the terms and subject to the conditions hereof are absolute and unconditional, irrespective of any action or inaction by the Holder to enforce the same, any waiver or consent with respect to any provision hereof, or the recovery of any judgment against any Person or any action to enforce the same, or any set-off, counterclaim, recoupment, limitation or termination.

(e) Adjustment for Stock Splits and Combinations. If at any time or from time to time on or after the Original Issue Date the Corporation effects a subdivision of the outstanding Common Stock, the Conversion Price in effect immediately before that subdivision shall be proportionately decreased. Conversely, if at any time or from time to time after the Original Issue Date the Corporation combines the outstanding shares of Common Stock into a smaller number of shares, the Conversion Price in effect immediately before the combination shall be proportionately increased. Any adjustment under this Section 7(e) shall become effective at the close of business on the date the subdivision or combination becomes effective.

(f) Adjustment for Reclassification, Exchange, Substitution, Reorganization, Merger or Consolidation. If at any time or from time to time on or after the Original Issue Date the Common Stock issuable upon the conversion of the Series C Preferred Stock is changed into the same or a different number of shares of any class or classes of stock, whether by recapitalization, reclassification, merger, consolidation or otherwise (other than a subdivision or combination of shares provided for elsewhere in this Section 7), in any such event each Holder shall then have the right to convert Series C Preferred Stock into the kind and amount of stock and other securities and property receivable upon such recapitalization, reclassification, merger, consolidation or other change by holders of the maximum number of shares of Common Stock into which such shares of Series C Preferred Stock could have been converted immediately prior to such recapitalization, reclassification, merger, consolidation or change, all subject to further adjustment as provided herein or with respect to such other securities or property by the terms thereof. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 7 with respect to the rights of the holders of Series C Preferred Stock after the capital reorganization to the end that the provisions of this Section 7 (including adjustment of the Conversion Price then in effect and the number of shares issuable upon conversion of the Series C Preferred Stock) shall be applicable after that event and be as nearly equivalent as practicable.

(g) Certificate of Adjustment. In each case of an adjustment or readjustment of the Conversion Price for the number of shares of Common Stock or other securities issuable upon conversion of the Series C Preferred Stock, if the Series C Preferred Stock is then convertible pursuant to this Section 7, the Corporation, at its expense, shall compute such adjustment or readjustment in accordance with the provisions hereof and shall, upon request, prepare a certificate showing such adjustment or readjustment, and shall mail such certificate, by first class mail, postage prepaid, to each Holder so requesting at the Holder's address as shown in the Corporation's books. Failure to request or provide such notice shall have no effect on any such adjustment.

(h) Fractional Shares. The Corporation shall not be required to issue or cause to be issued fractional shares of Common Stock on conversion of Series C Preferred Stock. Subject to Section 7(j), if any fraction of a share of Common Stock would, except for the provisions of this Section, be issuable upon conversion of Series C Preferred Stock, the number of shares of Common Stock to be issued will be rounded down to the nearest whole share, and the Corporation shall, in lieu of issuing any fractional share, pay an amount of cash equal to the product of such fraction multiplied by the Conversion Price on the date of conversion (each such payment in cash, the "**Fractional Cash Payment**").

(i) Payment of Taxes. The Corporation will pay all documentary, stamp, transfer (but only in respect of the registered Holder thereof) and other similar taxes that may be imposed with respect to the issue or delivery of shares of Common Stock upon conversion of shares of Series C Preferred Stock, excluding any tax or other charge imposed in connection with any transfer involved in the issue and delivery of shares of Common Stock in a name other than that in which the shares of Series C Preferred Stock so converted were registered. Holders shall be liable for any income, capital gain or similar tax imposed in connection with such transfer.

(j) Restrictions. Notwithstanding anything else set forth in this Section 7 to the contrary, the Corporation shall not be required to pay any Fractional Cash Payments pursuant to Section 7(h) to any Holder if the payment of such Fractional Cash Payments would cause the Corporation to violate any applicable law or regulation or order. The Corporation shall pay any Fractional Cash Payments owed by it but that it did not pay pursuant to the immediately preceding sentence on the date that is on or before the day that is five (5) days after the Corporation is first able to pay such Fractional Cash Payments without violating any applicable law or regulation or order.

8. Redemption.

(a) Each Holder shall have the right to require the Corporation to redeem all or any portion of its outstanding shares of Series C Preferred Stock at any time, and from time to time, after December 15, 2022, by delivering written notice (the "**Redemption Notice**") thereof to the Corporation, which shall specify (i) the number of shares of Series C Preferred Stock to be redeemed and (ii) the date on which the Holder's optional redemption shall occur, which date shall be not less than thirty (30) Business Days from the date the Corporation receives the Redemption Notice (such date hereinafter referred to as the "**Redemption Date**"). On the Redemption Date, the shares of Series C Preferred Stock specified in the Redemption Notice shall be redeemed by the Corporation at a price per share equal to the Series C Preferred Stock Liquidation Preference, in each case as of the Redemption Date, in cash to the Holder thereof (the "**Redemption Price**").

(b) If the funds of the Corporation legally available to redeem shares of Series C Preferred Stock on the Redemption Date are insufficient to redeem the total number of such shares required to be redeemed on such date or the Corporation is otherwise prohibited from redeeming the total number of such shares, the Corporation shall (i) take any action necessary or appropriate, to the extent permissible under applicable law and reasonably within its control, to remove promptly any impediments to its ability to redeem the total number of shares of Series C Preferred Stock required to be so redeemed, including to the extent permissible under applicable law, reducing the stated capital of the Corporation or causing a revaluation of the assets of the Corporation to create sufficient surplus to make such redemption, and (ii) in any event, use any funds legally available to redeem the maximum possible number of such shares from the holders of such shares to be redeemed in proportion to the respective number of such shares that otherwise would have been redeemed if all such shares had been redeemed in full. In the event that any shares of Series C Preferred Stock required to be redeemed pursuant to this Section 8 are not redeemed and continue to be outstanding, (A) such shares shall continue to be entitled to dividends thereon as provided in Section 3 until the date on which the Corporation actually redeems such shares and (B) such event shall constitute a Breach Event.

(c) If any shares of Series C Preferred Stock are not redeemed for any reason when required pursuant to this Section 8, on the Redemption Date all such unredeemed shares shall remain outstanding and entitled to all the rights and preferences provided herein, and the Corporation shall pay interest on the Redemption Price and any dividend accruing after the Redemption Date with respect to such unredeemed shares, at an aggregate rate per annum equal to the prime corporate rate announced from time to time at the end of each calendar month by the Wall Street Journal plus ten percent (10%) (increased by one percent (1%) at the end of each six (6) month period thereafter up to a maximum of 19% until the Redemption Price, and any interest thereon, is paid in full), with such interest to accrue daily in arrears and to be compounded monthly; provided that in no event shall such interest exceed the Maximum Permitted Rate. In the event that fulfillment of any provision hereof results in such rate of interest being in excess of the Maximum Permitted Rate, the amount of interest required to be paid hereunder shall automatically be reduced to eliminate such excess; provided that any subsequent increase in the Maximum Permitted Rate shall be retroactively effective to the Redemption Date to the extent permitted by law.

(d) Each Holder of Series C Preferred Stock to be redeemed pursuant to this Section 8 shall surrender to the Corporation the certificate or certificates representing such shares within three (3) Business Days after such Holder's receipt of the Redemption Price and all other amounts due to such Holder pursuant to this Section 8, in the manner and at the place designated by the Corporation. In the event less than all the shares represented by any such certificate are redeemed, a new certificate shall be issued to the Holder by the Corporation representing the unredeemed shares.

(e) The Corporation may redeem the Series C Preferred Stock at any time upon thirty (30) days advance notice to each Holder at the Redemption Price; provided, that the Holders shall have the right to convert their shares of Series C Preferred Stock into Common Stock in lieu of receiving the Redemption Price.

9. Breach Events and Breach Event Redemption.

(a) A "**Breach Event**" means any one of the following events (whatever the reason and whether it shall be voluntary or involuntary or effected by operation of law or pursuant to any judgment, decree or order of any court, or any order, rule or regulation):

(i) any provision of any Transaction Document, at any time after the Original Issue Date, and for any reason other than as permitted thereunder, ceases to be in full force and effect as against the Corporation in any material respect or the Corporation purports to revoke, terminate or rescind any Transaction Document as against any Holder other than in respect of a material breach thereby by such Holder;

(ii) any default in any payment obligations in respect of any Series C Preferred Stock or any other payment obligation of the Corporation to any Holder pursuant to any Transaction Document, as and when the same become due and payable pursuant to this Certificate of Designations or the applicable Transaction Document (including, for purposes of clarity, in the case any payments contemplated to be made pursuant to Sections 3, 6, 7 and 8 are not made because they are deemed to be legally prohibited), and such payment shall not have been made within ten (10) Business Days of the date such payment is due pursuant to the applicable Transaction Document;

(iii) the Corporation or any Subsidiary defaults in any of its covenants or other obligations in respect of any Indebtedness in an amount exceeding $500,000, whether such Indebtedness now exists or is hereafter created, and any such default is not cured within the greater of (x) the time permitted by such agreements, or (y) 30 days, other than pursuant to a good faith dispute relating to such Indebtedness;

(iv) the Corporation or any Subsidiary is in default under or has breached any provision of any Contract (which default or breach is not cured within the applicable cure period set forth in such Contract) and such breach or default individually or, when taken together with all other breaches or defaults under any other Contracts to which the Corporation or any Subsidiary is a party (after giving effect to any applicable cure periods), in the aggregate has had, or could reasonably be expected to have, a Material Adverse Effect;

(v) there is entered against the Corporation or any Significant Subsidiary (A) a final judgment or order or settlement by a court of competent jurisdiction for the payment of money in an aggregate amount exceeding $500,000, except to the extent such amounts have been paid to or on behalf of the Corporation or such Significant Subsidiary by its respective insurer(s), or (B) any one or more non-monetary final judgments by a court or courts of competent jurisdiction that have, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect;

(vi) any change, event or circumstance occurs that has had, individually or in the aggregate, a Material Adverse Effect;

(vii) a breach of any covenant set forth in Section 14(b) hereto;

(viii) the occurrence of any Liquidation Event which is not approved by the Majority Holders;

(ix) the occurrence of any Triggering Event; or

(x) the occurrence of any Bankruptcy Event.

(b) Upon the occurrence of any Breach Event,

(i) each Holder may elect by written notice to the Corporation, to require the Corporation to repurchase any outstanding shares of Series C Preferred Stock held by such Holder at a price per share equal to the greater of (A) the Series C Preferred Stock Liquidation Preference; and (B) the product of (y) that number of shares of Common Stock into which such share of Series C Preferred Stock (and all accrued but unpaid dividends with respect thereto) is then convertible (without giving effect to any limitations on conversion contained herein), multiplied by (z) the Closing Bid Price as of the date of the occurrence of such Breach Event, payable in cash; and

(ii) if in connection with such Breach Event the Corporation is in default under or has breached any provision of any Transaction Document in respect of its obligations to redeem a majority of the then outstanding shares of Series C Preferred Stock, upon the affirmative vote or by written consent of the Majority Holders, and without further action by any Holders, the number of directors constituting the Board shall automatically be increased by a number sufficient to cause such additional directors to constitute a majority of the Board. The Holders, voting as a single class to the exclusion of the holders of all other securities and classes of capital stock of the Corporation, shall elect such additional directors. For the avoidance of doubt, such additional directors shall constitute a majority of the Board. The period beginning on the date any Breach Event occurs and ending on the date upon which all shares of Series C Preferred Stock required to be redeemed pursuant to Section 9(b)(i) are so redeemed is referred to herein as the "**Voting Period**." As soon as practicable after the commencement of the Voting Period, the Corporation shall call a special meeting of the Holders to be held not more than 20 days after the date of mailing of notice of such meeting. If the Corporation fails to send a notice, any such Holder may call the meeting on like notice. The record date for determining those Holders entitled to notice of and to vote at such special meeting shall be the close of business on the fifth (5th) Business Day preceding the day on which such notice is mailed or as otherwise required by applicable law. At any such special meeting and at each meeting of such Holders held during a Voting Period at which directors are to be elected (or with respect to any action by written consent in lieu of a meeting of stockholders), the Majority Holders, voting together as a single class to the exclusion of the holders of all other securities and classes of capital stock of the Corporation, shall be entitled to elect the number of directors prescribed in this Section 9(b)(ii), and each share of Series C Preferred Stock held by a Holder shall be entitled to one (1) vote (whether voted in person by the holder thereof or by proxy or pursuant to a stockholders' consent). The terms of office of all persons who are incumbent directors of the Corporation at the time of a special meeting of the Holders (or any action by written consent in lieu of a meeting of stockholders) to elect such additional directors shall continue, notwithstanding the election at such meeting or pursuant to such written consent of the additional directors that such Holders are entitled to elect, and the additional directors so elected by such Holders, together with such incumbent directors, shall constitute the duly elected directors of the Corporation. Simultaneously with the termination of the Voting Period, the terms of office of the additional directors elected by the Holders under this Section 9(b)(ii) shall terminate, such incumbent directors shall constitute the directors of the Corporation, the number of directors constituting the Board shall automatically be decreased so that the number equals the number immediately prior to the increase pursuant to this Section 9(b)(ii) and the rights of the Holders to elect directors pursuant to this Section 9(b)(ii) shall cease.

(c) If any payments are not made for any reason when required pursuant to this Section 9, the Corporation shall pay interest on all amounts due under this Section 9, at an aggregate rate per annum equal to the prime corporate rate announced from time to time at the end of each calendar month by the Wall Street Journal plus ten percent (10%) (increased by one percent (1%) at the end of each six (6) month period thereafter up to a maximum of 19% until all such payments have been made, and any interest thereon, are paid in full), with such interest to accrue daily in arrears and to be compounded monthly; provided that in no event shall such interest exceed the Maximum Permitted Rate. In the event that fulfillment of any provision hereof results in such rate of interest being in excess of the Maximum Permitted Rate, the amount of interest required to be paid hereunder shall automatically be reduced to eliminate such excess; provided that any subsequent increase in the Maximum Permitted Rate shall be retroactively effective to the date such payment and/or delivery is due to the extent permitted by law.

10. Replacement Certificates. If any certificate evidencing Series C Preferred Stock, or Common Stock deliverable pursuant to this Certificate of Designations, is mutilated, lost, stolen or destroyed, the Corporation shall issue or cause to be issued in exchange and substitution for and upon cancellation thereof, or in lieu of and substitution for such certificate, a new certificate, but only upon receipt of evidence reasonably satisfactory to the Corporation of such loss, theft or destruction (in such case) and, in each case, customary and reasonable indemnity, if requested. Applicants for a new certificate under such circumstances shall also comply with such other reasonable regulations and procedures and pay such other reasonable third-party costs as the Corporation may prescribe.

11. Reservation of Common Stock. The Corporation shall at all times reserve and keep available out of the aggregate of its authorized but unissued and otherwise unreserved Common Stock, solely for the purpose of enabling it to issue Underlying Shares as required hereunder, the number of shares of Common Stock which are then issuable and deliverable pursuant to this Certificate of Designations, in each case free from preemptive rights or any other contingent purchase rights of Persons other than the Holders. All shares of Common Stock so issuable and deliverable shall, upon issuance in accordance with the terms hereof, be duly and validly authorized, issued and fully paid and nonassessable. If at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to issue Underlying Shares as required hereunder, the Corporation will take such corporate action as may be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose.

12. Notices. Any and all notices or other communications or deliveries hereunder shall be in writing and shall be deemed given and effective on the earliest of (i) the date of transmission, if such notice or communication is delivered via email or facsimile at the email address or facsimile number specified in this Section prior to 5:30 p.m. (New York City time) on a Business Day, (ii) the next Business Day after the date of transmission, if such notice or communication is delivered via email or facsimile at the email address or facsimile number specified in this Section on a day that is not a Business Day or later than 5:30 p.m. (New York City time) on any Business Day, (iii) the Business Day following the date of mailing, if sent by nationally recognized overnight courier service, or (iv) upon actual receipt by the party to whom such notice is required to be given. The address or facsimile number for such communications shall be: (i) if to the Corporation, to the address or facsimile number therefor set forth in the Purchase Agreement, or (ii) if to a Holder, to the address or facsimile number appearing on the Corporation's stockholder records or such other address or facsimile number as such Holder may provide to the Corporation in accordance with this Section 12.

13. Voting Rights. In addition to the rights provided by law and otherwise provided in this Certificate of Designations, the Holder shall be entitled to vote on all matters as to which holders of Common Stock shall be entitled to vote, in the same manner and with the same effect as such holders of Common Stock, voting together with the holders of Common Stock as one class (including without limitation with respect to any matter relating to a Liquidation Event, any amendment of the Certificate of Incorporation, any increase or decrease in the number of authorized shares of Common Stock of the Corporation or any other matter subject to the vote or consent of the holders of Common Stock), and, except as specifically required by applicable law or in the event the Corporation enters into transaction with Purchaser or any Affiliate of Purchaser that could result in a Liquidation Event and the Board in its exercise of its fiduciary duties determines that a separate vote of the Common Stock is required, in no event shall the holders of the Common Stock vote as a separate class from the Series C Preferred Stock on any matter. With respect to the voting rights of the Holders pursuant to the preceding sentence, each Holder shall be entitled to one vote for each share of Common Stock that would be issuable to such Holder upon the conversion of all the shares of Series C Preferred Stock held by such Holder on the record date for the determination of stockholders entitled to vote, subject to (i) the limitations set forth in Section 3(c) and Section 3(e) and (ii) the number of shares voted is based on a conversion price which is no less than the greater of the book or market value of the Common Stock on the Principal Market on the closing date of the purchase of the Series C Preferred Stock (subject to adjustment from time to time for stock splits, stock dividends, stock combinations and similar events, as applicable, with respect to the Common Stock).

14. Actions Prohibited.

(a) To the extent the Corporation is prohibited by law from taking any action specified in this Certificate of Designations, the Corporation shall, upon the request of the Majority Holders, in addition to any other requirements of this Certificate of Designations, take such actions as may be reasonably requested by the Majority Holders to implement a valid and enforceable provision that is a reasonable substitute for the prohibited provision in order to give the maximum effect to the intent of the Corporation and the Holders (the "**Amended Provision**"). The Corporation shall take any action necessary or appropriate, to the extent reasonably within its control, to cause this Certificate of Designations to be amended to include the Amended Provision.

(b) For so long as the Series C Preferred Stock remains outstanding, the Corporation shall not, directly or indirectly, and including in each case with respect to any Significant Subsidiary (as applicable), without the affirmative vote of the Majority Holders:

(i) liquidate, dissolve or wind up the Corporation or any Significant Subsidiary

(ii) consummate any transaction that would constitute or result in a Liquidation Event;

(iii) effect or consummate any Prohibited Issuance; or

(iv) create, incur, assume or suffer to exist any Indebtedness of any kind, other than existing Indebtedness of the Corporation as set forth on Schedule 4.8 to the Purchase Agreement and any replacement financing thereto, provided that any such replacement financing be on substantially similar terms as such existing Indebtedness.

15. Miscellaneous.

(a) The headings herein are for convenience only, do not constitute a part of this Certificate of Designations and shall not be deemed to limit or affect any of the provisions hereof.

(b) No provision of this Certificate of Designations may be amended, except in a written instrument signed by the Corporation and the Majority Holders. Any of the rights of the Holders set forth herein may be waived by the affirmative vote or by written consent of the Majority Holders, except that each Holder may waive its own rights as provided in this Certificate of Designations. No waiver of any default with respect to any provision, condition or requirement of this Certificate of Designations shall be deemed to be a continuing waiver in the future or a waiver of any subsequent default or a waiver of any other provision, condition or requirement hereof, nor shall any delay or omission of either party to exercise any right hereunder in any manner impair the exercise of any such right.

[Signature page follows]

IN WITNESS WHEREOF, the undersigned has caused this Certificate of Designations to be duly executed as of this 15th day of December, 2017.

MODUSLINK GLOBAL SOLUTIONS, INC.

By: /s/ Louis J. Belardi

Name: /s/ Louis J. Belardi

Title: Chief Financial Officer

ANNEX A

NOTICE OF CONVERSION

(TO BE EXECUTED BY THE REGISTERED HOLDER IN ORDER
TO CONVERT SHARES OF SERIES C PREFERRED STOCK)

The undersigned Holder hereby irrevocably elects to convert the number of shares of Series C Preferred Stock indicated below, represented by stock certificate No(s). _____, into shares of common stock, par value $0.01 per share (the "***Common Stock***"), of ModusLink Global Solutions, Inc., a Delaware corporation (the "***Corporation***"), as of the date written below. If securities are to be issued in the name of a person other than the undersigned, the undersigned will pay all transfer taxes payable with respect thereto.

Conversion calculations:

Date to Effect Conversion: _____

Number of shares of Series C Preferred Stock owned prior to Conversion: _____

Number of shares of Series C Preferred Stock to be Converted: _____

Number of shares of Common Stock to be Issued: _____

Address for delivery of physical certificates: _____

or

for DWAC Delivery:

DWAC Instructions:
Broker no: _____
Account no: _____

[HOLDER]

By: _____
Name:
Title:
Date:

MODUSLINK GLOBAL SOLUTIONS, INC.

PREFERRED STOCK PURCHASE AGREEMENT

DECEMBER 15, 2017

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PREFERRED STOCK PURCHASE AGREEMENT

This Preferred Stock Purchase Agreement is entered into and dated as of December 15, 2017 (this "**Agreement**"), by and between ModusLink Global Solutions, Inc., a Delaware corporation (the "**Company**"), and SPH Group Holdings LLC (the "**Purchaser**").

WHEREAS, subject to the terms and conditions set forth in this Agreement and pursuant to Section 4(2) of the Securities Act of 1933, and rules promulgated thereunder, the Company desires to issue and sell to the Purchaser, and the Purchaser desires to purchase from the Company, shares of the Company's Series C Convertible Preferred Stock, par value $0.01 per share, pursuant to the terms set forth herein.

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants contained in this Agreement, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Company and the Purchaser agree as follows:

ARTICLE I.
DEFINITIONS

1.1 Definitions. In addition to the terms defined elsewhere in this Agreement, the following terms shall have the meanings set forth in this Section 1.1:

"**Affiliate**" of a Person means any other Person that, directly or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the first Person. Without limiting the foregoing with respect to the Purchaser, any investment fund or managed account that is managed on a discretionary basis by the same investment manager as the Purchaser will be deemed to be an Affiliate of the Purchaser.

"**Breach Event**" shall have the definition set forth in the Certificate of Designations.

"**Business Day**" means any day except Saturday, Sunday and any day which is a U.S. federal legal holiday or a day on which banking institutions in the State of New York are authorized or required by law or other governmental action to close.

"**Certificate of Designations**" means the Certificate of Designations, Preferences and Rights of the Series C Convertible Preferred Stock of ModusLink Global Solutions, Inc. in the form attached hereto as Exhibit A.

"**Claim**" is defined in Section 3.1(n).

"**Closing**" is defined in Section 2.2.

"**Closing Date**" is defined in Section 2.2.

"**Commission**" or "**SEC**" means the U.S. Securities and Exchange Commission.

"**Committee Counsel**" means Littman Krooks LLP, counsel to the Special Committee.

"**Common Stock**" means the common stock of the Company, par value $0.01 per share, and any securities into which such common stock may hereafter be reclassified or converted.

"**Common Stock Equivalents**" means, collectively, Options and Convertible Securities.

"**Company**" is defined in the Preamble hereto.

"**Company Bylaws**" is defined in Section 3.1(a).

"**Company Certificate**" is defined in Section 3.1(a).

"**Company's Knowledge**" means the actual knowledge, as of the date of this Agreement, of the executive officers (as defined in Rule 405 under the Securities Act) of the Company, after reasonable inquiry.

"**Contracts**" means, with respect to any Person, any agreement, undertaking, franchise, permit, lease, loan, license, guarantee, understanding, commitment, contract, note, bond, indenture, mortgage, deed of trust or other obligation, instrument, document, agreement or other arrangement of any kind (written or oral) to which such Person is a party or by which such Person, or any material amount of such Person's property, is bound.

"**Control**" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

"**Conversion Price**" is defined in the Certificate of Designations and, whenever referred to in this Agreement, the term "Conversion Price" shall refer to the Conversion Price as then in effect under the Certificate of Designations.

"**Convertible Notes**" means the 5.25% Convertible Senior Notes due 2019 of the Company.

"**Convertible Securities**" means any stock or securities (other than Options) directly or indirectly convertible into or exercisable or exchangeable for Common Stock.

"**Debt**" is defined in Section 3.1(n).

"**DTC**" is defined in Section 4.1(c).

"**Eligible Market**" means any of the following: the Principal Market, the New York Stock Exchange, the NYSE MKT, The NASDAQ Global Select Market, The NASDAQ Capital Market or the OTC Bulletin Board.

"**Evaluation Date**" is defined in Section 3.1(m).

"**Event**" is defined in Section 6.1(b)(v).

"**Exchange Act**" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

"**First Meeting**" is defined in Section 4.15(b).

"**GAAP**" is defined in Section 3.1(h).

"**Governmental Authority**" means any government or political subdivision or any agency, authority, bureau, central bank, commission, department or instrumentality, or any court, tribunal, grand jury or arbitrator, in each case whether foreign or domestic.

"**Holder**" and "**Holders**" shall include the Purchaser and any permitted transferee or transferees of Registrable Securities (as defined below) which have not been sold to the public to whom the registration rights conferred by this Agreement have been transferred in compliance with this Agreement; provided that neither such Person nor any Affiliate of such Person is registered as a broker or dealer under Section 15(a) of the Securities Exchange Act of 1934, as amended, or a member of the Financial Industry Regulatory Authority.

"**Holder Representative**" is defined in Section 6.1(e).

"**Indebtedness**" of any Person means (i) all indebtedness representing money borrowed which is created, assumed, incurred or guaranteed in any manner by such Person or for which such Person is responsible or liable (whether by guarantee of such indebtedness, agreement to purchase indebtedness of, or to supply funds to or invest in, others), (ii) any direct or contingent obligations of such Person arising under any letter of credit (including standby and commercial), bankers acceptances, bank guaranties, surety bonds and similar instruments, (iii) all indebtedness secured by any Lien existing on property or assets owned by such Person and (iv) any shares of capital stock or other securities having a redemption feature; provided that the Preferred Stock, and any obligations due in respect thereof in accordance, as applicable, with the Certificate of Designations shall not be deemed to be Indebtedness pursuant to this definition.

"**Indemnified Party**" is defined in Section 6.5(c)(i).

"**Indemnifying Party**" is defined in Section 6.5(c)(i).

"**IRS**" is defined in Section 3.1(m)(iv).

"**Liens**" is defined in Section 3.1(e).

"**Losses**" means any and all damages, fines, penalties, deficiencies, liabilities, claims, losses (including loss of value), judgments, awards, settlements, taxes, actions, obligations and costs and expenses in connection therewith (including, without limitation, interest, court costs and reasonable fees and expenses of attorneys, accountants and other experts, or any other expenses of litigation or other Proceedings or of any default or assessment).

"**Material Adverse Effect**" means any material adverse effect on the business, properties, assets, operations, results of operations, or condition (financial or otherwise) of the Company and its Subsidiaries, taken as a whole, or on the transactions contemplated by the Transaction Documents, or on the authority or ability of the Company to perform its obligations under the Transaction Documents; provided, however, that no effect(s) arising out of or resulting from any of the following will, in and of itself, constitute a Material Adverse Effect (provided, that, with respect to clauses (i), (ii), (iii) and (iv), any effect does not disproportionately adversely affect the Company or its Subsidiaries compared to other companies of similar size operating in the industry in which the Company and its Subsidiaries operate): (i) general economic conditions; (ii) conditions generally in the securities markets, financial markets or currency markets; (iii) political conditions or acts of war, sabotage or terrorism; and (iv) acts of God, natural disasters, weather conditions or other calamities.

"**Material Contract**" means (A) any agreement which requires future expenditures by the Company or any Subsidiary in excess of $500,000 or which might result in payments to the Company or any Subsidiary in excess of $500,000; (B) any purchase or task order which might result in payments to the Company or any Subsidiary in excess of $500,000; (C) any employment agreements (not including at-will employment letters with employees), (D) any agreement that is or would be required to be filed as an exhibit to the SEC Documents pursuant to Item 601(b)(10) of Regulation S-K of the Commission, and (E) any Contract the violation of which, or default under which, by the Company or any Subsidiary, on the one hand, or the other party(ies) to such Contract, on the other hand, could reasonably be expected to result in a Material Adverse Effect.

"**Options**" means any rights, warrants or options to, directly or indirectly, subscribe for or purchase Common Stock or Convertible Securities.

"**Person**" means an individual or corporation, partnership, trust, incorporated or unincorporated association, joint venture, limited liability company, joint stock company, government (or an agency or subdivision thereof) or other entity of any kind.

"**Piggyback Registration Statement**" is defined in Section 6.1(a).

"**Preferred Shares**" means the shares of Preferred Stock to be sold and issued by the Company to the Purchaser in accordance with and subject to the terms and conditions of this Agreement.

"**Preferred Stock**" means the Series C Convertible Preferred Stock of the Company, par value $0.01 per share, and all securities into which such preferred stock may be reclassified or converted (other than the Common Stock).

"**Principal Market**" means The NASDAQ Global Market.

"**Proceeding**" means an action, claim, suit, inquiry, investigation or proceeding (including, without limitation, an investigation or partial proceeding, such as a deposition), whether commenced or, to the Company's Knowledge, threatened.

"**Prohibited Issuance**" means the issuance of: (A) any shares of Common Stock at a purchase price less than the then-existing Conversion Price or the issuance of any Common Stock Equivalents with a conversion price or exercise price less than the then-existing Conversion Price, except under any stockholder approved equity incentive plan; (B) any Common Stock Equivalents consisting of Indebtedness that is convertible into or exchangeable or exercisable for Common Stock; (C) any preferred stock of the Company that is senior to or pari passu with the Preferred Stock with respect to rights, preferences or privileges as to dividends, liquidation preference or redemption or contains a greater than 1x liquidation preference or is a "participating" preferred stock; (D) any shares of Common Stock or Common Stock Equivalents to the extent the effective purchase or conversion price or the number of underlying shares floats or resets or otherwise varies or is subject to adjustment (directly or indirectly) based on market prices of the Common Stock; or (E) any warrants or other rights to purchase Common Stock that, when valued on a black scholes basis, decreases the exercise price for such warrants or other rights below the then-existing Conversion Price.

"**Prospectus**" means the prospectus included in the Registration Statement (including, without limitation, a prospectus that includes any information previously omitted from a prospectus filed as part of an effective registration statement in reliance upon Rule 430A promulgated under the Securities Act), as amended or supplemented by any prospectus supplement, with respect to the terms of the offering of any portion of the Registrable Securities covered by the Registration Statement, and all other amendments and supplements to the Prospectus including post-effective amendments, and all material incorporated by reference or deemed to be incorporated by reference in such Prospectus.

"**Purchase Price**" is defined in Section 2.1.

"**Purchaser Counsel**" or "**Olshan**" means Olshan Frome Wolosky LLP, counsel to the Purchaser.

"**Purchaser**" is defined in the Preamble hereto.

"**Records**" is defined in Section 6.1(d).

"**register**," "**registered**" and "**registration**" shall refer to a registration effected by preparing and filing a registration statement in compliance with the Securities Act and applicable rules and regulations thereunder, and the declaration or ordering of the effectiveness of such registration statement.

"**Registrable Securities**" means all Underlying Shares, together with any securities issued or issuable upon any stock split, dividend or other distribution, recapitalization or similar event with respect to the foregoing.

"**Registration Statement**" means any registration statements on Forms S-1 or S-3 required to be filed under Section 6.1, including (in each case) the Prospectus, amendments and supplements to such registration statement or Prospectus, including pre- and post-effective amendments, all exhibits thereto, and all material incorporated by reference or deemed to be incorporated by reference in such registration statement.

"**Registration Expenses**" shall mean all expenses to be incurred by the Company in connection with each Holder's registration rights under this Agreement, including, without limitation, all registration and filing fees, printing expenses, fees and disbursements of counsel for the Company, blue sky fees and expenses, and the expense of any special audits incident to or required by any such registration (but excluding the compensation of regular employees of the Company, which shall be paid in any event by the Company).

"**Regulation D**" shall mean Regulation D as promulgated pursuant to the Securities Act, and as subsequently amended.

"**Related Person**" is defined in Section 4.9.

"**Required Approvals**" is defined in Section 3.1(e).

"**Rule 144,**" "**Rule 415,**" and "**Rule 424**" means Rule 144, Rule 415 and Rule 424, respectively, promulgated by the Commission pursuant to the Securities Act, as such Rules may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same effect as such Rule.

"**SEC Documents**" has the meaning set forth in Section 3.1(h).

"**Securities**" means the Preferred Shares and the Underlying Shares issued or issuable (as applicable) to the Purchaser pursuant to the Transaction Documents.

"**Securities Act**" means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

"**Selling Expenses**" shall mean all underwriting discounts and selling commissions applicable to the sale of Registrable Securities and all fees and disbursements of counsel for the Holder not included within "**Registration Expenses**".

"**Significant Subsidiary**" means any Subsidiary that would be a "significant subsidiary" as defined in Article I, Rule 1-02 of Regulation S-X.

"**Special Committee**" means the special committee of independent directors of the Board of Directors of the Company established to evaluate the terms and conditions of the transactions set forth herein.

"**Stockholder Approval**" is defined in Section 4.15(a).

"**Solvent**" is defined in Section 3.1(n).

"**Subsidiary(ies)**" means at any time, any Person (other than a natural person or Governmental Authority) which the Company (either alone or through or together with any other Subsidiary), owns, directly or indirectly, more than a majority of the capital stock or equity interests the holders of which are generally entitled to vote for the election of the board of directors or other governing body of such Person.

"**Trading Day**" means (a) any day on which the Common Stock is listed or quoted and traded on its primary Trading Market, or (b) if the Common Stock is not then listed or quoted and traded on any Trading Market, then any Business Day.

"**Trading Market**" means The NASDAQ Global Market or any other primary Eligible Market or any national securities exchange, market or trading or quotation facility on which the Common Stock is then listed or quoted.

"**Transaction Documents**" means this Agreement, the Certificate of Designations, and any other documents, certificates or agreements executed or delivered in connection with the transactions contemplated hereby.

"**Underlying Shares**" means the shares of Common Stock issued or issuable (i) upon conversion of the Preferred Stock and (ii) in satisfaction of any other obligation or right of the Company to issue shares of Common Stock pursuant to the Transaction Documents (including upon payment of any dividends in Common Stock to the holders of Preferred Stock to the extent specifically permitted by the Certificate of Designations), and in each case, any securities issued or issuable in exchange for or in respect of such securities.

"**8-K Filing**" is defined in Section 4.5.

ARTICLE II.
PURCHASE AND SALE

2.1 Purchase and Sale of the Securities. Subject to the terms and conditions of this Agreement, the Purchaser agrees to purchase from the Company, and the Company agrees to sell and issue to the Purchaser, at the Closing, the Preferred Shares in the amounts set forth opposite the Purchaser's name on Schedule A hereto for the aggregate purchase price set forth opposite the Purchaser's name on Schedule A hereto under the headings "Number of Preferred Shares." The purchase price for each Preferred Share shall be One Thousand Dollars ($1,000) (the "**Purchase Price**").

2.2 Closing. The purchase and sale of the Preferred Shares pursuant to the terms of this Agreement (the "**Closing**") shall take place at the offices of Olshan Frome Wolosky LLP in New York City, New York, at 10:00 A.M. (New York City time) on the date each of the conditions set forth in Section 2.3 and Article 5 have been satisfied, or at such other time and place as the Company and the Purchaser mutually agree upon in writing (the "**Closing Date**").

2.3 Closing Deliveries.

(a) At the Closing, the Company shall deliver or cause to be delivered to the Purchaser the following:

(i) a stock certificate representing the Preferred Shares registered in the name of the Purchaser (or one or more of its assignees or designees), in the amount indicated opposite the Purchaser's name on Schedule A hereto, in proper form for transfer, and with any required stock transfer stamps affixed thereto;

(ii) the Certificate of Designations, together with confirmation of filing and effectiveness with the Secretary of State of the State of Delaware;

(iii) a certificate dated as of the Closing Date and signed by the Chief Executive Officer of the Company certifying as of the Closing Date (i) as to the fulfillment of each of the conditions set forth in Section 5.1 and (ii) that no Breach Event, or event which, with the giving of notice or the passing of time, would constitute a Breach Event, exists as of such date;

(iv) certificates dated as of the Closing Date and signed by the Secretary of the Company certifying: (1) that attached thereto is a true and complete copy of all resolutions adopted by the Special Committee and Board of Directors authorizing the execution, delivery and performance of each of the Transaction Documents, and that all such resolutions are in full force and effect and are all the resolutions adopted in connection with the transactions contemplated by this Agreement; (2) that attached thereto are true and complete copies of the Company Certificate and Company Bylaws, and that such documents are in full force and effect; and (3) the signatures and titles of the officers of the Company executing each of the Transaction Documents; and

(v) any other document reasonably requested by the Purchaser or its counsel.

(b) At the Closing, the Purchaser shall deliver or cause to be delivered to the Company the purchase price set forth opposite the Purchaser's name on Schedule A hereto under the heading "Aggregate Purchase Price," in United States dollars and in immediately available funds, by wire transfer to an account designated in writing by the Company for such purpose.

ARTICLE III.
REPRESENTATIONS AND WARRANTIES

3.1 Representations and Warranties of the Company. The Company hereby represents and warrants to, and agrees with, the Purchaser as of the date hereof as follows:

(a) Organization and Qualification. Each of the Company and the Subsidiaries is an entity duly incorporated, validly existing and in good standing under the laws of the jurisdiction of its incorporation or formation, with the requisite power and authority to own and use its properties and assets and to carry on its business as currently conducted. Neither the Company nor any Subsidiary is in violation or default of any of the provisions of its respective certificate or articles of incorporation or bylaws or other organizational or charter documents. Each of the Company and the Subsidiaries is duly qualified to conduct business and is in good standing as a foreign corporation in each jurisdiction in which the nature of the business conducted or property owned by it makes such qualification necessary, except where the failure to be so qualified or in good standing, as the case may be, could not reasonably be expected to, individually or in the aggregate result in a Material Adverse Effect, and no Proceeding has been instituted in any such jurisdiction revoking, limiting or curtailing or seeking to revoke, limit or curtail such power and authority or qualification. The Company has delivered or made available to the Purchaser true and complete copies of the Restated Certificate of Incorporation of the Company (the "**Company Certificate**") and Fourth Amended and Restated Bylaws of the Company (the "**Company Bylaws**"), each as amended to date, and the respective certificate or articles of incorporation or bylaws or other organizational or charter documents of each Subsidiary. Each of the foregoing documents is in full force and effect. The Company has not violated any provision of the Company Certificate, the Company Bylaws or any certificate or articles of incorporation or bylaws or other organizational or charter documents of any Subsidiary, in a manner that has not been cured and that materially and adversely affects the Company.

(b) Authorization; Enforcement. The Company has the requisite corporate power and authority to enter into and to consummate the transactions contemplated by each of the Transaction Documents and otherwise to carry out its respective obligations hereunder and thereunder and to issue the Securities in accordance with the terms hereof and thereof. The execution and delivery by the Company of each of the Transaction Documents and the consummation by it of the transactions contemplated hereunder and thereunder, including, without limitation, the issuance of the Preferred Shares and the reservation for issuance and the issuance of the Underlying Shares, have been duly authorized by all necessary action on the part of the Company and no further consent or action is required by the Company, or its Board of Directors or stockholders. Each Transaction Document has been (or upon delivery will have been) duly executed by the Company and, when delivered in accordance with the terms hereof, will constitute the legal, valid and binding obligation of the Company, enforceable against the Company, in accordance with its terms, subject to (i) laws of general application relating to bankruptcy, insolvency and the relief of debtors, or (ii) rules of law governing specific performance, injunctive relief or other equitable remedies.

(c) No Conflicts. The execution, delivery and performance of the Transaction Documents by the Company and the Subsidiaries and the consummation by them of the transactions contemplated hereby and thereby (including, without limitation, the issuance of the Preferred Shares, and the reservation for issuance and the issuance of the Underlying Shares) do not and will not (i) conflict with or violate any provision of the Company's or any Subsidiary's certificate or articles of incorporation, bylaws or other organizational or charter documents, (ii) conflict with, or constitute a default (or an event that with notice or lapse of time or both would become a default) under, or result in, or have the enforcement of the rights provided for in the Transactions Documents constitute, a change of control (including, without limitation, by being deemed to be a merger, consolidation, or other disposition of all or substantially all of the assets or businesses of the Company or any of its Subsidiaries) or similar outcome in any respect under, or give to others any rights (x) of termination, amendment, acceleration or cancellation of, or (y) to any payment (including, without limitation, any employment or severance payment) under, any agreement, credit facility, debt or other instrument (evidencing a Company or Subsidiary debt or otherwise) or other understanding to which the Company or any Subsidiary is a party or by which any property or asset of the Company or any Subsidiary is bound or affected or result in the creation of any Lien upon any of the properties or assets of the Company or any Subsidiary, or (iii) result in a violation of any law, rule, regulation, order, judgment, injunction, decree or other restriction of any Governmental Authority or any regulatory or self-regulatory agency to which the Company or a Subsidiary is subject (including foreign, federal and state securities laws and regulations and the rules and regulations of the Principal Market and applicable laws of the State of Delaware), or by which any property or asset of the Company or a Subsidiary is bound or affected.

(d) Filings, Consents and Approvals. Neither the Company nor any Subsidiary is required to obtain any consent, waiver, authorization, permit or order of, give any notice to, or make any filing or registration with, any Governmental Authority or any regulatory or self-regulatory agency or any other Person in connection with the execution, delivery and performance by the Company of the Transaction Documents, other than the filing by the Company of a Notice of Sale of Securities on Form D with the Commission under Regulation D of the Securities Act, the filing of the Certificate of Designations, state and applicable Blue Sky filings, and the consents, waivers, authorizations, permits, orders, notices, filings or registrations set forth on Schedule 3.1(d) (collectively, the "**Required Approvals**"). To the Company's Knowledge, the Company and its Subsidiaries are unaware of any facts or circumstances that might prevent the Company from obtaining or effecting any of the Required Approvals.

(e) Subsidiaries. The Company does not directly or indirectly control or own any interest in any other Person other than those listed in Schedule 3.1(e). The jurisdiction of organization of each Subsidiary is as set forth on Schedule 3.1(e). Except as disclosed in Schedule 3.1(e), the Company owns, directly or indirectly, all of the capital stock of each Subsidiary free and clear of any lien, charge, claim, tax, security interest, encumbrance, right of first refusal or similar right or other restriction (collectively, "**Liens**"), and all the issued and outstanding shares of capital stock of each Subsidiary have been validly issued and are duly authorized, fully paid and non-assessable and free of preemptive and similar rights.

(f) Issuance of the Securities. The Preferred Shares and the Underlying Shares issuable upon conversion of the Preferred Shares and any other Underlying Shares issuable pursuant to the Transaction Documents shall be duly authorized as of the Closing. As of the Closing, the Preferred Shares shall be, and any Underlying Shares when so issued in accordance with the terms of the applicable Transaction Documents will be, validly issued, fully paid and nonassessable and free from all preemptive or similar rights or Liens with respect to the issue thereof. As of the Closing, the Preferred Shares have been, and the Underlying Shares when so issued in accordance with the terms of the applicable Transaction Documents will be, issued in compliance with applicable securities laws, rules and regulations. The issuance and sale of the Securities contemplated hereby does not conflict with or violate any rules or regulations of the Principal Market. As of the Closing, a number of shares of Common Stock shall have been duly authorized and reserved for issuance which equals or exceeds 100% of the aggregate of the maximum number of shares of Common Stock issuable upon conversion of all of the Preferred Shares.

(g) Capitalization. Immediately prior to the issuance of the Preferred Shares hereunder, the authorized capital stock of the Company consists of (i) 1,400,000,000 shares of Common Stock, of which 55,557,326 shares are issued and outstanding, (ii) 5,000,000 shares of preferred stock, par value $0.01 per share (A) of which 140,000 shares are designated as "Series A Junior Participating Preferred Stock, of which no shares are issued or outstanding and (B) there is a sufficient amount of authorized preferred stock to issue the Preferred Shares. All of the outstanding shares have been validly issued and are fully paid and nonassessable. No shares of Common Stock are subject to preemptive rights or any other similar rights or any liens or encumbrances suffered or permitted by the Company. Except as set forth in the SEC Documents, as of the date hereof, (i) there are no outstanding options (except for options granted under the Company's existing equity incentive plans), warrants, scrip, rights to subscribe to, Common Stock Equivalents, calls or commitments of any character whatsoever relating to, or securities or rights convertible into, any shares of capital stock of the Company, or contracts, commitments, understandings or arrangements by which the Company is or may become bound to issue additional shares of capital stock of the Company and (ii) there are no agreements or arrangements under which the Company is obligated to register the sale of any of its securities under the Securities Act except as provided herein. There are no securities or instruments containing anti-dilution or similar provisions that will be triggered by the issuance of any of the Securities as described in this Agreement.

(h) SEC Reports; Financial Statements. During the twelve (12) months prior to the date hereof, the Company has timely filed all reports, schedules, forms, statements and other documents required to be filed by it with the Commission pursuant to the reporting requirements of the Exchange Act (all of the foregoing filed prior to the date hereof, and all exhibits included therein and financial statements, notes and schedules thereto and documents incorporated by reference therein being hereinafter referred to as the "**SEC Documents**"). As of their respective filing dates, the SEC Documents complied in all material respects with the requirements of the Exchange Act and the rules and regulations of the Commission promulgated thereunder applicable to the SEC Documents, and none of the SEC Documents, at the time they were filed with the Commission, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. The Commission has not issued any stop order or other order suspending the effectiveness of any registration statement filed by the Company or any Subsidiary under the Exchange Act or the Securities Act. As of their respective filing dates, the financial statements of the Company included in the SEC Documents and, as of the respective dates delivered by the Company to the Purchaser, any other financial statements of the Company (if any) delivered by the Company to the Purchaser complied as to form in all material respects with applicable accounting requirements and the published rules and regulations of the Commission with respect to financial statements included in the SEC Documents. Such financial statements have been prepared in accordance with United States generally accepted accounting principles, consistently applied ("**GAAP**"), consistently applied, during the periods involved (except (i) as may be otherwise indicated in such financial statements or the notes thereto, or (ii) in the case of unaudited interim statements, to the extent they may exclude footnotes or may be condensed or summary statements) and fairly present in all material respects the financial position of the Company as of the dates thereof and the results of its operations and cash flows for the periods then ended (subject, in the case of unaudited statements, to normal year-end audit adjustments); as of the date hereof, there are no obligations, liabilities or indebtedness (including contingent and indirect liabilities) which are material to the Company and not reflected in such financial statements, and no material adverse changes have occurred in the financial condition or business of the Company since the date of the most recent financial statement provided by the Company to the Purchaser or included in the SEC Documents.

(i) Taxes. The Company and each of its Subsidiaries (i) has made or filed all foreign, U.S. federal and (to the Company's Knowledge, solely with respect to state income tax returns) state income and all other tax returns, reports and declarations required by any jurisdiction to which it is subject, (ii) has paid all taxes and other governmental assessments and charges that are material in amount, shown or determined to be due on such returns, reports and declarations, except those being contested in good faith and (iii) has set aside on its books provision reasonably adequate for the payment of all taxes yet to become due for the periods to which such returns, reports or declarations apply. All tax returns are true and correct in all material respects. There is no liability for any tax to be imposed upon its or any of its Subsidiaries' properties or assets as of the date of this Agreement for which adequate provision has not been made. There are no unpaid taxes in any material amount claimed to be due by the taxing authority of any jurisdiction, and the officers of the Company know of no basis for any such claim. No material tax returns of the Company have been audited, and to the Company's Knowledge, no deficiency assessment or proposed adjustment of the Company's or the Subsidiaries material taxes is pending.

(j) No Material Adverse Effect; Absence of Certain Changes. Since August 1, 2017, there has been no Material Adverse Effect on the business, assets, properties, operations, condition (financial or otherwise) or results of operations of the Company or its Subsidiaries and there is no specific fact known to the Company which would reasonably be expected to result in any Material Adverse Effect. Except as disclosed in the SEC Documents or Schedule 3.1(j), since August 1, 2017, neither the Company nor any of its Subsidiaries has (i) declared or paid any dividends or purchased, redeemed or made any agreements to purchase or redeem any shares of its capital stock, (ii) sold any assets, individually or in the aggregate, in excess of $500,000, (iii) had capital expenditures, individually or in the aggregate, in excess of $500,000, (iv) altered its method of accounting or the identity of its auditors, (v) incurred any liabilities (contingent or otherwise), individually or in the aggregate, in excess of $500,000, other than (A) trade payables and accrued expenses incurred in the ordinary course of business and (B) liabilities not required to be reflected in the Company's financial statements pursuant to GAAP (including, without limitation, the footnotes thereto) or required to be disclosed in filings made with the SEC or (vi) issued any equity securities to any officer, director or Affiliate. Neither the Company nor any of its Subsidiaries has taken any steps to seek protection pursuant to any bankruptcy law nor does the Company have any knowledge or reason to believe that its creditors intend to initiate involuntary bankruptcy proceedings or any actual knowledge of any fact that would reasonably lead a creditor to do so. The Company does not have pending before the Commission any request for confidential treatment of information. Neither the Company nor any Affiliate of the Company (including, without limitation, any pension plan, employee stock option plan or similar plan) has purchased or sold any securities of the Company within the 90 days preceding the date hereof. The Company and its Subsidiaries, individually and on a consolidated basis, are not as of the date hereof, and after giving effect to the transactions contemplated hereby to occur at the Closing, will not be Insolvent (as defined below). No event, liability, development or circumstance has occurred or exists, or, to the Company's Knowledge, is contemplated to occur with respect to the Company, its Subsidiaries or their respective business, properties, operations or financial condition, that would be required to be disclosed by the Company under applicable securities laws on a registration statement on Form S-1 filed with the Commission relating to an issuance and sale by the Company of its Common Stock and which has not been publicly announced.

(k) Litigation. As of the date hereof, except as disclosed in the SEC Documents or listed on Schedule 3.1(k), there is no suit, claim, action, arbitration, investigation or proceeding pending or, to the Company's Knowledge, threatened that (i) if determined adversely to the Company or any of the Company's Subsidiaries, has had or would reasonably be expected to result in losses greater than $500,000, or (ii) could reasonably be expected to result in a Material Adverse Effect. Neither the Company nor any Subsidiary is subject to any outstanding order, writ, injunction, judgment, decree or arbitration ruling, award or other finding that, individually or in the aggregate, has had or would reasonably be expected to have a Material Adverse Effect

(l) Compliance. Except as set forth in Schedule 3.1(l), as of the date hereof, each of the Company and its Subsidiaries has complied and is in compliance with all statutes, ordinances, rules and regulations of any Governmental Authority or any regulatory or self-regulatory agency, to which the Company or a Subsidiary is subject, except for any non-compliance that, individually or in the aggregate, has not had and would not reasonably be expected to have a Material Adverse Effect

(m) Internal Accounting Controls. The Company and the Subsidiaries maintain a system of internal accounting controls sufficient to provide reasonable assurance that (i) transactions are executed in accordance with management's general or specific authorizations, (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain asset accountability, (iii) access to assets is permitted only in accordance with management's general or specific authorization, and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences. The Company has established disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the Company and designed such disclosure controls and procedures to ensure that information required to be disclosed by the Company in the reports it files or submits under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the Commission's rules and forms, including without limitation, controls and procedures designed to ensure that information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act is accumulated and communicated to the Company's management, including its principal executive officer or officers and its principal financial officer or officers, as appropriate, to allow timely decisions regarding required disclosure. The Company's certifying officers have evaluated the effectiveness of the Company's disclosure controls and procedures as of the end of the period covered by the Company's most recently filed periodic report under the Exchange Act (such date, the "**Evaluation Date**"). The Company presented in its most recently filed periodic report under the Exchange Act the conclusions of the certifying officers about the effectiveness of the disclosure controls and procedures based on their evaluations as of the Evaluation Date. Since the Evaluation Date, there have been no changes in the Company's internal control over financial reporting (as such term is defined in the Exchange Act) that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting. Except as disclosed in the SEC Documents, during the twelve (12) months prior to the date hereof neither the Company nor any of its Subsidiaries has received any notice or correspondence from any accountant relating to any material weakness in any part of the system of internal accounting controls of the Company or any of its Subsidiaries.

(n) Solvency. No proceedings have been taken, instituted or, to the knowledge of the Company, are pending for the dissolution or liquidation of the Company or any of its Subsidiaries. Neither the Company nor any of its Subsidiaries has taken any steps to seek protection pursuant to any bankruptcy or insolvency laws, nor does the Company have any knowledge or reason to believe that its creditors intend to initiate involuntary bankruptcy proceedings or any knowledge of any fact that would reasonably lead a creditor to do so. The Company and its Subsidiaries, taken as a whole, are, as of the date hereof, and after giving effect to the transactions contemplated hereby, will be Solvent. As used herein, (x) "**Solvent**", with regard to any Person, means that (a) the sum of the assets of such Person, both at a fair valuation and at present fair salable value, exceeds its liabilities, including contingent, subordinated, unmatured, unliquidated and disputed liabilities, (b) such Person has sufficient capital with which to conduct its business, and (c) such Person has not incurred Debts, and does not intend to incur Debts, beyond its ability to pay such Debts as they mature, (y) "**Debt**" means any liability on a Claim, and (z) "**Claim**" means (i) a right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured, or (ii) a right to an equitable remedy for breach of performance if such breach gives rise to a payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured; with respect to any such contingent liabilities, such liabilities shall be computed at the amount which, in light of all of the facts and circumstances existing at the time, represents the amount which can reasonably be expected to become an actual or matured liability.

(o) Broker Fees. No brokerage or finder's fees or commissions are or will be payable by the Company to any broker, financial advisor or consultant, finder, placement agent, investment banker, bank or other Person with respect to the transactions contemplated by this Agreement.

(p) Private Placement. Assuming the accuracy of the Purchaser's representations and warranties set forth in Section 3.2, (i) no registration under the Securities Act is required for the offer and sale of the Securities by the Company to the Purchaser under the Transaction Documents, and (ii) the issuance and sale of the Securities hereunder does not contravene the rules and regulations of the Principal Market.

(q) Disclosure. This Agreement and the Schedules set forth herein do not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements contained therein, in light of the circumstances under which they were made, not misleading. No event or circumstance has occurred or information exists with respect to the Company or any of its Subsidiaries or its or their business, properties, operations or financial conditions, which, under applicable law, rule or regulation, requires public disclosure or announcement by the Company but which has not been so publicly announced or disclosed.

(r) Acknowledgment Regarding Purchaser's Purchase of Securities. The Company acknowledges and agrees that the Purchaser is acting solely in the capacity of an arm's length purchaser with respect to this Agreement and the transactions contemplated hereby and thereby. The Company further acknowledges that the Purchaser is not acting as a financial advisor or fiduciary of the Company (or in any similar capacity) with respect to this Agreement and the transactions contemplated hereby and any advice given by the Purchaser or any of its respective representatives or agents in connection with this Agreement and the transactions contemplated hereby is merely incidental to the Purchaser's purchase of the Securities. The Company further represents to the Purchaser that the Company's decision to enter into this Agreement has been based solely on the independent evaluation of the Company and its representatives. The Company further acknowledges that the Purchaser has not made any promises or commitments other than as set forth in this Agreement, including any promises or commitments for any additional investment by the Purchaser in the Company.

3.2 Representations and Warranties of the Purchaser. The Purchaser hereby, as to itself only, represents and warrants to the Company as follows:

(a) Organization; Authority. The Purchaser is an entity duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization with the requisite corporate, limited liability company or partnership power and authority to enter into and to consummate the transactions contemplated by the Transaction Documents and otherwise to carry out its obligations hereunder and thereunder. The execution, delivery and performance by the Purchaser of the Transaction Documents to which it is a party have been duly authorized by all necessary corporate or, if the Purchaser is not a corporation, such partnership, limited liability company or other applicable like action, on the part of the Purchaser. Each of the Transaction Documents to which the Purchaser is a party has been duly executed by the Purchaser and, when delivered by the Purchaser in accordance with terms hereof, will constitute the valid and legally binding obligation of the Purchaser, enforceable against it in accordance with its terms.

(b) Investment Intent. The Purchaser is acquiring the Securities as principal for its own account for investment purposes and not with a view to distributing or reselling such Securities or any part thereof in violation of applicable securities laws, without prejudice, however, to the Purchaser's right at all times to sell or otherwise dispose of all or any part of such Securities in compliance with applicable federal and state securities laws. Nothing contained herein shall be deemed a representation or warranty by the Purchaser to hold the Securities for any specific period of time. The Purchaser understands that the Securities have not been registered under the Securities Act, and therefore the Securities may not be sold, assigned or transferred unless pursuant to (i) an effective registration statement under the Securities Act with respect thereto or (ii) an available exemption from the registration requirements of the Securities Act.

(c) Purchaser Status. At the time the Purchaser was offered the Securities, it was, and at the date hereof it is, an "accredited investor" as defined in Rule 501(a) under the Securities Act. The Purchaser is not a registered broker-dealer under Section 15 of the Exchange Act.

(d) Experience of the Purchaser. The Purchaser, either alone or together with its representatives, has such knowledge, sophistication and experience in business and financial matters so as to be capable of evaluating the merits and risks of the prospective investment in the Securities, and has so evaluated the merits and risks of such investment. The Purchaser is able to bear the economic risk of an investment in the Securities and, at the present time, is able to afford a complete loss of such investment.

(e) Access to Data. The Purchaser has received and reviewed information about the Company and has had an opportunity to discuss the Company's business, management and financial affairs with its management and to review the Company's facilities. The foregoing, however, does not limit or modify the representations and warranties made by the Company in this Agreement or any other provision in this Agreement or the right of the Purchaser to rely thereon.

(f) Broker Fees. No broker, investment banker, financial advisor or other Person is entitled to any broker's, finder's, financial advisor's or other similar fee or commission in connection with the transactions contemplated hereby based upon arrangements made by or on behalf of the Purchaser.

(g) No Other Representations or Warranties. Except for the representations and warranties set forth in this Section 3.2, neither the Purchaser nor any other Person makes any express or implied representation or warranty with respect to the Purchaser or with respect to any other information provided to the Company in connection with the transactions contemplated hereunder.

ARTICLE IV.
OTHER AGREEMENTS OF THE PARTIES

4.1 Legends.

(a) Certificates evidencing the Preferred Stock and, when issued, the Underlying Shares shall bear any legend as required by the "blue sky" laws of any state and a restrictive legend in substantially the following form, until such time as they may be resold without restriction as to current public information, manner of sale or volume limitations under applicable securities laws or as otherwise provided in Section 4.1(c):

> THESE SECURITIES AND THE SECURITIES ISSUABLE UPON CONVERSION HEREOF HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR APPLICABLE STATE SECURITIES LAWS. THE SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD, TRANSFERRED OR ASSIGNED (I) IN THE ABSENCE OF (A) AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER THE SECURITIES ACT OR (B) AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS OR BLUE SKY LAWS AS EVIDENCED BY A LEGAL OPINION OF COUNSEL REASONABLY SATISFACTORY TO THE COMPANY OR (II) UNLESS SOLD PURSUANT TO RULE 144 UNDER SAID ACT. NOTWITHSTANDING THE FOREGOING, THE SECURITIES MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN OR FINANCING ARRANGEMENT SECURED BY THE SECURITIES.

(b) The Company acknowledges and agrees that the Purchaser may from time to time pledge, and/or grant a security interest in, some or all of the legended Securities in connection with applicable securities laws, pursuant to a bona fide margin agreement in compliance with a bona fide margin loan. Such a pledge would not be subject to approval or consent of the Company and no legal opinion of legal counsel to the pledgee, secured party or pledgor shall be required in connection with the pledge, but such legal opinion shall be required in connection with a subsequent transfer or foreclosure following default by the Purchaser's transferee of the pledge. No notice shall be required of such pledge, but the Purchaser's transferee shall promptly notify the Company of any such subsequent transfer or foreclosure. The Purchaser acknowledges that the Company shall not be responsible for any pledges relating to, or the grant of any security interest in, any of the Securities or for any agreement, understanding or arrangement between the Purchaser and its pledgee or secured party. At the Purchaser's expense, the Company will execute and deliver such reasonable documentation as a pledgee or secured party of Securities may reasonably request in connection with a pledge or transfer of the Securities, including the preparation and filing of any required prospectus supplement under Rule 424(b)(3) of the Securities Act or other applicable provision of the Securities Act to appropriately amend the list of selling stockholders thereunder.

(c) The legend set forth in Section 4.1(a) above shall be removed and the Company shall issue one or more certificates without such legend or any other legend to the holder of the applicable Preferred Stock or Underlying Shares upon which it is stamped or issue to such holder by electronic delivery at the applicable balance account at the Depository Trust Company ("**DTC**"), if (i) such Preferred Stock or Underlying Shares are registered for resale under the Securities Act (provided that the Purchaser agrees to only sell such Preferred Stock or Underlying Shares when, and as permitted, by the effective registration statement permitting such resale), (ii) such Preferred Stock or Underlying Shares are sold or transferred pursuant to Rule 144 (if the transferor is not an Affiliate of the Company), or (iii) such Preferred Stock or Underlying Shares are eligible for resale under the Securities Act without regard to current public information, manner of sale or volume limitations. The Company may request an opinion of counsel to the holder of any such Preferred Stock or Underlying Shares and such other certifications as the Company shall reasonably request with respect to the legal and factual grounds for the removal of such legends. Any fees (with respect to the Company's transfer agent, Company counsel or otherwise) associated with the removal of such legend shall be borne by the Company and the fees of any counsel to the holder shall be borne by such holder. The Company may not make any notation on its records or give instructions to its transfer agent that enlarge the restrictions on transfer set forth in this Section 4.1. Certificates for Preferred Stock or Underlying Shares subject to legend removal hereunder may be transmitted by the Company's transfer agent to the Purchaser by crediting the account of the Purchaser's prime broker with DTC.

4.2 Dilution. The Company acknowledges that the issuance of the Securities (including the Underlying Shares) will result in dilution of the outstanding shares of Common Stock, which dilution may be substantial under certain market conditions. The Company further acknowledges that its obligations under the Transaction Documents, including without limitation its obligation to issue the Securities (including the Underlying Shares) pursuant to the Transaction Documents, are unconditional and absolute and not subject to any right of set off, counterclaim, delay or reduction, regardless of the effect of any such dilution or any claim that the Company may have against the Purchaser.

4.3 Reservation and Listing of Securities. Unless the Purchaser shall otherwise consent:

(a) The Company shall take all action necessary to have authorized and reserved solely for the purpose of providing for the conversion of all of the outstanding Preferred Stock, such number of shares of Common Stock as shall from time to time equal to the number of shares sufficient to permit the conversion, in full, of all of the outstanding Preferred Stock in accordance with the terms of the Certificate of Designations but without regard to any conversion limitations contained therein.

(b) The Company shall promptly following the removal of any legends pursuant to Section 4.1(c) above, or the effectiveness of any Piggyback Registration Statement, as applicable, (i) prepare and timely file with each Trading Market an additional shares listing application covering all of the shares of Common Stock issued or issuable under the Transaction Documents, (ii) use best efforts to cause such shares of Common Stock to be approved for listing on each Trading Market as soon as practicable thereafter, (iii) provide to the Purchaser evidence of such listing, and (iv) use best efforts to maintain the listing of such Common Stock on each such Trading Market or another Eligible Market.

4.4 Conversion Procedures. The form of Conversion Notice included in the Certificate of Designations sets forth the totality of the procedures required by the Purchaser in order for the Purchaser to voluntarily convert the Preferred Stock into Common Stock. No other information or instructions shall be necessary to enable the Purchaser to convert the Preferred Stock into Common Stock. The Company shall honor all conversions of the Preferred Stock and shall deliver all Underlying Shares issuable upon conversion thereof, in each case in accordance with the terms and conditions set forth in the Transaction Documents.

4.5 Securities Laws Disclosure; Publicity. Within four (4) Business Days of the Closing Date, the Company shall file a Current Report on Form 8-K with the Commission (the "**8-K Filing**") describing the material terms of the transactions contemplated by the Transaction Documents and including as exhibits to such Current Report on Form 8-K this Agreement and the form of the Certificate of Designations, in the form required by the Exchange Act. Thereafter, the Company shall timely file any filings and notices required by the Commission or applicable law with respect to the transactions contemplated hereby and provide copies thereof to the Purchaser promptly after filing. The Company shall, at least one (1) Trading Day prior to the filing or dissemination of any disclosure required by this paragraph, provide a copy thereof to the Purchaser for its review. The Company and the Purchaser shall consult with each other in issuing any press releases or otherwise making public statements or filings and other communications with the Commission or any regulatory agency or Trading Market with respect to the transactions contemplated hereby, and neither party shall issue any such press release or otherwise make any such public statement, filing or other communication without the prior consent of the other, except if such disclosure is required by law, in which case the disclosing party shall promptly provide the other party with prior notice of such public statement, filing or other communication. Notwithstanding the foregoing, the Company shall not publicly disclose the name of the Purchaser, or include the name of the Purchaser in any filing with the Commission or any regulatory agency or Trading Market (other than the Registration Statement, the 8-K Filing and any exhibits to filings made in respect of this transaction in accordance with periodic filing requirements under the Exchange Act and any application to list additional shares filed with the Trading Market), without the prior written consent of the Purchaser, except to the extent such disclosure is required by law, Trading Market regulations or the Commission, in which case the Company shall provide the Purchaser with prior notice of such disclosure. In the event of a breach of the foregoing covenant by the Company, any of its Subsidiaries, or any of its or their respective officers, directors, employees and agents, in addition to any other remedy provided herein or in the Transaction Documents, the Purchaser shall have the right to require the Company to make a public disclosure, in the form of a press release, public advertisement or otherwise, of such material nonpublic information. The Purchaser shall not have any liability to the Company, its Subsidiaries, or any of its or their respective officers, directors, employees, stockholders or agents for any such disclosure. Each press release disseminated by the Company during the twelve (12) months prior to the Closing Date did not at the time of release contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading.

4.6 Use of Proceeds. The Company may use the proceeds from the sale of the Securities hereunder to repurchase or pay amounts due under the Convertible Notes currently outstanding, for working capital purposes and/or for general corporate purposes.

4.7 Covenants.

(a) For so long as the Preferred Shares remain outstanding, the Company shall:

(i) (A) do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence and its rights and franchises; (B) continue to conduct its business substantially as now conducted or as otherwise currently contemplated and permitted under this Agreement; and (C) at all times maintain, preserve and protect in all material respects all of its assets and properties used or useful in the conduct of its business;

(ii) keep adequate books and records with respect to its business activities in which proper entries, reflecting all bona fide financial transactions, are made in accordance with GAAP;

(iii) comply in all material respects with (i) the applicable laws and regulations wherever its business is conducted, (ii) the provisions of (A) the Company Certificate and Company Bylaws and (B) the Certificate of Designations, and (iii) all Material Contracts;

(iv) promptly notify the Purchaser in writing of the occurrence of any Breach Event;

(v) give notice to Purchaser in writing within three (3) Business Days of becoming aware of any litigation or Proceedings threatened in writing against the Company or any of its Subsidiaries or any pending litigation and Proceedings affecting the Company or any of its Subsidiaries or to which any of them is or becomes a party involving a claim against any of them that could reasonably be expected to result in a Material Adverse Effect, stating the nature and status of such litigation or Proceedings; and

(vi) (a) as soon as practicable, but in any event no later than the time prescribed by the Commission (and, if not subject to the periodic reporting requirements of the Exchange Act, no later than the ninetieth (90th) day after the end of each fiscal year of the Company), deliver to Purchaser a balance sheet as of the end of such fiscal year and an income statement and statement of cash flow for such fiscal year, audited and certified by the Company's nationally recognized independent public accountants; and (b) as soon as practicable, but in any event no later than the time prescribed by the Commission (and, if not subject to the periodic reporting requirements of the Exchange Act, no later than the forty-fifth (45^{th}) day after the end of each fiscal quarter of the Company), deliver to Purchaser an unaudited balance sheet, income statement and statement of cash flows for such fiscal quarter, all prepared in accordance with GAAP (except that such financial statements may (i) be subject to normal year-end audit adjustments and (ii) not contain all notes thereto that may be required in accordance with GAAP); provided that the filing of any report with the SEC containing the foregoing information shall satisfy the delivery requirements set forth herein.

(b) For so long as the Preferred Shares remain outstanding, the Company shall not, directly or indirectly, and including in each case with respect to any Significant Subsidiary (as applicable), without the affirmative vote of the holders owning a majority of the outstanding shares of Preferred Stock:

(i) by operation of law or otherwise, (A) amend or restate (x) the Company Certificate (excluding the Certificate of Designations) or Company Bylaws in a manner that adversely affects the voting powers, preferences, rights or privileges of the Preferred Stock or (y) the Certificate of Designations in any manner, (B) convert the Company into any other organizational form, (C) liquidate, dissolve or wind up the Company or any Significant Subsidiary or (D) merge with, consolidate with, acquire all or substantially all of the assets or capital stock of, or otherwise combine with or acquire or be acquired by, or sell all or substantially all of the assets or capital stock to, any Person or any operating division of any Person;

(ii) (A) effect or consummate any Prohibited Issuance, (B) issue any additional shares of Preferred Stock, (C) reclassify any capital stock, or (D) directly or indirectly, redeem, purchase or otherwise acquire any capital stock or set aside any monies for such a redemption, purchase or other acquisition of its capital stock; provided that the Company may directly or indirectly, redeem, purchase or otherwise acquire Securities if specifically permitted pursuant to the Certificate of Designations and in all events in accordance with the terms of the Certificate of Designations;

(iii) set aside, declare or make any dividend payment or other distribution of assets, properties, cash, rights, obligations or securities on account of any shares or other interests in the Company, other than distributions (A) or dividend payments in respect of the Preferred Shares in accordance with the terms of the Certificate of Designations, (B) to directly or indirectly redeem, purchase or otherwise acquire Securities if specifically permitted pursuant to the Certificate of Designations and in all events in accordance with the terms of the Certificate of Designations, and (C) of Common Stock as a dividend on the Common Stock, to the extent specifically permitted by the Certificate of Designations, distributed pro rata to the holders thereof;

(iv) create, incur, assume or suffer to exist any Indebtedness of any kind, other than certain existing Indebtedness of the Company as set forth on Schedule 4.8 of this Agreement and any replacement financing thereto, provided that any such replacement financing be on substantially similar terms as the existing Indebtedness; or

(v) enter into any agreement to do any of the foregoing or cause or permit any Subsidiary of the Company directly or indirectly to take any actions described in clauses (i) through (iv) above;

provided, that nothing set forth herein shall prohibit the Company from repurchasing any of the Convertible Notes.

4.8 No Impairment. At all times after the date hereof, the Company will not take or permit any action, or cause or permit any Subsidiary to take or permit any action that impairs or adversely affects the rights of the Purchaser under any Transaction Document.

4.9 Indemnification. If the Purchaser or any of its Affiliates or any officer, director, partner, controlling person, employee or agent of the Purchaser or any of its Affiliates (a "**Related Person**") becomes involved in any capacity in any Proceeding brought by or against any Person in connection with or as a result of the transactions contemplated by the Transaction Documents, the Company will indemnify and hold harmless the Purchaser or Related Person for its reasonable legal and other expenses (including the reasonable costs of any investigation, preparation and travel) and for any Losses incurred in connection therewith, as such expenses or Losses are incurred, excluding only Losses that result directly from the Purchaser's or Related Person's gross negligence or willful misconduct. In addition, the Company shall indemnify and hold harmless the Purchaser and Related Person from and against any and all Losses, as incurred, arising out of or relating to any misrepresentation or breach by the Company or any Subsidiary of any of the representations, warranties or covenants made by the Company or any Subsidiary in this Agreement or any other Transaction Document, or any allegation by a third party that, if true, would constitute such a breach or misrepresentation. The conduct of any Proceedings for which indemnification is available under this paragraph shall be governed by Section 6.5 below. The indemnification obligations of the Company under this paragraph shall be in addition to any liability that the Company or any Subsidiary may otherwise have and shall be binding upon and inure to the benefit of any successors, assigns, heirs and personal representatives of the Purchaser and any such Related Persons. If the Company or any Subsidiary breaches its obligations under any Transaction Document, then, in addition to any other liabilities the Company may have under any Transaction Document or applicable law, the Company shall pay or reimburse the Purchaser on demand for all costs of collection and enforcement (including reasonable attorneys fees and expenses). Without limiting the generality of the foregoing, the Company specifically agrees to reimburse the Purchaser on demand for all costs of enforcing the indemnification obligations in this paragraph.

4.10 Shareholders Rights Plan. No claim will be made or enforced by the Company or any other Person that the Purchaser is an "Acquiring Person" or any similar term under any stockholders rights plan or similar plan or arrangement in effect or hereafter adopted by the Company, or that the Purchaser could be deemed to trigger the provisions of any such plan or arrangement, by virtue of receiving Securities under the Transaction Documents or under any other agreement between the Company and the Purchaser.

4.11 Access. In addition to any other rights provided by law or set forth herein, from and after the date of this Agreement, the Company shall, and shall cause each of the Subsidiaries, to give Purchaser and its representatives, at the request of Purchaser, access during reasonable business hours to (a) all properties, assets, books, contracts, commitments, reports and records relating to the Company and the Subsidiaries, and (b) the management, accountants, lenders, customers and suppliers of the Company and the Subsidiaries; provided, however, that the Company shall not be required to provide Purchaser access to any information or Persons if the Company reasonably determines that access to such information or Persons (x) would adversely affect the attorney-client privilege between the Company and its counsel and cannot be provided to Purchaser in a manner that would avoid the adverse effect on the attorney-client privilege between the Company and its counsel, (y) would result in the disclosure of trade secrets, material nonpublic information or other confidential or proprietary information and cannot be provided to Purchaser in a manner that would avoid the disclosure of trade secrets, material nonpublic information or other confidential or proprietary information, or (z) would violate the requirements of any Governmental Authority, applicable law or regulation with respect to the confidentiality of information or security clearances and cannot be provided to Purchaser in a manner that would not violate any such requirements, law or regulation; provided further that the Company shall be required to provide Purchaser with access to the information contemplated in clause (y) if Purchaser signs a customary confidentiality agreement with the Company with respect to such information.

4.12 Amendments to Transaction Documents. Without the prior written consent of Purchaser, the Company shall not, and shall not permit any of its Subsidiaries to, enter into or become or remain subject to any agreement or instrument, except for the Transaction Documents, that would prohibit or require the consent of any Person to any amendment, modification or supplement to any of the Transaction Documents.

4.13 Further Assurances. The parties to this Agreement agree to make, execute and deliver all such additional and further acts, things, deeds and instruments, as Purchaser may reasonably require with respect to the Company, and the Company may reasonably require with respect to the Purchaser, to document and consummate the transactions contemplated hereby in a manner consistent herewith and to vest completely in and insure the Purchaser or the Company their respective rights under this Agreement and the other Transaction Documents.

4.14 Best Efforts. Each party shall use its best efforts timely to satisfy each of the covenants and the conditions to be satisfied by it as provided in Section 5 of this Agreement.

4.15 Stockholder Approval.

(a) To the extent required by the rules and regulations of the Principal Market applicable to the Company, the Company shall use its commercially reasonable best efforts to obtain the approval of its stockholders to issue any Underlying Shares and to otherwise perform its respective obligations under the Transactions Documents, including approving (i) the issuance of in excess of 19.99% of the shares of Common Stock outstanding on the date of this Agreement at a price, determined in accordance with the rules and regulations of the Principal Market, that may be less than the greater of book or market value and (ii) any potential change of control of the Company which may occur as a result of the transactions contemplated by the Transaction Documents (the "**Stockholder Approval**").

(b) In furtherance of the obligations of the Company under Section 4.15(a), and only to the extent required by the rules and regulations of the Principal Market applicable to the Company, (i) the Board of Directors of the Company shall adopt proper resolutions authorizing the actions set forth in Section 4.15(a) above, (ii) the Board of Directors of the Company shall recommend and the Company shall otherwise use its commercially reasonable best efforts to promptly and duly obtain Stockholder Approval, including, without limitation, by filing any required proxy materials with the Principal Market and the Commission, by delivering proxy materials to its stockholders in furtherance thereof as soon as practicable thereafter, by soliciting proxies from its stockholders in connection therewith in the same manner as all other management proposals in such proxy statement and having all management-appointed proxy-holders vote their proxies in favor of such proposals to carry out such resolutions and (iii) within three Business Days of obtaining such Stockholder Approval, take all actions necessary to effectuate the actions set forth in Section 4.15(a) above. If the Company does not obtain Stockholder Approval at the first meeting (the "**First Meeting**"), the Company shall in addition to satisfying clauses (i), (ii) and (iii) as contemplated above, call a special meeting of its stockholders as soon as reasonably practicable but in no event later than ninety (90) days following the First Meeting to seek Stockholder Approval until the date Stockholder Approval is obtained.

ARTICLE V.
CONDITIONS

5.1 Conditions Precedent to the Obligations of the Purchaser. The obligation of the Purchaser to acquire the Preferred Shares at the Closing is subject to the satisfaction or waiver by the Purchaser, at or before the Closing, of each of the following conditions:

(a) Representations and Warranties. The representations and warranties of the Company contained herein shall be true and correct in all material respects (except to the extent such representations and warranties are qualified as to materiality, in which case such representations and warranties shall be true and correct in all respects);

(b) Performance. The Company shall have performed, satisfied and complied in all material respects with all covenants, agreements and conditions required by the Transaction Documents to be performed, satisfied or complied with by it at or prior to the Closing;

(c) No Injunction. No statute, rule, regulation, executive order, decree, ruling or injunction shall have been enacted, entered, promulgated or endorsed by any court or Governmental Authority of competent jurisdiction that prohibits the consummation of any of the transactions contemplated by the Transaction Documents;

(d) Adverse Changes. On and as of the Closing Date, there shall not exist any Material Adverse Effect with respect to the Company;

(e) No Suspensions of Trading in Common Stock; Listing. Trading in the Common Stock shall not have been suspended by the Commission or any Trading Market (except for any suspensions of trading of not more than one Trading Day solely to permit dissemination of material information regarding the Company), and the Common Stock shall be listed for trading on an Eligible Market;

(f) Secretary of State Certificates. The Purchaser shall have received Certificates, as of a recent date, of the Secretary of State of Delaware and each other jurisdiction where a Subsidiary is organized showing the Company and each Subsidiary, as applicable, to be validly existing in their respective jurisdictions of organization and in good standing;

(g) Required Approvals. All Required Approvals shall have been obtained reasonably satisfactory in form and substance to the Purchaser.

(h) Other Documents. All other Transaction Documents, opinions, certificates and other instruments and all proceedings in connection with the transactions contemplated by this Agreement shall be reasonably satisfactory in form and substance to the Purchaser. The Purchaser shall have received copies of all other documents, opinions, certificates and instruments required to be delivered at the Closing pursuant to Section 2.3(a) hereof and all other documents, opinions, certificates and instruments reasonably requested thereby, with respect to the transactions contemplated by this Agreement and the other Transaction Documents in form and substance satisfactory to the Purchaser.

5.2 Conditions Precedent to the Obligations of the Company. The obligation of the Company to sell the Preferred Shares at the Closing is subject to the satisfaction or waiver by the Company, at or before the Closing, of each of the following conditions:

(a) Representations and Warranties. The representations and warranties of the Purchaser contained herein shall be true and correct in all material respects (except to the extent such representations and warranties are qualified as to materiality, in which case such representations and warranties shall be true and correct in all respects);

(b) Performance. The Purchaser shall have performed, satisfied and complied in all material respects with all covenants, agreements and conditions required by the Transaction Documents to be performed, satisfied or complied with by the Purchaser at or prior to the Closing; and

(c) No Injunction. No statute, rule, regulation, executive order, decree, ruling or injunction shall have been enacted, entered, promulgated or endorsed by any court or Governmental Authority of competent jurisdiction that prohibits the consummation of any of the transactions contemplated by the Transaction Documents.

ARTICLE VI.
REGISTRATION RIGHTS

6.1 Piggyback Registration Requirements. The Company shall use its commercially reasonable efforts to effect the piggyback registration of the Registrable Securities (including, without limitation, the execution of an undertaking to file post-effective amendments, appropriate qualification under applicable blue sky or other state securities laws and appropriate compliance with applicable regulations issued under the Securities Act) as would permit or facilitate the sale or distribution of all the Registrable Securities in the manner (including manner of sale) and in all states reasonably requested by the Holder in accordance with the following:

(a) If at any time after the Closing Date the Company proposes to register the offer and sale of any shares of its Common Stock under the Securities Act (other than a registration (A) pursuant to a registration statement on Form S-8 (or other registration solely relating to an offering or sale to employees or directors of the Company pursuant to any employee stock plan or other employee benefit arrangement), (B) pursuant to a registration statement on Form S-4 (or similar form that relates to a transaction subject to Rule 145 under the Securities Act or any successor rule thereto), or (C) in connection with any dividend or distribution reinvestment or similar plan), whether for its own account or for the account of one or more stockholders of the Company and the form of Registration Statement (a "**Piggyback Registration Statement**") to be used may be used for any registration of securities of the Company, the Company shall give prompt written notice (in any event no later than 30 days prior to the filing of such registration statement) to the Holder of the Registrable Securities of its intention to effect such a registration and, shall include in such Registration Statement all Registrable Securities with respect to which the Company has received written requests for inclusion from the Holders of Registrable Securities within 20 days after the Company's notice has been given to each such Holder. The Company may postpone or withdraw the filing or the effectiveness of a Piggyback Registration Statement at any time in its sole discretion. Each Holder of Registrable Securities shall furnish to the Company or the underwriter(s) (if any) in respect of the offering pursuant to the subject Registration Statement, as applicable, such information regarding the Holder and the distribution proposed by it as the Company may reasonably request in connection with any registration or offering referred to in this Section. Each Holder of Registrable Securities shall cooperate as reasonably requested by the Company in connection with the preparation of the Registration Statement with respect to such registration, and for so long as the Company is obligated to file and keep effective such Registration Statement, shall provide to the Company, in writing, for use in the Registration Statement, all such information regarding the Holder of Registrable Securities of and its plan of distribution of shares of Common Stock included in such Registration Statement as may be reasonably necessary to enable the Company to prepare such Registration Statement, to maintain the currency and effectiveness thereof and otherwise to comply with all applicable requirements of law in connection therewith. Notwithstanding anything to the contrary in this Section, if a piggyback registration is initiated as a primary underwritten offering on behalf of the Company and the managing underwriter advises the Company and the Holders of Registrable Securities (if any Holders of Registrable Securities have elected to include Registrable Securities in such piggyback registration) in writing that in its reasonable and good faith opinion the number of shares of Common Stock proposed to be included in such registration or takedown, including all Registrable Securities and all other shares of Common Stock proposed to be included in such underwritten offering, exceeds the number of shares of Common Stock which can be sold in such offering and/or that the number of shares of Common Stock proposed to be included in any such registration would adversely affect the price per share of the Common Stock to be sold in such offering, the Company shall include in such registration or takedown (i) first, the shares of Common Stock that the Company proposes to sell; (ii) second, the shares of Common Stock requested to be included therein by Holders of Registrable Securities, allocated pro rata among all such Holders on the basis of the number of Registrable Securities owned by each such Holder or in such manner as they may otherwise agree; and (iii) third, the shares of Common Stock requested to be included therein by Holders of Common Stock other than Holders of Registrable Securities, allocated among such Holders in such manner as they may agree.

(b) The Company's commercially reasonable efforts to effect the piggyback registration of the Registrable Securities shall include, without limitation, the following:

(i) Cause such Registration Statement and other filings to be declared effective as soon as commercially reasonably possible.

(ii) Prepare and file with the SEC such amendments and supplements to such Registration Statement and the prospectus used in connection with such Registration Statement as may be necessary to comply with the provisions of the Securities Act with respect to the disposition of all securities covered by such Registration Statement and notify the Holders of the filing and effectiveness of such Registration Statement and any amendments or supplements.

(iii) Furnish to each Holder that has Registrable Securities included in the Registration Statement such numbers of copies of a current prospectus conforming with the requirements of the Securities Act, copies of the Registration Statement, any amendment or supplement thereto and any documents incorporated by reference therein and such other documents as such Holder may reasonably require in order to facilitate the disposition of Registrable Securities owned by such Holder.

(iv) Register and qualify the securities covered by such Registration Statement under the securities or "Blue Sky" laws of all domestic jurisdictions; provided that the Company shall not be required in connection therewith or as a condition thereto to qualify to do business or to file a general consent to service of process in any such states or jurisdictions.

(v) Notify promptly each Holder that has Registrable Securities included in the Registration Statement of the happening of any event (but not the substance or details of any such event) of which the Company has knowledge as a result of which the prospectus (including any supplements thereto or thereof) included in such Registration Statement, as then in effect, includes an untrue statement of material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading in light of the circumstances then existing (each an "**Event**"), and use its best efforts to promptly update and/or correct such prospectus. Each Holder will hold in confidence and will not make any disclosure of any such Event and any related information disclosed by the Company.

(vi) Notify each Holder of the issuance by the SEC or any state securities commission or agency of any stop order suspending the effectiveness of the Registration Statement or the threat or initiation of any proceedings for that purpose. The Company shall use its best efforts to prevent the issuance of any stop order and, if any stop order is issued, to obtain the lifting thereof at the earliest possible time.

(vii) List the Registrable Securities covered by such Registration Statement with all securities exchange(s) and/or markets on which the Common Stock is then listed and prepare and file any required filings with the Nasdaq Stock Market or any other exchange or market where the shares of Common Stock are traded.

(viii) Take all steps reasonably necessary to enable Holders to avail themselves of the prospectus delivery mechanism set forth in Rule 153 (or successor thereto) under the Securities Act.

(c) Notwithstanding the obligations under this Section 6 or any other provision of this Agreement, if (i) in the good faith judgment of the Company, following consultation with legal counsel, it would be detrimental to the Company and its stockholders for resales of Registrable Securities to be made pursuant to the Registration Statement due to the existence of a material development or potential material development involving the Company that the Company would be obligated to disclose in the Registration Statement, which disclosure would be premature or otherwise inadvisable at such time or would have a material adverse effect upon the Company and its stockholders, or (ii) in the good faith judgment of the Company, it would adversely affect or require premature disclosure of the filing of a Company-initiated registration of any class of its equity securities, then the Company will have the right to suspend the use of the Registration Statement for a period of not more than 90 consecutive calendar days, but only if the Company reasonably concludes, after consultation with outside legal counsel, that the failure to suspend the use of the Registration Statement as such would create a risk of a material liability or violation under applicable securities laws or regulations.

(d) During the registration period, the Company will make available, upon reasonable advance notice during normal business hours, for inspection by any Holder whose Registrable Securities are being sold pursuant to a Registration Statement, all pertinent financial and other records, pertinent corporate documents and properties of the Company (collectively, the "**Records**") as reasonably necessary to enable each such Holder to exercise its due diligence responsibility in connection with or related to the contemplated offering. The Company will cause its officers, directors and employees to supply all information that any Holder may reasonably request for purposes of performing such due diligence.

(e) Each Holder will hold in confidence, use only in connection with the contemplated offering and not make any disclosure of all Records and other information that the Company determines in good faith to be confidential, and of which determination the Holders are so notified, unless (i) the disclosure of such Records is necessary to avoid or correct a misstatement or omission in any Registration Statement, (ii) the release of such Records is ordered pursuant to a subpoena or other order from a court or government body of competent jurisdiction, (iii) the information in such Records has been made generally available to the public other than by disclosure in violation of this or any other agreement (to the knowledge of the relevant Holder), (iv) the Records or other information was developed independently by the Holder without breach of this Agreement, (v) the information was known to the Holder before receipt of such information from the Company, or (vi) the information was disclosed to the Holder by a third party not under an obligation of confidentiality. However, a Holder may make disclosure of such Records and other information to any attorney, adviser, or other third party retained by it that needs to know the information as determined in good faith by the Holder (the "**Holder Representative**"), if the Holder advises the Holder Representative of the confidentiality provisions of this Section 6.1(e), but the Holder will be liable for any act or omission of any of its Holder Representatives relative to such information as if the act or omission was that of the Holder. The Company is not required to disclose any confidential information in the Records to any Holder unless and until such Holder has entered into a confidentiality agreement (in form and substance satisfactory to the Company) with the Company with respect thereto, substantially to the effect of this Section 6.1(e). Unless legally prohibited from so doing, each Holder will, upon learning that disclosure of Records containing confidential information is sought in or by a court or governmental body of competent jurisdiction or through other means, give prompt notice to the Company and allow the Company, at the Company's expense, to undertake appropriate action to prevent disclosure of, or to obtain a protective order for, the Records deemed confidential. Nothing herein will be deemed to limit the Holder's ability to sell Registrable Securities in a manner that is otherwise consistent with applicable laws and regulations.

6.2 Registration Expenses. All Registration Expenses in connection with any registration, qualification or compliance with registration pursuant to this Agreement shall be borne by the Company, and all Selling Expenses of a Holder shall be borne by such Holder.

6.3 Registration on Form S-3. The Company shall use its reasonable best efforts to meet the "registrant eligibility" requirements for a secondary offering set forth in the general instructions to Form S-3 or any comparable or successor form or forms, or in the event that the Company is ineligible to use such form, such form as the Company is eligible to use under the Securities Act, provided that if such other form is used, the Company shall convert such other form to a Form S-3 as soon as the Company becomes so eligible.

6.4 Registration Period. In the case of the registration effected by the Company pursuant to this Agreement, the Company shall keep such registration effective until the date on which all the Holders have completed the sales or distribution described in the Registration Statement relating thereto or, if earlier until such Registrable Securities may be sold by the Holders under Rule 144 (provided that the Company's transfer agent has accepted an instruction from the Company to such effect).

6.5 Indemnification.

(a) Indemnification by the Company. The Company shall, notwithstanding any termination of this Agreement, indemnify and hold harmless each Holder, the officers, directors, partners, members, agents, brokers (including brokers who offer and sell Registrable Securities as principal as a result of a pledge or any failure to perform under a margin call of Common Stock), investment advisors and employees of each of them, each Person who controls each Holder (within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act) and the officers, directors, partners, members, agents and employees of each such controlling Person, to the fullest extent permitted by applicable law, from and against any and all Losses, as incurred, arising out of or relating to any untrue or alleged untrue statement of a material fact contained in the Registration Statement, any Prospectus or any form of prospectus or in any amendment or supplement thereto or in any preliminary prospectus, or arising out of or relating to any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein (in the case of any Prospectus or form of prospectus or supplement thereto, in the light of the circumstances under which they were made) not misleading, except to the extent, but only to the extent, that such untrue statements, alleged untrue statements, omissions or alleged omissions are based solely upon information regarding a Holder furnished in writing to the Company by such Holder expressly for use therein, or to the extent that such information relates to a Holder or such Holder's proposed method of distribution of Registrable Securities and was reviewed and expressly approved in writing by the Holder expressly for use in the Registration Statement, such Prospectus or such form of Prospectus or in any amendment or supplement thereto.

(b) Indemnification by the Purchaser. Each Holder shall indemnify and hold harmless the Company, its directors, officers, agents and employees, each Person who controls the Company (within the meaning of Section 15 of the Securities Act and Section 20 of the Exchange Act), and the directors, officers, agents or employees of such controlling Persons, to the fullest extent permitted by applicable law, from and against all Losses (as determined by a court of competent jurisdiction in a final judgment not subject to appeal or review) arising solely out of any untrue statement of a material fact contained in the Registration Statement, any Prospectus, or any form of prospectus, or in any amendment or supplement thereto, or arising solely out of any omission of a material fact required to be stated therein or necessary to make the statements therein (in the case of any Prospectus or form of prospectus or supplement thereto, in light of the circumstances under which they were made) not misleading to the extent, but only to the extent, that such untrue statement or omission is based solely upon information regarding the Holder furnished in writing to the Company by the Holder expressly for use in such Registration Statement or Prospectus, or to the extent that such information relates to the Holder or the Holder's proposed method of distribution of Registrable Securities and was reviewed and expressly approved in writing by the Holder expressly for use in the Registration Statement, such Prospectus or such form of Prospectus or in any amendment or supplement thereto. In no event shall the liability of any Holder hereunder be greater in amount than the dollar amount of the net proceeds received by the Holder upon the sale of the Registrable Securities giving rise to such indemnification obligation.

(c) Conduct of Indemnification Proceedings.

(i) If any Proceeding shall be brought or asserted against any Person entitled to indemnity hereunder (an "**Indemnified Party**"), such Indemnified Party shall promptly notify the Person from whom indemnity is sought (the "**Indemnifying Party**") in writing, and the Indemnifying Party shall assume the defense thereof, including the employment of counsel reasonably satisfactory to the Indemnified Party and the payment of all fees and expenses incurred in connection with defense thereof; provided, that the failure of any Indemnified Party to give such notice shall not relieve the Indemnifying Party of its obligations or liabilities pursuant to this Agreement, except (and only) to the extent that it shall be finally determined by a court of competent jurisdiction (which determination is not subject to appeal or further review) that such failure shall have proximately and materially adversely prejudiced the Indemnifying Party.

(ii) An Indemnified Party shall have the right to employ separate counsel in any such Proceeding and to participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of such Indemnified Party or Parties unless: (i) the Indemnifying Party has agreed in writing to pay such fees and expenses; or (ii) the Indemnifying Party shall have failed promptly to assume the defense of such Proceeding and to employ counsel reasonably satisfactory to such Indemnified Party in any such Proceeding; or (iii) the named parties to any such Proceeding (including any impleaded parties) include both such Indemnified Party and the Indemnifying Party, and such Indemnified Party shall have been advised by counsel that a conflict of interest is likely to exist if the same counsel were to represent such Indemnified Party and the Indemnifying Party (in which case, if such Indemnified Party notifies the Indemnifying Party in writing that it elects to employ separate counsel at the expense of the Indemnifying Party, the Indemnifying Party shall not have the right to assume the defense thereof and such counsel shall be at the expense of the Indemnifying Party). The Indemnifying Party shall not be liable for any settlement of any such Proceeding effected without its written consent, which consent shall not be unreasonably withheld. No Indemnifying Party shall, without the prior written consent of the Indemnified Party, effect any settlement of any pending Proceeding in respect of which any Indemnified Party is a party, unless such settlement includes an unconditional release of such Indemnified Party from all liability on claims that are the subject matter of such Proceeding.

(iii) All fees and expenses of the Indemnified Party (including reasonable fees and expenses to the extent incurred in connection with investigating or preparing to defend such Proceeding in a manner not inconsistent with this Section) shall be paid to the Indemnified Party, as incurred, within ten (10) Trading Days of written notice thereof to the Indemnifying Party (regardless of whether it is ultimately determined that an Indemnified Party is not entitled to indemnification hereunder; provided, that the Indemnifying Party may require such Indemnified Party to undertake to reimburse all such fees and expenses to the extent it is finally judicially determined that such Indemnified Party is not entitled to indemnification hereunder).

6.6 Contribution.

(a) If a claim for indemnification under Section 6.5 is unavailable to an Indemnified Party (by reason of public policy or otherwise), then each Indemnifying Party, in lieu of indemnifying such Indemnified Party, shall contribute to the amount paid or payable by such Indemnified Party as a result of such Losses, in such proportion as is appropriate to reflect the relative fault of the Indemnifying Party and Indemnified Party in connection with the actions, statements or omissions that resulted in such Losses as well as any other relevant equitable considerations. The relative fault of such Indemnifying Party and Indemnified Party shall be determined by reference to, among other things, whether any action in question, including any untrue or alleged untrue statement of a material fact or omission or alleged omission of a material fact, has been taken or made by, or relates to information supplied by, such Indemnifying Party or Indemnified Party, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such action, statement or omission. The amount paid or payable by a party as a result of any Losses shall be deemed to include any reasonable attorneys' or other reasonable fees or expenses incurred by such party in connection with any Proceeding to the extent such party would have been indemnified for such fees or expenses if the indemnification provided for in this Section was available to such party in accordance with its terms.

(b) The parties hereto agree that it would not be just and equitable if contribution pursuant to this Section 6.6(b) were determined by pro rata allocation or by any other method of allocation that does not take into account the equitable considerations referred to in the immediately preceding paragraph. Notwithstanding the provisions of this Section 6.6(b), the Purchaser shall not be required to contribute, in the aggregate, any amount in excess of the amount by which the net proceeds actually received by the Purchaser from the sale of the Registrable Securities subject to the Proceeding exceeds the amount of any damages that the Purchaser has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No Person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation.

(c) The indemnity and contribution agreements contained in this Section are in addition to any liability that the Indemnifying Parties may have to the Indemnified Parties.

ARTICLE VII.
MISCELLANEOUS

7.1 Fees and Expenses. The parties hereto shall pay their own costs and expenses in connection herewith. The Company shall pay all transfer agent fees, stamp taxes and other taxes and duties levied in connection with the issuance of any Securities.

7.2 Entire Agreement. The Transaction Documents, together with the Exhibits and Schedules thereto and the respective nondisclosure agreements between the Company and the Purchaser, contain the entire understanding of the parties with respect to the subject matter hereof and supersede all prior agreements and understandings, oral or written, with respect to such matters, which the parties acknowledge have been merged into such documents, exhibits and schedules. At or after the Closing, and without further consideration, the Company will execute and deliver to the Purchaser such further documents as may be reasonably requested in order to give practical effect to the intention of the parties under the Transaction Documents.

7.3 Notices. Any and all notices or other communications or deliveries required or permitted to be provided under this Agreement or any other Transaction Document shall be in writing and shall be deemed given and effective on the earliest of (i) the date of transmission, if such notice or communication is delivered via email or facsimile at the email address or facsimile number specified in this Section prior to 5:30 p.m. (New York City time) on a Trading Day, (ii) the Trading Day after the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number specified in this Section later than 5:30 p.m. (New York City time) on any date and earlier than 11:59 p.m. (New York City time) on such date, (iii) the Trading Day following the date of mailing, if sent by nationally recognized overnight courier service, specifying next business day delivery or (iv) upon actual receipt by the party to whom such notice is required to be given if delivered by hand. The address for such notices and communications shall be as follows:

If to the Company:

ModusLink Global Solutions, Inc.
1601 Trapelo Road
Suite 170
Waltham, MA 02451
Attn.: Louis J. Belandi

With a copy to:

Littman Krooks LLP
655 Third Avenue, 20th Floor
New York, New York 10017
Attn.: Martin W. Enright, Esq.
Email: menright@littmankrooks.com
Fax: 212-490-2990

If to Purchaser:

SPH Group Holdings LLC
590 Madison Avenue
New York, NY 10022
Attn: Jack L. Howard

With a copy to:

Olshan Frome Wolosky LLP
1325 Avenue of the Americas
New York, NY 10019
Attn.: Steve Wolosky and Adam Finerman
Email: swolosky@olshanlaw.com and afinerman@olshanlaw.com
Fax: 212-451-2222

or such other address as may be designated in writing hereafter, in the same manner, by such Person by two (2) Trading Days' prior notice to the other party in accordance with this Section 7.3.

7.4 Amendments; Waivers. No provision of this Agreement may be waived or amended except in a written instrument signed by Purchaser and the Company. No waiver of any default with respect to any provision, condition or requirement of this Agreement shall be deemed to be a continuing waiver in the future or a waiver of any subsequent default or a waiver of any other provision, condition or requirement hereof, nor shall any delay or omission of either party to exercise any right hereunder in any manner impair the exercise of any such right. Notwithstanding the foregoing, a waiver or consent to depart from the provisions hereof with respect to a matter that relates exclusively to the rights of Purchasers under Article VI and that does not directly or indirectly affect the rights of other Purchasers may be given by Purchasers holding at least a majority of the Registrable Securities to which such waiver or consent relates. No consideration shall be offered or paid to any Person to amend or consent to a waiver or modification of any provision of any of the Transaction Documents unless the same consideration also is offered on identical terms to all of the parties to the Transaction Documents that are holders of Preferred Shares.

7.5 Construction. The headings herein are for convenience only, do not constitute a part of this Agreement and shall not be deemed to limit or affect any of the provisions hereof. The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent, and no rules of strict construction will be applied against any party.

7.6 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties and their successors and permitted assigns. The Company may not assign this Agreement or any rights or obligations hereunder, without the prior written consent of the Purchaser. The Purchaser may assign its rights under this Agreement to any Person to whom the Purchaser assigns or transfers any Securities, provided such transferee agrees in writing to be bound, with respect to the transferred Securities, by the provisions hereof and of the applicable Transaction Documents that apply to the "Purchaser." Notwithstanding anything to the contrary herein, Securities may be pledged to any Person in connection with a bona fide margin account or other loan or financing arrangement secured by such Securities.

7.7 No Third-Party Beneficiaries. This Agreement is intended for the benefit of the parties hereto and their respective successors and permitted assigns and is not for the benefit of, nor may any provision hereof be enforced by, any other Person, except that each Related Person is an intended third party beneficiary of Section 4.9 and each Indemnified Party is an intended third party beneficiary of Section 6.5 and (in each case) may enforce the provisions of such Sections directly against the parties with obligations thereunder.

7.8 Governing Law; Venue; Waiver of Jury Trial. All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by and construed and enforced in accordance with the internal laws of the State of New York (except for matters governed by corporate law in the State of Delaware), without regard to the principles of conflicts of law thereof. Each party agrees that all legal proceedings concerning the interpretations, enforcement and defense of the transactions contemplated by this agreement (whether brought against a party hereto or its respective affiliates, directors, officers, stockholders, employees or agents) shall be commenced exclusively in the state and federal courts sitting in the City of New York, Borough of Manhattan. Each party hereto hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in the City of New York, Borough of Manhattan for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein (including with respect to the enforcement of this Agreement), and hereby irrevocably waives, and agrees not to assert in any Proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such Proceeding is improper. Each party hereto hereby irrevocably waives personal service of process and consents to process being served in any such Proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. Each party hereto hereby irrevocably waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any Proceeding arising out of or relating to this Agreement or the transactions contemplated hereby.

7.9 Survival. The representations, warranties, agreements and covenants contained herein shall survive the Closing.

7.10 Execution. This Agreement may be executed in two or more counterparts, all of which when taken together shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to the other party, it being understood that both parties need not sign the same counterpart. In the event that any signature is delivered by facsimile transmission, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) the same with the same force and effect as if such facsimile signature page were an original thereof.

7.11 Severability. If any provision of this Agreement is held to be invalid or unenforceable in any respect, the validity and enforceability of the remaining terms and provisions of this Agreement shall not in any way be affected or impaired thereby and the parties will attempt in good faith to agree upon a valid and enforceable provision that is a reasonable substitute therefor, and upon so agreeing, shall incorporate such substitute provision in this Agreement.

7.12 Rescission and Withdrawal Right. Notwithstanding anything to the contrary contained in (and without limiting any similar provisions of) the Transaction Documents, whenever the Purchaser exercises a right, election, demand or option under a Transaction Document and the Company does not timely perform its related obligations within the periods therein provided, then the Purchaser may rescind or withdraw, in its sole discretion from time to time upon written notice to the Company, any relevant notice, demand or election in whole or in part without prejudice to its future actions and rights.

7.13 Replacement of Securities. If any certificate or instrument evidencing any Securities is mutilated, lost, stolen or destroyed, the Company shall issue or cause to be issued in exchange and substitution for and upon cancellation thereof, or in lieu of and substitution therefor, a new certificate or instrument, but only upon receipt of evidence reasonably satisfactory to the Company of such loss, theft or destruction and customary and reasonable indemnity, if requested. The applicants for a new certificate or instrument under such circumstances shall also pay any reasonable third-party costs associated with the issuance of such replacement Securities.

7.14 Remedies. In addition to being entitled to exercise all rights provided herein or granted by law, including recovery of damages, each of the Purchaser and the Company will be entitled to specific performance under the Transaction Documents. The parties agree that monetary damages may not be adequate compensation for any loss incurred by reason of any breach of obligations described in the foregoing sentence and hereby agree that, in any action for specific performance of any such obligation, it shall not assert or shall waive the defense that a remedy at law would be adequate.

7.15 Payment Set Aside. To the extent that the Company makes a payment or payments to the Purchaser hereunder or under any other Transaction Document or the Purchaser enforces or exercises its rights hereunder or thereunder, and such payment or payments or the proceeds of such enforcement or exercise or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside, recovered from, disgorged by or are required to be refunded, repaid or otherwise restored to the Company by a trustee, receiver or any other person under any law (including, without limitation, any bankruptcy law, state or federal law, common law or equitable cause of action), then to the extent of any such restoration the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such enforcement or setoff had not occurred.

7.16 Adjustments in Share Numbers and Prices. In the event of any stock split, subdivision, dividend or distribution payable in shares of Common Stock (or other securities or rights convertible into, or entitling the holder thereof to receive directly or indirectly shares of Common Stock), combination or other similar recapitalization or event occurring after the date hereof, each reference in this Agreement to a number of shares or a price per share shall be amended to appropriately account for such event.

7.17 Construction. The parties agree that each of them and/or their respective counsel has reviewed and had an opportunity to revise the Transaction Documents and, therefore, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of the Transaction Documents or any amendments hereto.

7.18 Legal Counsel. The Purchaser has engaged Olshan as its legal counsel in connection with the preparation of this Agreement. Olshan has previously represented and/or concurrently represents the interests of the Purchaser, the Company, and/or parties related thereto in connection with matters other than the preparation of this Agreement and may represent such Persons in the future. The Company: (i) approves of Olshan's representation of the Purchaser in the preparation of this Agreement; and (ii) acknowledges that Olshan has not been engaged by the Company, the Board or the Special Committee to protect or represent the interests of the Company in connection with the preparation of this Agreement, and that actual or potential conflicts of interest may exist among the Purchaser and the Company in connection with the preparation of this Agreement. In addition, the Company: (iii) acknowledges the possibility of a future conflict or dispute among the Company and the Purchaser; and (iv) acknowledges the possibility that, under the laws and ethical rules governing the conduct of attorneys, Olshan may be precluded from representing the Purchaser and/or the Company in connection with any such conflict or dispute. Nothing in this Section 7.18 shall preclude the Purchaser from selecting different legal counsel to represent it at any time in the future and the Company shall be deemed by virtue of this Section 7.18 to have waived its right to object to any conflict of interest relating to matters other than this Agreement or the transactions contemplated herein.

IN WITNESS WHEREOF, the parties hereto have caused this Preferred Stock Purchase Agreement to be duly executed by their respective authorized signatories as of the date first indicated above.

MODUSLINK GLOBAL SOLUTIONS, INC.

By: /s/ Louis J. Belardi
Name: Louis J. Belardi
Title: Chief Financial Officer

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SIGNATURE PAGE OF THE PURCHASER FOLLOWS]

PURCHASER:
SPH GROUP HOLDINGS LLC

By: Steel Partners Holdings GP Inc.
Manager

By: /s/ Jack L. Howard
Name: Jack L. Howard
Title: President

Schedule A

Name of Purchaser	Number of Preferred Shares	Aggregate Purchase Price
SPH Group Holdings LLC	35,000	$35,000,000

EXHIBIT A

Form of Certificate of Designations

FINANCING AGREEMENT

Dated as of December 15, 2017

by and among

IWCO DIRECT HOLDINGS INC.
as Parent,

MLGS MERGER COMPANY, INC.,
as the Initial Borrower, and immediately upon the consummation of the IWCO Acquisition,

INSTANT WEB, LLC,
as Borrower,

PARENT AND EACH OTHER SUBSIDIARY OF PARENT
LISTED AS A GUARANTOR ON THE SIGNATURE PAGES HERETO,
as Guarantors,

THE LENDERS FROM TIME TO TIME PARTY HERETO,
as Lenders,

CERBERUS BUSINESS FINANCE, LLC,
as Administrative Agent

and

Collateral Agent

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Exhibit F Form of Revolving Note
Exhibit G Solvency Certificate

FINANCING AGREEMENT

Financing Agreement, dated as of December 15, 2017, by and among IWCO Direct Holdings Inc., a Delaware corporation (the "Parent"), MLGS Merger Company, Inc., a Delaware corporation (the "Initial Borrower") and immediately upon the consummation of the IWCO Acquisition (as hereinafter defined), Instant Web, LLC, a Delaware corporation (the "Borrower"), each subsidiary of the Parent listed as a "Guarantor" on the signature pages hereto (together with the Parent and each other Person that executes a joinder agreement and becomes a "Guarantor" hereunder or otherwise guaranties all or any part of the Obligations (as hereinafter defined), each a "Guarantor" and, collectively, the "Guarantors"), the lenders from time to time party hereto (each a "Lender" and, collectively, the "Lenders"), Cerberus Business Finance, LLC, a Delaware limited liability company ("Cerberus"), as collateral agent for the Lenders (in such capacity, together with its successors and assigns in such capacity, the "Collateral Agent"), and Cerberus, as administrative agent for the Lenders (in such capacity, together with its successors and assigns in such capacity, the "Administrative Agent" and together with the Collateral Agent, each an "Agent" and, collectively, the "Agents").

RECITALS

Pursuant to that certain Agreement and Plan of Merger, dated as of December 15, 2017 (as amended, restated, amended and restated supplement or otherwise modified from time to time, the "IWCO Acquisition Agreement"), by and among ModusLink, (b) MLGS Merger Company, Inc., a Delaware corporation, (c) IWCO Direct Holdings Inc., a Delaware corporation, (d) CSC Shareholder Services, LLC, a Delaware limited liability company, solely in its capacity as Representative, and (e) the stockholders of the Company listed on the signature pages thereto, ModusLink shall obtain all of the outstanding equity interests of IWCO Direct Holdings Inc. (the "IWCO Acquisition").

The Borrower has asked the Lenders to extend credit to the Borrower consisting of (a) a Term Loan (as hereinafter defined) in the aggregate principal amount of $393,000,000 and (b) a revolving credit facility in an aggregate principal amount not to exceed $25,000,000 at any time outstanding. The proceeds of the Term Loan and the Revolving Loans made on the Effective Date shall be used (i) to finance a portion of the IWCO Acquisition, (ii) to repay certain existing indebtedness of the Borrower and its subsidiaries, (iii) for working capital and general corporate purposes of the Loan Parties and (iv) to pay fees and expenses related to this Agreement and the IWCO Acquisition. The proceeds of any Revolving Loans made under the revolving credit facility after the Effective Date shall be used for working capital and general corporate purposes of the Loan Parties. The Lenders are severally, and not jointly, willing to extend such credit to the Borrower subject to the terms and conditions hereinafter set forth.

In consideration of the premises and the covenants and agreements contained herein, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS; CERTAIN TERMS

Section 1.01 Definitions.

As used in this Agreement, the following terms shall have the respective meanings indicated below, such meanings to be applicable equally to both the singular and plural forms of such terms:

"Account Debtor" means, with respect to any Person, each debtor, customer or obligor in any way obligated on or in connection with any Account Receivable of such Person.

"Account Receivable" means, with respect to any Person, any and all rights of such Person to payment for goods sold or leased and/or services rendered, including accounts, general intangibles and any and all such rights evidenced by chattel paper, instruments or documents, whether due or to become due and whether or not earned by performance, and whether now or hereafter acquired or arising in the future, and any proceeds arising therefrom or relating thereto.

"Acquisition" means the acquisition (whether by means of a merger, consolidation or otherwise) of all of the Equity Interests of any Person or all or substantially all of the assets of (or any division or business line of) any Person.

"Acquisition Assets" means, with respect to any Acquisition, all of the property and assets (tangible and intangible and including any Equity Interests) purported to be purchased by Parent or any of its Subsidiaries pursuant to the applicable acquisition agreement or other documentation evidencing or otherwise relating to such Acquisition.

"Acquisition Collateral Assignment" means the Collateral Assignment of Acquisition Documents, dated as of the date hereof, and in form and substance reasonably satisfactory to the Collateral Agent, made by ModusLink, Parent, Initial Borrower and Borrower in favor of the Collateral Agent.

"Action" has the meaning specified therefor in Section 12.12.

"Additional Amount" has the meaning specified therefor in Section 2.09(a).

"Administrative Agent" has the meaning specified therefor in the preamble hereto.

"Administrative Agent's Account" means an account at a bank designated by the Administrative Agent from time to time as the account into which the Loan Parties shall make all payments to the Administrative Agent for the benefit of the Agents and the Lenders under this Agreement and the other Loan Documents.

"Affiliate" means, with respect to any Person, any other Person that directly or indirectly through one or more intermediaries, controls, 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, either to (a) vote 25% or more of the Equity Interests having ordinary voting power for the election of members of the Board of Directors of such Person or (b) direct or cause the direction of the management and policies of such Person whether by contract or otherwise. Notwithstanding anything herein to the contrary, in no event shall any Agent or any Lender be considered an "Affiliate" of any Loan Party.

"Affiliated Investment Fund" means an Affiliate of Sponsor (other than Parent, the Borrower or any of its respective Subsidiaries) that is a bona fide debt fund that is primarily engaged in, or advises funds or other investment vehicles that are engaged in, making, purchasing, holding or otherwise investing in commercial loans, bonds and similar extensions of credit or securities in the ordinary course of its business.

"Affiliated Lender" means, at any time, any Lender (not a natural person) that is the Sponsor or an Affiliate thereof (including Affiliated Investment Funds) other than the Parent, the Borrower or any of its respective Subsidiaries.

"Affiliated Lender Amendment" has the meaning set forth in Section 12.07(a)(iv)(B).

"Agent" and "Agents" have the respective meanings specified therefor in the preamble hereto.

"Agent Advances" has the meaning specified therefor in Section 10.08(a).

"Agreement" means this Financing Agreement, including all amendments, restatements, amendments and restatements, modifications and supplements and any exhibits or schedules to any of the foregoing, and shall refer to the Agreement as the same may be in effect at the time such reference becomes operative.

"Anti-Corruption Laws" has the meaning specified therefor in Section 6.01(aa).

"Anti-Terrorism Laws" means any Requirement of Law relating to terrorism, economic sanctions or money laundering, including, without limitation, (a) the Money Laundering Control Act of 1986 (*i.e.*, 18 U.S.C. §§ 1956 and 1957), (b) the Bank Secrecy Act of 1970 (31 U.S.C. §§ 5311-5330 and 12 U.S.C. §§ 1818(s), 1820(b) and 1951-1959), and the implementing regulations promulgated thereunder, (c) the USA PATRIOT Act and the implementing regulations promulgated thereunder, (d) the laws, regulations and executive orders administered by the United States Department of the Treasury's Office of Foreign Assets Control ("OFAC"), (e) any law prohibiting or directed against terrorist activities or the financing or support of terrorist activities (*e.g.*, 18 U.S.C. §§ 2339A and 2339B), and (f) any similar laws enacted in the United States or any other jurisdictions in which the parties to this Agreement operate, as any of the foregoing laws have been, or shall hereafter be, amended, renewed, extended, or replaced and all other present and future legal requirements of any Governmental Authority governing, addressing, relating to, or attempting to eliminate, terrorist acts and acts of war and any regulations promulgated pursuant thereto.

"Applicable Margin" means, as of any date of determination, with respect to the interest rate of (a) any Reference Rate Loan or any portion thereof, 3.75% and (b) any LIBOR Rate Loan or any portion thereof, 6.50%.

"Applicable Premium Trigger Event" means:

(a) any permanent reduction of the Total Revolving Credit Commitment (i) pursuant to Section 2.05 (other than any permanent reduction of the Total Revolving Credit Commitment made pursuant to Section 2.05(c)(i), Section 2.05(c)(iv) and Section 2.05(c)(v)) whether before or after the occurrence of an Event of Default or (ii) as a result of the acceleration of the Obligations (for any reason), including, without limitation, the acceleration of the Obligations as a result of the commencement of any Insolvency Proceeding; and

(b) the prepayment of all or any portion of the principal balance of the Term Loan for any reason prior to the Final Maturity Date (including, without limitation, any optional prepayment or mandatory prepayment, but excluding any repayment of the Term Loan made pursuant to Section 2.03(b) and mandatory prepayments made pursuant to Section 2.05(c)(i), Section 2.05(c)(iv) and Section 2.05(c)(v)) whether before or after (i) the occurrence of an Event of Default, or (ii) the commencement of any Insolvency Proceeding, and notwithstanding any acceleration (for any reason) of the Obligations.

"Applicable Prepayment Premium" means,

(a) as of the date of the occurrence of an Applicable Premium Trigger Event specified in clause (a) of the definition thereof:

(i) during the period of time from and after the Effective Date up to and including the date that is the twelve month anniversary of the Effective Date (the "First Period"), an amount equal to 2.00% times the amount of the permanent reduction of the Total Revolving Credit Commitment on such date; and

(ii) during the period of time from and after the First Period up to and including the date that is the twenty-four month anniversary of the Effective Date (the "Second Period"), an amount equal to 1.00% times the amount of the permanent reduction of the Total Revolving Credit Commitment on such date; and

(iii) thereafter, zero; and

(b) as of the date of the occurrence of an Applicable Premium Trigger Event specified in clause (b) of the definition thereof:

(i) during the First Period, an amount equal to 2.00% times the principal amount of the Term Loan Obligations (other than the Applicable Prepayment Premium) being paid on such date;

(ii) during the Second Period, an amount equal to 1.00% times the principal amount of the Term Loan Obligations (other than the Applicable Prepayment Premium) being paid on such date; and

(iii) thereafter, zero.

"Approved Bank" means any commercial bank that is organized under the laws of the United States, any state thereof, the District of Columbia or any member nation of the Organization for Economic Cooperation and Development or any other jurisdiction in which a Loan Party conducts business, in each case, which is reputable and financially sound.

"Assignee" has the meaning specified therefor in Section 12.07(a)(i).

"Assignment and Acceptance" means an assignment and acceptance entered into by an assigning Lender and an assignee (with the consent of any Person required by Section 12.07), and accepted by the Collateral Agent (and the Administrative Agent, if applicable), in accordance with Section 12.07 hereof and substantially in the form of Exhibit B hereto or such other form reasonably acceptable to the Collateral Agent.

"Authorized Officer" means, with respect to any Person, the chief executive officer, chief operating officer, chief financial officer, treasurer, controller or other financial officer performing similar functions, president or executive vice president of such Person.

"Availability" means, as of the date of determination, an amount equal to (a) the Total Revolving Credit Commitment minus (b) the aggregate outstanding principal amount of all Revolving Loans.

"Bankruptcy Code" means Title 11 of the United States Code, as amended from time to time and any successor statute or any similar federal or state law for the relief of debtors.

"Basel III" means: (a) the agreements on capital requirements, a leverage ratio and liquidity standards contained in "Basel III: A global regulatory framework for more resilient banks and banking systems", "Basel III: International framework for liquidity risk measurement, standards and monitoring" and "Guidance for national authorities operating the countercyclical capital buffer" published by the Basel Committee on Banking Supervision in December 2010, each as amended, supplemented or restated, (b) the rules for global systemically important banks contained in "Global systemically important banks: assessment methodology and the additional loss absorbency requirement – Rules text" published by the Basel Committee on Banking Supervision in November 2011, as amended, supplemented or restated, and (c) any further guidance or standards published by the Basel Committee on Banking Supervision relating to "Basel III".

"Blocked Person" means any Person:

(a) that (i) is identified on the list of "Specially Designated Nationals and Blocked Persons" published by OFAC; (ii) resides, is organized or chartered, or has a place of business in a country or territory that is the subject of an OFAC Sanctions Program; or (iii) a United States Person is prohibited from dealing or engaging in a transaction with under any of the Anti-Terrorism Laws;

(b) that is owned or controlled by, or that owns or controls, or that is acting for or on behalf of, any Person described in clause (a) above; or

(c) that is affiliated or associated with a Person described in clauses (a) and (b) above.

"Board" means the Board of Governors of the Federal Reserve System of the United States (or any successor).

"Board of Directors" means with respect to (a) any corporation, the board of directors of the corporation or any committee thereof duly authorized to act on behalf of such board, (b) a partnership, the board of directors of the general partner of the partnership, (c) a limited liability company, the managing member or members or any controlling committee or board of managers or equivalent governing body of such company or the sole member or the managing member thereof, and (d) any other Person, the board or committee of such Person serving a similar function.

"Borrower" has the meaning specified therefor in the introductory paragraph hereto.

"Business Day" means (a) for all purposes other than as described in clause (b) below, any day other than a Saturday, Sunday or other day on which commercial banks are authorized or required to be closed for business in New York City, and (b) with respect to the borrowing, payment or continuation of, or determination of interest rate on, LIBOR Rate Loans, any day that is a Business Day described in clause (a) above and on which dealings in Dollars may be carried on in the interbank eurodollar markets in New York City and London.

"Capital Expenditures" means, with respect to any Person for any period, the aggregate of all expenditures by such Person and its Subsidiaries during such period that in accordance with GAAP are capital expenditures, whether such expenditures are paid in cash or financed, including all Capitalized Lease Obligations that are paid or due and payable during such period; provided that the term "Capital Expenditures" shall not include any such expenditures which constitute (i) expenditures by a Loan Party made in connection with the replacement, substitution or restoration of such Loan Party's assets pursuant to Section 2.05(c)(vi) from the Net Cash Proceeds of Dispositions and Extraordinary Receipts, (ii) expenditures financed with the proceeds received from the sale or issuance of Equity Interests to a Permitted Holder or any other Person permitted under this Agreement so long as (A) the Borrower is not required to make a prepayment of the Loans with such proceeds pursuant to Section 2.05(c)(v) and (B) such proceeds are used exclusively to fund such expenditures, (iii) a Permitted Acquisition, (iv) expenditures that are accounted for as capital expenditures of such Person and that actually are paid for or reimbursed by a third party (excluding any Loan Party) and for which no Loan Party has provided or is required to provide or incur, directly or indirectly, any consideration or obligation to such third party or any other person (whether before, during or after such period), (v) property, plant and equipment taken in settlement of Accounts Receivable in the ordinary course of business and (vi) the purchase price of equipment that is purchased substantially contemporaneously with the trade in of existing equipment to the extent that the gross amount of such purchase price is reduced by the credit granted by the seller of such equipment for the equipment being traded in at such time.

"Capitalized Lease" means, with respect to any Person, any lease of (or other arrangement conveying the right to use) real or personal property by such Person as lessee which is required under GAAP to be capitalized on the balance sheet of such Person; provided that any change in GAAP after the Effective Date that recharacterizes the treatment of operating leases as Capitalized Leases shall be ignored for all purposes of this Agreement.

"Capitalized Lease Obligations" means, with respect to any Person, obligations of such Person and its Subsidiaries under Capitalized Leases, and, for purposes hereof, the amount of any such obligation shall be the capitalized amount thereof determined in accordance with GAAP.

"Cash Equivalents" means (a) marketable direct obligations issued or unconditionally guaranteed by the United States Government or issued by any agency thereof and backed by the full faith and credit of the United States, in each case, maturing within one year from the date of acquisition thereof; (b) commercial paper, maturing not more than one year after the date of acquisition thereof rated P-1 by Moody's or A-1 by Standard & Poor's; (c) certificates of deposit, bankers' acceptances, overnight deposits and time deposits maturing not more than one year after the date of issue, issued by commercial banking institutions and money market or demand deposit accounts maintained at commercial banking institutions, each of which is a member of the Federal Reserve System and has a combined capital and surplus and undivided profits of not less than $500,000,000; (d) repurchase agreements having maturities of not more than 90 days from the date of acquisition which are entered into with major money center banks included in the commercial banking institutions described in clause (c) above and which are secured by readily marketable direct obligations of the United States Government or any agency thereof; (e) deposit accounts maintained with (i) any commercial banking institution that satisfies the criteria described in clause (c) above, or (ii) any commercial banking institution organized under the laws of the United States or any state thereof so long as the full amount maintained with any such commercial banking institution is insured by the Federal Deposit Insurance Corporation; (f) debt securities with maturities of one year or less from the date of acquisition backed by letters of credit issued by any commercial banking institution described in clause (c) above; (g) money market accounts maintained with mutual funds having assets in excess of $2,500,000,000, which assets are primarily comprised of Cash Equivalents described in another clause of this definition; and (h) marketable tax exempt securities rated A or higher by Moody's or A+ or higher by Standard & Poor's, in each case, maturing within one year from the date of acquisition thereof.

"Cash Management Accounts" means the bank accounts of each Loan Party maintained at one or more Cash Management Banks listed on Schedule 8.01 (other than Excluded Accounts).

"Cash Management Bank" has the meaning specified therefor in Section 8.01(a).

"CFTC" means the Commodity Futures Trading Commission.

"Change in Law" means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation, judicial ruling, judgment or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority, or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority, provided that, notwithstanding anything herein to the contrary, the following shall, in each case, be deemed to be a "Change in Law", regardless of the date enacted, adopted or issued: (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (ii) subject to Section 2.11(c)(iii) and (d), all requests, rules, guidelines or directives concerning capital adequacy promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, including, inter alia, Basel III and any law or regulation that implements or applies Basel III.

"Change of Control" means each occurrence of any of the following:

(a) the Permitted Holders cease beneficially and of record to own and control, directly or indirectly, at least 25% on a fully diluted basis of the aggregate outstanding voting and economic power of the Equity Interests of ModusLink;

(b) the acquisition, directly or indirectly, by any person or group (within the meaning of Section 13(d)(3) of the Exchange Act) other than a Permitted Holder of beneficial ownership of more than 33% of the aggregate outstanding voting or economic power of the Equity Interests of ModusLink;

(c) ModusLink shall cease to have beneficial ownership (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of 100% of the aggregate voting or economic power of the Equity Interests of the Parent;

(d) the Parent shall cease to have beneficial ownership (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of 100% of the aggregate voting or economic power of the Equity Interests of each other Loan Party and each of its Subsidiaries (other than in connection with any transaction permitted pursuant to Section 7.02(c)(i)), free and clear of all Liens (other than Permitted Specified Liens); or

(e) a "Change of Control" (or any comparable term or provision) under or with respect to any of the Equity Interests of the Parent or any of its Subsidiaries.

"Closing Equity Investment" has the meaning specified therefor in Section 5.01(h).

"Collateral" means all of the property and assets and all interests therein and proceeds thereof now owned or hereafter acquired by any Loan Party upon which a Lien is granted or purported to be granted by such Person as security for all or any part of the Obligations pursuant to the terms of any Loan Document; provided that, notwithstanding anything in this Agreement to the contrary, "Collateral" shall not include any Excluded Property.

"Collateral Agent" has the meaning specified therefor in the preamble hereto.

"Collections" means all cash, checks, notes, instruments, and other items of payment (including insurance proceeds, proceeds of cash sales, rental proceeds, and tax refunds).

"Commitments" means, with respect to each Lender, such Lender's Revolving Credit Commitment and Term Loan Commitment.

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

"Competitor" means (a) any Person that is an operating company directly and primarily engaged in substantially similar business operations as the Borrower and (b) any of such Person's Subsidiaries that competes in similar markets in a material manner.

"Compliance Certificate" has the meaning assigned to such term in Section 7.01(a)(iv).

"Compliance Date" means the last day of any applicable fiscal quarter (commencing with the first fiscal quarter ending after the Effective Date) if Liquidity (which shall be measured as the average Liquidity for the last 10 consecutive days of the applicable fiscal quarter) of Parent and its Subsidiaries is less than $15,000,000.

"Consolidated EBITDA" means, with respect to any Person for any period:

(a) the Consolidated Net Income of such Person for such period,

plus

(b) without duplication, the sum of the following amounts for such period to the extent deducted in the calculation of Consolidated Net Income for such period:

(i) any provision for United States federal income taxes or other taxes measured by net income,

(ii) Consolidated Net Interest Expense,

(iii) any loss from (A) extraordinary items and (B) other non-recurring items (including, without limitation, severance, relocation expenses and one-time compensation costs) to the extent, in the case of this subclause (B), such losses are incurred within 12 months of the Effective Date,

(iv) any depreciation and amortization expense,

(v) any sales and use tax settlement,

(vi) any aggregate net loss on the Disposition of property (other than accounts and Inventory) outside the ordinary course of business, and

(vii) any other non-cash expenditure, charge or loss for such period (other than any non-cash expenditure, charge or loss relating to write-offs, write-downs or reserves with respect to accounts and Inventory),

minus

(c) without duplication, the sum of the following amounts for such period to the extent included in the calculation of such Consolidated Net Income for such period:

(i) any credit for United States federal income taxes or other taxes measured by net income,

(ii) any gain from extraordinary items,

(iii) any aggregate net gain from the Disposition of property (other than accounts and Inventory) outside the ordinary course of business, and

(iv) any other non-cash gain, including any reversal of a charge referred to in clause (b)(vi) above by reason of a decrease in the value of any Equity Interest;

in each case, determined on a consolidated basis in accordance with GAAP.

"Consolidated Net Income" means, with respect to any Person, for any period, the consolidated net income (or loss) of such Person and its Subsidiaries for such period; provided, however, that the following shall be excluded: (a) the net income of any other Person in which such Person or one of its Subsidiaries has a joint interest with a third-party (which interest does not cause the net income of such other Person to be consolidated into the net income of such Person), except to the extent of the amount of dividends or distributions paid to such Person or Subsidiary, (b) the net income of any Subsidiary of such Person that is, on the last day of such period, subject to any restriction or limitation on the payment of dividends or the making of other distributions, to the extent of such restriction or limitation, and (c) the net income of any other Person arising prior to such other Person becoming a Subsidiary of such Person or merging or consolidating into such Person or its Subsidiaries.

"Consolidated Net Interest Expense" means, with respect to any Person for any period, (a) gross interest expense of such Person and its Subsidiaries for such period determined on a consolidated basis and in accordance with GAAP (including, without limitation, interest expense paid to Affiliates of such Person), less (b) the sum of (i) interest income for such period and (ii) gains for such period on Hedging Agreements (to the extent not included in interest income above and to the extent not deducted in the calculation of gross interest expense), plus (c) the sum of (i) losses for such period on Hedging Agreements (to the extent not included in gross interest expense) and (ii) the upfront costs or fees for such period associated with Hedging Agreements (to the extent not included in gross interest expense), in each case, determined on a consolidated basis and in accordance with GAAP.

"Contingent Indemnity Obligations" means any Obligation constituting a contingent, unliquidated indemnification obligation of any Loan Party, in each case, to the extent (a) such obligation has not accrued and is not yet due and payable and (b) no claim has been made or is reasonably anticipated to be made with respect thereto.

"Contingent Obligation" means, with respect to any Person, any obligation of such Person guaranteeing or intending to guarantee any Indebtedness, leases, dividends or other obligations ("primary obligations") of any other Person (the "primary obligor") in any manner, whether directly or indirectly, including, without limitation, (a) the direct or indirect guaranty, endorsement (other than for collection or deposit in the ordinary course of business), co-making, discounting with recourse or sale with recourse by such Person of the obligation of a primary obligor, (b) the obligation to make take-or-pay or similar payments, if required, regardless of nonperformance by any other party or parties to an agreement, (c) any obligation of such Person, whether or not contingent, (i) to purchase any such primary obligation or any property constituting direct or indirect security therefor, (ii) to advance or supply funds (A) for the purchase or payment of any such primary obligation or (B) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, (iii) to purchase property, assets, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation or (iv) otherwise to assure or hold harmless the holder of such primary obligation against loss in respect thereof; provided, however, that the term "Contingent Obligation" shall not include any product warranties extended or endorsements of instruments for deposit or collection made in the ordinary course of business. The amount of any Contingent Obligation shall be deemed to be an amount equal to the stated or determinable amount of the primary obligation with respect to which such Contingent Obligation is made (or, if less, the maximum amount of such primary obligation for which such Person may be liable pursuant to the terms of the instrument evidencing such Contingent Obligation) or, if not stated or determinable, the maximum reasonably anticipated liability with respect thereto (assuming such Person is required to perform thereunder), as determined by such Person in good faith.

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

"Control Agreement" means, with respect to any deposit account, any securities account, commodity account, securities entitlement or commodity contract, an agreement, in form and substance reasonably satisfactory to the Collateral Agent, among the Collateral Agent, the financial institution or other Person at which such account is maintained or with which such entitlement or contract is carried and the Loan Party maintaining such account, effective to grant "control" (as defined under the applicable UCC) over such account to the Collateral Agent.

"Controlled Investment Affiliate" means, as to any Person, any other Person that (a) directly or indirectly, is in control of, is controlled by, or is under common control with, such Person and (b) is organized by such Person primarily for the purpose of making equity or debt investments in one or more companies. 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 by contract or otherwise.

"Cure Right" has the meaning specified therefor in Section 7.03.

"Current Value" has the meaning specified therefor in Section 7.01(m).

"Daily LIBOR Rate" means, for any day, the Published Rate.

"Debtor Relief Law" means the Bankruptcy Code and any other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, administration or similar debtor relief law of the United States or other applicable jurisdiction from time to time in effect.

"Default" means an event which, with the giving of notice or the lapse of time or both, would constitute an Event of Default.

"Defaulting Lender" means any Lender that (a) has failed to (i) fund all or any portion of its Loans within 2 Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies the Administrative Agent and the Borrower in writing that such failure is the result of such Lender's good faith determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Administrative Agent or any other Lender any other amount required to be paid by it hereunder within 2 Business Days of the date when due, (b) has notified the Borrower or the Administrative Agent in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender's obligation to fund a Loan hereunder and states that such position is based on such Lender's determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within 3 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 written confirmation by the Administrative Agent and the Borrower), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, or (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity. Notwithstanding anything to the contrary herein, 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 permits such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under clauses (a) through (d) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender as of the date established therefor by the Administrative Agent in a written notice of such determination, which shall be delivered by the Administrative Agent to the Borrower and each Lender promptly following such determination.

"Disbursement Letter" means a disbursement letter, in form and substance reasonably satisfactory to the Collateral Agent, by and among the Loan Parties, the Agents, the Lenders and the other Persons party thereto, and the related funds flow memorandum describing the sources and uses of all cash payments in connection with the transactions contemplated to occur on the Effective Date.

"Disposition" means any transaction, or series of related transactions, pursuant to which any Person or any of its Subsidiaries sells, assigns, transfers, leases, licenses (as licensor) or otherwise disposes of any property or assets (whether now owned or hereafter acquired) to any other Person, in each case, whether or not the consideration therefor consists of cash, securities or other assets owned by the acquiring Person. For purposes of clarification, "Disposition" shall include (a) the sale or other disposition for value of any contracts or merchant accounts (or any rights thereto (including, without limitation, any rights to any residual payment stream with respect thereto), or (b) the early termination or modification of any contract resulting in the receipt by any Loan Party of a cash payment or other consideration in exchange for any such events during any calendar year (other than payments in the ordinary course for accrued and unpaid amounts due through the date of termination or modification).

"Disqualified Equity Interests" means any Equity Interest that, by its terms (or by the terms of any security or other Equity Interest into which it is convertible or for which it is exchangeable), or upon the happening of any event or condition, (a) matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise (except as a result of a change of control or asset sale so long as any rights of the holders thereof upon the occurrence of a change of control or asset sale event shall be subject to the prior repayment in full of the Loans and all other Obligations and the termination of the Commitments), (b) is redeemable at the option of the holder thereof, in whole or in part, (c) provides for the scheduled payments of dividends or distributions in cash, or (d) is convertible into or exchangeable for (i) Indebtedness or (ii) any other Equity Interests that would constitute Disqualified Equity Interests, in each case of clauses (a) through (d), prior to the date that is six months after the Final Maturity Date.

"Disqualified Institution" means (a) Competitors of any Loan Party, (b) any Person identified on a disqualified institution list delivered to the Administrative Agent by the Borrower prior to the Effective Date, as such list may be modified by the Borrower, with the consent of the Administrative Agent, after the Effective Date from time to time, and (c) Affiliates of any of the foregoing, so long as, in each case, the Administrative Agent (i) has been notified by the Borrower in writing that such Person is a Person described in clause (a) or (b) above, or (ii) has actual knowledge that such Person is a Competitor of the Parent or its Subsidiaries; provided that no Agent shall have any responsibility to monitor or maintain or update the list of Disqualified Lenders, other than with respect to those Disqualified Lenders identified by the Borrower.

"Dollar," "Dollars" and the symbol "$" each means lawful money of the United States of America.

"Domestic Subsidiary" means any Subsidiary that is organized and existing under the laws of the United States or any state or commonwealth thereof or under the laws of the District of Columbia.

"ECF Due Date" shall have the meaning specified therefor in Section 2.05(c)(i).

"Effective Date" has the meaning specified therefor in Section 5.01.

"Eligibility Date" means, with respect to each Loan Party and each Swap, the date on which this Agreement or any other Loan Document becomes effective with respect to such Swap (for the avoidance of doubt, the Eligibility Date shall be the effective date of such Swap if this Agreement or any other Loan Document is then in effect with respect to such Loan Party, and otherwise it shall be the Effective Date of this Agreement or such other Loan Document to which such Loan Party is a party).

"Eligible Assignee" means (a) any Lender, any Affiliate of a Lender and any Related Fund (any two or more Related Funds with respect to a particular Lender being treated as a single Eligible Assignee for all purposes hereof), and (b) any commercial bank, insurance company, financial institution, investment or mutual fund or other entity that is an "accredited investor" (as defined in Regulation D under the Securities Act); provided that "Eligible Assignee" shall (x) include Affiliated Investment Funds and Affiliated Lenders, subject to the limitations set forth in the provisions of Section 12.07(a)(iv) and (y) exclude (i) any natural person, or the Sponsor, the Borrower, or any of Sponsor's or the Borrower's Affiliates (in each case except as set forth in clause (x) above) and (ii) so long as no Event of Default exists, any Disqualified Institution.

"Eligible Contract Participant" means an "eligible contract participant" as defined in the Commodity Exchange Act and regulations thereunder.

"Employee Plan" means an employee benefit plan (other than a Multiemployer Plan) covered by Title IV of ERISA and maintained by any Loan Party or with respect to which a Loan Party has any liability, including on account of any of its ERISA Affiliates, other than a Multiemployer Plan.

"Environmental Actions" means any complaint, summons, citation, notice, directive, order, claim, litigation, investigation, judicial or administrative proceeding, judgment, letter or other communication from any Person or Governmental Authority involving violations of Environmental Laws or Releases of Hazardous Materials (a) from any assets, properties or businesses owned or operated by any Loan Party or any of its Subsidiaries or any predecessor in interest; (b) from adjoining properties or businesses; or (c) onto any facilities which received Hazardous Materials generated by any Loan Party or any of its Subsidiaries or any predecessor in interest.

"Environmental Laws" means the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601, et seq.), the Hazardous Materials Transportation Act (49 U.S.C. § 1801, et seq.), the Resource Conservation and Recovery Act (42 U.S.C. § 6901, et seq.), the Federal Clean Water Act (33 U.S.C. § 1251 et seq.), the Clean Air Act (42 U.S.C. § 7401 et seq.), the Toxic Substances Control Act (15 U.S.C. § 2601 et seq.) and the Occupational Safety and Health Act (29 U.S.C. § 651 et seq.), as such laws may be amended or otherwise modified from time to time, and any other Requirement of Law, permit, license or other binding determination of any Governmental Authority imposing liability or establishing standards of conduct for protection of the environment or other government restrictions relating to the protection of the environment or the Release, deposit or migration of any Hazardous Materials into the environment.

"Environmental Liabilities and Costs" means all liabilities, monetary obligations, Remedial Actions, losses, damages, punitive damages, consequential damages, treble damages, costs and expenses (including all reasonable fees, disbursements and expenses of counsel, experts and consultants and costs of investigations and feasibility studies), fines, penalties, sanctions and interest incurred as a result of any claim or demand by any Governmental Authority or any third party, and which relate to any environmental condition or a Release of Hazardous Materials from or onto (a) any property presently or formerly owned by any Loan Party or any of its Subsidiaries or (b) any facility which received Hazardous Materials generated by any Loan Party or any of its Subsidiaries.

"Environmental Lien" means any Lien in favor of any Governmental Authority for Environmental Liabilities and Costs.

"Equity Interests" means (a) all shares of capital stock (whether denominated as common stock or preferred stock), equity interests, beneficial, partnership or membership interests, joint venture interests, participations or other ownership or profit interests in or equivalents (regardless of how designated) of or in a Person (other than an individual), whether voting or non-voting and (b) all securities convertible into or exchangeable for any of the foregoing and all warrants, options or other rights to purchase, subscribe for or otherwise acquire any of the foregoing, whether or not presently convertible, exchangeable or exercisable.

"Equity Issuance" means either (a) the sale or issuance by any Loan Party or any of its Subsidiaries of any shares of its Equity Interests or (b) the receipt by the Parent of any cash capital contributions.

"Equity Investors" means the Sponsor and any other Person reasonably acceptable to the Collateral Agent.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended, and regulations thereunder.

"ERISA Affiliate" means, with respect to any Person, any corporation or trade or business (whether or not incorporated) which, together with such Person, would be treated as a single employer under Section 414 of the Internal Revenue Code.

"Event of Default" has the meaning specified therefor in Section 9.01.

"Excess Cash Flow" means, with respect to any Person for any period, (a) Consolidated EBITDA of such Person and its Subsidiaries for such period, less (b) the sum of, without duplication, (i) all cash principal payments (excluding any principal payments made pursuant to Section 2.05(b) or Section 2.05(c)) on the Loans made during such period (but, in the case of the Revolving Loans, only to the extent that the Total Revolving Credit Commitment is permanently reduced by the amount of such payments), and all cash principal payments on Indebtedness (other than Indebtedness incurred under this Agreement) of such Person or any of its Subsidiaries during such period to the extent such other Indebtedness is permitted to be incurred, and such payments are permitted to be made, under this Agreement (but, in the case of revolving loans, only to the extent that the revolving credit commitment in respect thereof is permanently reduced by the amount of such payments), (ii) all Consolidated Net Interest Expense to the extent paid or payable in cash during such period, (iii) the cash portion of Capital Expenditures made by such Person and its Subsidiaries during such period to the extent permitted to be made under this Agreement (excluding Capital Expenditures to the extent financed through the incurrence of Indebtedness or through an Equity Issuance), (iv) all scheduled loan servicing fees and other similar fees in respect of Indebtedness of such Person or any of its Subsidiaries paid in cash during such period, to the extent such Indebtedness is permitted to be incurred, and such payments are permitted to be made, under this Agreement, (v) (A) income taxes paid in cash by such Person and its Subsidiaries for such period and (B) distributions described in clause (c) of "Permitted Restricted Payments" to the extent such distributions are actually paid during such period and (vi) the excess, if any, of Working Capital at the end of such period over Working Capital at the beginning of such period (or minus the excess, if any, of Working Capital at the beginning of such period over Working Capital at the end of such period).

"Exchange Act" means the Securities Exchange Act of 1934, as amended.

"Excluded Account" means (a) any deposit account specifically and exclusively used for payroll, payroll taxes and other employee wage and benefit payments to or for the benefit of any Loan Party's employees, (b) any Petty Cash Account and (c) any accounts specifically and exclusively used to post cash collateral to secure Permitted Indebtedness described in clauses (h) and (p) of the definition thereof.

"Excluded Equity Issuance" means (a) in the event that the Parent or any of its Subsidiaries forms any Subsidiary in accordance with this Agreement, the issuance by such Subsidiary of Equity Interests to the Parent or such Subsidiary, as applicable, (b) the issuance of Permitted Cure Equity, (c) the issuance of Equity Interests of the Parent to directors, officers and employees of the Parent and its Subsidiaries pursuant to employee stock option plans (or other employee incentive plans or other compensation arrangements) approved by the Board of Directors of the Parent, (d) the issuance of Equity Interests of the Parent in order to finance the purchase consideration (or a portion thereof) in connection with a Permitted Acquisition, and (e) the issuance of Equity Interests by a Subsidiary of the Parent to its parent or member in connection with the contribution by such parent or member to such Subsidiary of the proceeds of an issuance described in clauses (a) – (d) above.

"Excluded Foreign Subsidiary" means (a) any Subsidiary of the Parent that (i) is a “controlled foreign corporation” under Section 957 of the Internal Revenue Code and (ii) has not guaranteed or pledged any of its assets or suffered a pledge of more than 65% of its voting Equity Interests, to secure, directly or indirectly, any Indebtedness of any Borrower or any Guarantor that is a “United States Person” within the meaning of Section 7701(a)(30) of the Internal Revenue Code, (b) any Subsidiary of a Subsidiary described in clause (a) above and (c) any Subsidiary of the Parent substantially all of the assets of which consist of the Equity Interests (and other securities) of Subsidiaries described in clause (a) above; provided that no Foreign Subsidiary shall constitute an Excluded Foreign Subsidiary pursuant to clause (a) above to the extent Section 956 of the Internal Revenue Code is amended or modified after the Effective Date and, as a result thereof, such Foreign Subsidiary will be permitted to become a Guarantor hereunder without triggering an adverse tax consequence to the Parent (or any direct or indirect equityholder of the Parent).

"Excluded Hedge Liability or Liabilities" means, with respect to each Guarantor, each Swap Obligation if, and to the extent that, all or any portion of this Agreement or any other Loan Document that relates to such Swap Obligation is or becomes illegal or unlawful under the Commodities Exchange Act, or any rule, regulation or order of the Commodity Futures Trading Commission, solely by virtue of such Guarantor's failure to qualify as an Eligible Contract Participant on the Eligibility Date for such Swap. Notwithstanding anything to the contrary contained in the foregoing or in any other provision of this Agreement or any other Loan Document, the foregoing is subject to the following provisos: (a) if a Swap Obligation arises under a master agreement governing more than one Swap, only the portion of such Swap Obligation that is attributable to Swaps for which such guaranty or security interest is or becomes illegal or unlawful under the Commodities Exchange Act, or any rule, regulations or order of the Commodity Futures Trading Commission, solely as a result of the failure by such Guarantor for any reason to qualify as an Eligible Contract Participant on the Eligibility Date for such Swap shall be an Excluded Hedge Liability; (b) if a guarantee of a Swap Obligation would cause such obligation to be an Excluded Hedge Liability but the grant of a security interest would not cause such obligation to be an Excluded Hedge Liability, such Swap Obligation shall constitute an Excluded Hedge Liability for purposes of the guaranty but not for purposes of the grant of the security interest; and (c) if there is more than one Guarantor executing this Agreement or the other Loan Documents and a Swap Obligation would be an Excluded Hedge Liability with respect to one or more of such Persons, but not all of them, the definition of Excluded Hedge Liability or Liabilities with respect to each such Person shall only be deemed applicable to (i) the particular Swap Obligations that constitute Excluded Hedge Liabilities with respect to such Person, and (ii) the particular Person with respect to which such Swap Obligations constitute Excluded Hedge Liabilities.

"Excluded Property" has the meaning set forth in the Security Agreement.

"Excluded Subsidiaries" means (a) any Excluded Foreign Subsidiary, (b) Immaterial Subsidiaries, (c) any Subsidiary that is prohibited by any Requirement of Law (to the extent such Requirement of Law is effective under applicable anti-assignment provisions of the UCC) or by any unaffiliated third party material Contractual Obligation from guaranteeing the Obligations or which would require the consent, approval, license or authorization from any Governmental Authority to provide such guarantee, in each case, as reasonably determined by the Agents and the Borrower unless (A) the Loan Parties shall have failed to use commercially reasonable efforts to obtain such consent, approval, license or authorization or (B) such consent, approval, license or authorization has been received, (d) Subsidiaries set forth on Schedule 1.01(D) as such Schedule may be updated from time to time with the prior written consent of the Collateral Agent, such consent not to be unreasonably withheld, conditioned or delayed, (e) Subsidiaries excluded by the Collateral Agent in its sole discretion, (f) Subsidiaries in circumstances where the Borrower and the Collateral Agent reasonably agree that the cost or adverse tax consequence of providing such guarantee is excessive in relation to the value afforded thereby, and (g) any Person that becomes a Subsidiary (that is not a wholly-owned Subsidiary and whose Governing Documents prohibit such Subsidiary from becoming a Guarantor without the consent of the minority equity owners thereof) pursuant to clauses (n) and (p) of the definition of Permitted Investments.

"Excluded Swap Obligation" means, with respect to any Guarantor, any Swap Obligation if, and to the extent that, all or a portion of the guarantee of such Guarantor of, or the grant by such Guarantor of a security interest to secure, such Swap Obligation (or any guarantee thereof) is or would otherwise become illegal or unlawful under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor's failure for any reason not to constitute an "eligible contract participant" as defined in the Commodity Exchange Act at the time the guarantee of such Guarantor would otherwise have become effective with respect to such related Swap Obligation but for such Guarantor's failure to constitute an "eligible contract participant" at such time.

"Executive Order No. 13224" means the Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001, as the same has been, or shall hereafter be, renewed, extended, amended or replaced.

"Existing Credit Facilities" means the Existing Wells Fargo Credit Agreement and the Existing Prospect Credit Agreement .

"Existing Lenders" means (i) the lenders party to the Wells Fargo Credit Agreement as of the date hereof and (ii) the lenders party to the Prospect Credit Agreement as of the date hereof.

"Existing Prospect Credit Facilities" means that Loan Agreement, dated as of March 28, 2014, by and among Borrower, Parent, and the other guarantors party thereto, the lenders party thereto, and Prospect Capital Corporation, as amended, restated, amended and restated, supplemented or otherwise modified from time to time prior to the date hereof.

"Existing Wells Credit Facilities" means Credit and Security Agreement, dated March 28, 2014, by and among, Borrower, Parent, the other borrowers and guarantors party thereto, the lenders party thereto, and Wells Fargo Bank, National Association, as amended, restated, amended and restated, supplemented or otherwise modified from time to time prior to the date hereof

"Extraordinary Receipts" means any cash received by the Parent or any of its Subsidiaries not in the ordinary course of business (and not consisting of proceeds described in Section 2.05(c)(ii) or (iii) hereof), including, without limitation, (a) foreign, United States, state or local tax refunds, (b) pension plan reversions, (c) proceeds of insurance, (d) judgments, proceeds of settlements or other consideration of any kind in connection with any cause of action, (e) condemnation awards (and payments in lieu thereof), (f) indemnity payments and (g) any purchase price adjustment received in connection with any purchase agreement including, without limitation, the IWCO Acquisition Agreement.

"Facility" means the real property identified on Schedule 1.01(B) and any New Facility hereafter acquired by the Parent or any of its Subsidiaries, including, without limitation, the land on which each such facility is located, all buildings and other improvements thereon, and all fixtures located thereat or used in connection therewith.

"FASB ASC" means the Accounting Standards Codification of the Financial Accounting Standards Board.

"FATCA" means Sections 1471 through 1474 of the Internal Revenue Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with) and any current or future regulations or official interpretations thereof and any agreements entered into pursuant to Section 1471(b)(1) of the Internal Revenue Code, and any intergovernmental agreement entered into in connection with the foregoing.

"FCPA" has the meaning specified therefor in Section 6.01(aa).

"Federal Funds Open Rate" means, for any day, the rate per annum (based on a year of 360 days and actual days elapsed) which is the daily federal funds open rate as quoted by ICAP North America, Inc. (or any successor) as set forth on the Bloomberg Screen BTMM for that day opposite the caption "OPEN" (or on such other substitute Bloomberg Screen that displays such rate), or as set forth on such other recognized electronic source used for the purpose of displaying such rate as selected by the Administrative Agent (an "Alternate Source") (or if such rate for such day does not appear on the Bloomberg Screen BTMM (or any substitute screen) or on any Alternate Source, or if there shall at any time, for any reason, no longer exist a Bloomberg Screen BTMM (or any substitute screen) or any Alternate Source, a comparable replacement rate determined by the Administrative Agent at such time (which determination shall be conclusive absent manifest error); provided, however, that if such day is not a Business Day, the Federal Funds Open Rate for such day shall be the "open" rate on the immediately preceding Business Day. If and when the Federal Funds Open Rate changes, the rate of interest hereunder will change automatically without notice to the Borrowing Agent, effective on the date of any such change.

"Federal Funds Rate" means, for any day, the rate per annum (based on a year of 360 days and actual days elapsed and rounded upward to the nearest 1/100 of 1%) announced by the Federal Reserve Bank of New York (or any successor) on such day as being the weighted average of the rates on overnight federal funds transactions arranged by federal funds brokers on the previous trading day, as computed and announced by such Federal Reserve Bank (or any successor) in substantially the same manner as such Federal Reserve Bank computes and announces the weighted average it refers to as the "Federal Funds Effective Rate" as of the date of this Agreement; provided that if such Federal Reserve Bank (or its successor) does not announce such rate on any day, the "Federal Funds Effective Rate" for such day shall be the Federal Funds Effective Rate for the last day on which such rate was announced.

"Fee Letter" means the fee letter, dated as of the date hereof, among the Borrowers and the Administrative Agent.

"Final Maturity Date" means the earlier of (a) the date which is December 15, 2022 and (b) the payment in full of all Obligations and the termination of all Commitments.

"Financial Statements" means the quarterly and annual financial statements of the Parent and its Subsidiaries delivered to the Agents pursuant to Section 7.01(a).

"Fiscal Year" means the fiscal year of the Parent and its Subsidiaries ending on December 31st of each year.

"Flood Laws" shall mean all Requirements of Law relating to policies and procedures that address requirements placed on federally regulated lenders under the National Flood Insurance Reform Act of 1994 and other Requirements of Law related thereto.

"Foreign Official" has the meaning specified therefor in Section 6.01(aa).

"Foreign Sovereign Immunities Act" means the US Foreign Sovereign Immunities Act of 1976 (28 U.S.C. Sections 1602-1611), as amended.

"Foreign Subsidiary" means any Subsidiary of the Parent that is not a Domestic Subsidiary.

"Funding Losses" has the meaning specified therefor in Section 2.07(e).

"GAAP" means generally accepted accounting principles in effect from time to time in the United States, applied on a consistent basis, provided that, for the purpose of calculating any financial covenant in any Loan Document, "GAAP" shall mean generally accepted accounting principles in effect on the date hereof, provided further that, if there occurs after the date of this Agreement any change in GAAP that affects in any respect the calculation of any financial covenant or test contained in any Loan Document, then, upon the request of the Collateral Agent or the Borrower, the Collateral Agent and the Borrower shall negotiate in good faith amendments to the provisions of this Agreement that relate to the calculation of such covenant with the intent of having the respective positions of the Lenders and the Borrower after such change in GAAP conform as nearly as possible to their respective positions as of the date of this Agreement and, until any such requested amendments have been agreed upon, such financial covenant or test shall be calculated as if no such change in GAAP has occurred.

"Governing Documents" means, (a) with respect to any corporation or exempted company, the certificate or articles of incorporation and the bylaws or the memorandum and articles of association (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction); (b) with respect to any limited liability company, the certificate or articles of formation or organization, and the operating agreement (or equivalent or comparable constitutive documents with respect to any Foreign Subsidiary); (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture, declaration or other applicable agreement or documentation evidencing or otherwise relating to its incorporation, formation or organization, governance and capitalization (or equivalent or comparable constitutive documents with respect to any Foreign Subsidiary); and (d) with respect to any of the entities described above, any other agreement, instrument, filing or notice with respect thereto filed in connection with its incorporation, formation or organization with the applicable Governmental Authority in the jurisdiction of its incorporation, formation or organization.

"Governmental Authority" means any nation or government, any Federal, state, city, town, municipality, county, local or other political subdivision thereof or thereto and any department, commission, board, bureau, instrumentality, agency 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).

"Guaranteed Obligations" has the meaning specified therefor in Section 11.01.

"Guarantor" means (a) the Parent and each Subsidiary of the Parent listed as a "Guarantor" on the signature pages hereto, (b) any other Subsidiary of the Parent (other than an Excluded Subsidiary) and (c) each other Person which guarantees, pursuant to Section 7.01(b) or otherwise, all or any part of the Obligations; provided, however, that no Excluded Foreign Subsidiary shall be listed, or shall at any time become listed, as a Guarantor under this Agreement.

"Guaranty" means (a) the guaranty of each Guarantor party hereto contained in Article XI hereof and (b) each other guaranty, in form and substance reasonably satisfactory to the Collateral Agent, made by any other Guarantor in favor of the Collateral Agent for the benefit of the Agents and the Lenders guaranteeing all or part of the Obligations; provided, however, that no Excluded Foreign Subsidiary shall be permitted, or shall at any time become permitted, to guarantee any liability or obligation of any Person in any manner.

"Hazardous Material" means (a) any element, compound or chemical that is defined, listed or otherwise classified as a contaminant, pollutant, toxic pollutant, toxic or hazardous substance, extremely hazardous substance or chemical, hazardous waste, special waste, or solid waste under Environmental Laws or that is likely to cause immediately, or at some future time, harm to or have an adverse effect on, the environment or risk to human health or safety, including, without limitation, any pollutant, contaminant, waste, hazardous waste, toxic substance or dangerous good which is defined or identified in any Environmental Law and which is present in the environment in such quantity or state that it contravenes any Environmental Law; (b) petroleum and its refined products; (c) polychlorinated biphenyls; (d) any substance exhibiting a hazardous waste characteristic, including, without limitation, corrosivity, ignitability, toxicity or reactivity as well as any radioactive or explosive materials; and (e) any raw materials, building components (including, without limitation, asbestos-containing materials) and manufactured products containing hazardous substances listed or classified as such under Environmental Laws.

"Hedge Liabilities" means the liabilities of the Borrower under any Hedging Agreement as calculated on a marked-to-market basis in accordance with GAAP.

"Hedging Agreement" means any interest rate, foreign currency, commodity or equity swap, collar, cap, floor or forward rate agreement, or other agreement or arrangement designed to protect against fluctuations in interest rates or currency, commodity or equity values (including, without limitation, any option with respect to any of the foregoing and any combination of the foregoing agreements or arrangements), and any confirmation executed in connection with any such agreement or arrangement, in each case, entered into for the bona fide purpose of hedging the interest rate, commodity, or foreign currency risks associated with the Loan Parties' operations and not for speculative purposes.

"Highest Lawful Rate" means, with respect to any Agent or any Lender, the maximum non-usurious interest rate, if any, that at any time or from time to time may be contracted for, taken, reserved, charged or received on the Obligations under laws applicable to such Agent or such Lender which are currently in effect or, to the extent allowed by law, under such applicable laws which may hereafter be in effect and which allow a higher maximum non-usurious interest rate than applicable laws now allow.

"Holdcos" means the Parent and/or any other holding company that is a Loan Party.

"Holdout Lender" has the meaning specified therefor in Section 12.02(b).

"Immaterial Subsidiary" means, at any time, any Subsidiary that (a) contributed 2.5% or less of the Consolidated EBITDA of the Parent and its Subsidiaries for the most recently ended period for which financial statements have been delivered, (b) contributed 2.5% or less of the revenues of the Parent and its Subsidiaries for the most recently ended period for which financial statements have been delivered or were required to be delivered hereunder, and (c) had assets representing 5.0% or less of the total consolidated assets of the Parent and its Subsidiaries on the last day of the most recently ended period for which financial statements have been delivered; provided, if at any time and from time to time after the Effective Date, Immaterial Subsidiaries comprise in the aggregate more than 5.0% of the Consolidated EBITDA of the Parent and its Subsidiaries for the most recently ended period for which financial statements have been delivered, or more than 5.0% of the revenues of the Parent and its Subsidiaries for the most recently ended period for which financial statements have been delivered or more than 5% of the consolidated Total Assets as of the end of the most recently ended period for which financial statements have been delivered, then the Borrower shall, not later than thirty days after the date by which financial statements for such period are required to be delivered (or such longer period as the Collateral Agent may agree in its reasonable discretion), designate in writing to the Collateral Agent that one or more of such Subsidiaries is no longer an Immaterial Subsidiary for purposes of this Agreement to the extent required such that the foregoing condition ceases to be true. As of the Effective Date, the Immaterial Subsidiaries are listed on Schedule 1.01(D).

"Indebtedness" means, with respect to any Person, without duplication, (a) all indebtedness of such Person for borrowed money; (b) all obligations of such Person for the deferred purchase price of property or services (other than (x) trade payables or other accounts payable incurred in the ordinary course of such Person's business and not outstanding for more than 90 days after the date such payable was created, except for which adequate reserves or other appropriate provisions are maintained on the books of such Person in accordance with GAAP and (y) any earn-out, purchase price adjustment or similar obligation until such obligation appears in the liabilities section of the balance sheet of such Person); (c) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments or upon which interest payments are customarily made; (d) all reimbursement, payment or other obligations and liabilities of such Person created or arising under any conditional sales or other title retention agreement with respect to property used and/or acquired by such Person, even though the rights and remedies of the lessor, seller and/or lender thereunder may be limited to repossession or sale of such property; (e) that portion of Capitalized Lease Obligations of such Person that is properly classified as a liability on the balance sheet in conformity with GAAP; (f) all obligations and liabilities, contingent or otherwise, of such Person, in respect of letters of credit, acceptances and similar facilities; (g) all obligations and liabilities of such Person under Hedging Agreements; (h) all monetary obligations under any receivables factoring, receivable sales or similar transactions and all monetary obligations under any synthetic lease, tax ownership/operating lease, off-balance sheet financing or similar financing; (i) all Contingent Obligations (other than Contingent Obligations incurred in the ordinary course of business); (j) all Disqualified Equity Interests; and (k) all obligations referred to in clauses (a) through (j) of this definition of another Person secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) a Lien upon property owned by such Person, even though such Person has not assumed or become liable for the payment of such Indebtedness. The Indebtedness of any Person shall include the Indebtedness of any partnership or joint venture in which such Person is a general partner or a joint venturer. The amount of any Indebtedness that is only recourse to specific assets of such Person shall be deemed to be equal to the lesser of the principal amount of such Indebtedness and the fair market value of the assets of such Person to which such Indebtedness has recourse. Notwithstanding anything to the contrary in this Agreement or the other Loan Documents, “Indebtedness” shall exclude (A) accrued expenses, deferred management fees, deferred rent, deferred revenue, deferred taxes and deferred compensation and customary obligations under employment arrangements, (B) customary payables with respect to money orders or wire transfers, (C) operating leases, (D) collections or deposits in the ordinary course of business, and (E) any product warranties.

"Indemnified Matters" has the meaning specified therefor in Section 12.15(a).

"Indemnified Taxes" has the meaning specified therefor in Section 2.09(a).

"Indemnitees" has the meaning specified therefor in Section 12.15(a).

"Insolvency Proceeding" means any proceeding commenced by or against any Person under any provision of any Debtor Relief Law.

"Intellectual Property" has the meaning specified therefor in the Security Documents.

"Intellectual Property Contracts" means all agreements concerning Intellectual Property, including without limitation license agreements, technology consulting agreements, confidentiality agreements, co-existence agreements, consent agreements and non-assertion agreements.

"Intercompany Subordination Agreement" means an Intercompany Subordination Agreement made by the Parent and its Subsidiaries in favor of the Collateral Agent for the benefit of the Agents and the Lenders, in form and substance reasonably satisfactory to the Collateral Agent.

"Interest Period" means, with respect to each LIBOR Rate Loan, a period commencing on the date of the making of such LIBOR Rate Loan (or the continuation of a LIBOR Rate Loan or the conversion of a Reference Rate Loan to a LIBOR Rate Loan) and ending 1, 2 or 3 months thereafter; provided, however, that (a) if any Interest Period would end on a day that is not a Business Day, such Interest Period shall be extended (subject to clauses (c)-(e) below) to the next succeeding Business Day, (b) interest shall accrue at the applicable rate based upon the LIBOR Rate from and including the first day of each Interest Period to, but excluding, the day on which any Interest Period expires, (c) any Interest Period that would end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case such Interest Period shall end on the next preceding Business Day, (d) with respect to an 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), the Interest Period shall end on the last Business Day of the calendar month that is 1, 2 or 3 months after the date on which the Interest Period began, as applicable, and (e) the Borrower may not elect an Interest Period which will end after the Final Maturity Date.

"Internal Revenue Code" means the Internal Revenue Code of 1986, as amended (or any successor statute thereto) and the regulations thereunder.

"Inventory" means, with respect to any Person, all goods and merchandise of such Person leased or held for sale or lease by such Person, including, without limitation, all raw materials, work-in-process and finished goods, and all packaging, supplies and materials of every nature used or usable in connection with the shipping, storing, advertising or sale of such goods and merchandise, whether now owned or hereafter acquired, and all such other property the sale or other disposition of which would give rise to an Account Receivable or cash.

"Investment" means, with respect to any Person, (a) any investment by such Person in any other Person (including Affiliates) in the form of loans, guarantees, advances or other extensions of credit (excluding Account Receivables arising in the ordinary course of business), capital contributions or acquisitions of Indebtedness (including, any bonds, notes, debentures or other debt securities), Equity Interests, or all or substantially all of the assets of such other Person (or of any division or business line of such other Person), (b) the purchase or ownership of any futures contract or liability for the purchase or sale of currency or other commodities at a future date in the nature of a futures contract, or (c) any investment in any other items that are or would be classified as investments on a balance sheet of such Person prepared in accordance with GAAP. For purposes of covenant compliance, the amount of any Investment shall be an amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment, but adjusted based on the amount of any principal and interest payments, return representing a return of capital, redemption or sale with respect to such Investment (up to the original amount of such Investment).

"IStar Dispute" means the dispute between iStar Minnesota, LLC and any Loan Party with respect to the IStar Lease Agreement and arising as a result of Sponsor's ownership of Parent pursuant to the IWCO Acquisition.

"IStar Lease Agreement" means that certain lease agreement, dated February 3, 2005, by and among iStar Minnesota, LLC and Victory Envelope, Inc., United Mailing, Inc. and Borrower for the properties at 1000 Park Road, 1001 Park Road, 7951 Powers Boulevard in Chanhassen, Minnesota and 1910 Haven Road in Little Falls, Minnesota.

"IWCO Acquisition" has the meaning specified therefor in the Recitals.

"IWCO Acquisition Agreement" has the meaning specified therefor in the Recitals.

"IWCO Acquisition Assets" means all of the property and assets (tangible and intangible) proposed to be purchased by the Parent pursuant to the IWCO Acquisition Agreement.

"IWCO Acquisition Documents" means the IWCO Acquisition Agreement and all other agreements, instruments and other documents related thereto or executed in connection therewith.

"IWCO Material Adverse Effect" has the meaning ascribed to "Material Adverse Effect" in the IWCO Acquisition Agreement.

"Joinder Agreement" means a Joinder Agreement, substantially in the form of Exhibit A, duly executed by a Subsidiary of a Loan Party made a party hereto pursuant to Section 7.01(b).

"Lease" means any lease of real property to which any Loan Party or any of its Subsidiaries is a party as lessor or lessee.

"Legal Opinion" means any legal opinion delivered to the Agent(s) under this Agreement.

"Lender" has the meaning specified therefor in the preamble hereto, and any other Person that is a party hereto pursuant to an Assignment and Acceptance.

"Leverage Ratio" means, with respect to any Person and its Subsidiaries for any period, the ratio of (a) the result of (i) all Indebtedness described in clauses (a), (b), (c), (d), (e) and (f) in the definition thereof of such Person and its Subsidiaries as of the end of such period minus (ii) the aggregate amount of Qualified Cash on the applicable determination date to (b) Consolidated EBITDA of such Person and its Subsidiaries for such period.

"LIBOR" means for any LIBOR Rate Loan for the then current Interest Period relating thereto, the interest rate per annum determined by the Administrative Agent as the rate which appears on the Bloomberg Page BBAM1 (or on such other substitute Bloomberg page that displays rates at which U.S. dollar deposits are offered by leading banks in the London interbank deposit market), or the rate which is quoted by another source selected by the Administrative Agent as an authorized information vendor for the purpose of displaying rates at which U.S. dollar deposits are offered by leading banks in the London interbank deposit market (a "LIBOR Alternate Source"), at approximately 11:00 a.m., London time, two (2) Business Days prior to the commencement of such Interest Period as the London interbank offered rate for U.S. Dollars for an amount comparable to such LIBOR Rate Loan and having a borrowing date and a maturity comparable to such Interest Period (or if there shall at any time, for any reason, no longer exist a Bloomberg Page BBAM1 (or any substitute page) or any LIBOR Alternate Source, a comparable replacement rate determined by the Administrative Agent at such time (which determination shall be conclusive absent manifest error)); provided, however, that if the LIBOR Rate determined as provided above would be less than zero, such rate shall be deemed to be zero for purposes of this Agreement. The Administrative Agent shall give reasonably prompt notice to the Borrower of LIBOR as determined or adjusted in accordance herewith, which determination shall be conclusive absent manifest error.

"LIBOR Option" has the meaning specified therefor in Section 2.07(a).

"LIBOR Rate" means, for each Interest Period for each LIBOR Rate Loan, the greater of (a) the rate per annum determined by the Administrative Agent (rounded upwards if necessary, to the next 1/100% of 1%) by dividing (i) LIBOR for such Interest Period by (ii) 100% minus the Reserve Percentage and (b) 1.0% per annum. If applicable, the LIBOR Rate shall be adjusted on and as of the effective day of any change in the Reserve Percentage; provided, however, that if the LIBOR Rate determined as provided above would be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

"LIBOR Rate Loan" means each portion of a Loan that bears interest at a rate determined by reference to the LIBOR Rate.

"Lien" means any mortgage, deed of trust, pledge, lien (statutory or otherwise), security interest, charge or other encumbrance or security or preferential arrangement of any nature, including, without limitation, any conditional sale or title retention arrangement, any Capitalized Lease and any assignment, deposit arrangement or financing lease intended as, or having the effect of, security.

"Liquidity" means, as of any date of determination, (a) the Availability *plus* (b) Qualified Cash of the Loan Parties and their respective Subsidiaries as of such date.

"Loan" means the Term Loans or any portion thereof or any Revolving Loan made by an Agent or a Lender to the Borrower pursuant to Article II hereof.

"Loan Account" means an account maintained hereunder by the Administrative Agent on its books of account at the Payment Office, and with respect to the Borrower, in which the Borrower will be charged with all Loans made to, and all other Obligations incurred by, the Borrower.

"Loan Document" means this Agreement, the Acquisition Collateral Assignment, any Control Agreement, the Disbursement Letter, the Fee Letter, any Guaranty, the Intercompany Subordination Agreement, any Joinder Agreement, any Mortgage, any Security Agreement, any other Security Document, any landlord waiver, any collateral access agreement, any Perfection Certificate and any other agreement, instrument, certificate, report and other document executed and delivered pursuant hereto or thereto or otherwise evidencing or securing any Loan or any other Obligation.

"Loan Party" means the Borrower and any Guarantor.

"Loan Party Insolvency" has the meaning specified therefor in Section 12.07(a)(iv)(H).

"Loan Party Plan of Reorganization" has the meaning specified therefor in Section 12.07(a)(iv)(H).

"Material Adverse Effect" means (a) on the Effective Date, a IWCO Material Adverse Effect and (b) immediately following the IWCO Acquisition, a material adverse effect on any of (i) the results of operations, assets, financial condition of the Loan Parties taken as a whole, (ii) the ability of the Loan Parties taken as a whole to perform any of their payment or other material obligations under any Loan Document, (iii) the legality, validity or enforceability of this Agreement or any other Loan Document, (iv) the material rights and remedies of any Agent or any Lender under any Loan Document, or (v) a material impairment of the enforceability or priority of the Collateral Agent's Liens with regard to all or material portion of the Collateral (except to the extent resulting from a Permitted Disposition or any actions or inactions on the part of the Collateral Agent due to the Collateral Agent's negligence, bad faith, or willful misconduct).

"Material Contract" means, with respect to any Person, (a) the IWCO Acquisition Agreement and the other material IWCO Acquisition Documents, and (b) all other contracts or agreements as to which the breach, nonperformance, cancellation or failure to renew by any party thereto could reasonably be expected to have a Material Adverse Effect.

"Maximum Revolving Credit Amount" means $25,000,000.

"ModusLink" means ModusLink Global Solutions, Inc., a Delaware corporation.

"Moody's" means Moody's Investors Service, Inc. and any successor thereto.

"Mortgage" means a mortgage, deed of trust or deed to secure debt, in form and substance reasonably satisfactory to the Collateral Agent, in each case executed and delivered by a Loan Party in favor of the Collateral Agent for the benefit of the Agents and the Lenders with respect to any Facility owned by any Loan Party, securing the Obligations and delivered to the Collateral Agent.

"Multiemployer Plan" means a "multiemployer plan" as defined in Section 4001(a)(3) of ERISA to which any Loan Party contributes or has any liability, including on account of any of its ERISA Affiliates.

"Net Cash Proceeds" means, with respect to, any issuance or incurrence of any Indebtedness, any Equity Issuance, any Disposition or the receipt of any Extraordinary Receipts by any Person or any of its Subsidiaries, the aggregate amount of cash received (directly or indirectly) from time to time (whether as initial consideration or through the payment or disposition of deferred consideration) by or on behalf of such Person or such Subsidiary, in connection therewith after deducting therefrom only (a) in the case of any Disposition or the receipt of any Extraordinary Receipts consisting of insurance proceeds or condemnation awards, the amount of any Indebtedness secured by any Permitted Lien on any asset (other than Indebtedness assumed by the purchaser of such asset) which is required to be, and is, repaid in connection therewith (other than Indebtedness under this Agreement), (b) reasonable expenses related thereto incurred by such Person or such Subsidiary in connection therewith, (c) transfer taxes paid to any taxing authorities by such Person or such Subsidiary in connection therewith, and (d) net income taxes to be paid in connection therewith (after taking into account any tax credits or deductions and any tax sharing arrangements), in each case, to the extent, but only to the extent, that the amounts so deducted are (i) actually paid to a Person that, except in the case of reasonable out-of-pocket expenses, is not an Affiliate of such Person or any of its Subsidiaries and (ii) properly attributable to such transaction or to the asset that is the subject thereof.

"New Facility" has the meaning specified therefor in Section 7.01(m).

"New Lending Office" has the meaning specified therefor in Section 2.09(d).

"Non-Qualifying Party" means any Loan Party that on the Eligibility Date fails for any reason to qualify as an Eligible Contract Participant.

"Non-Restricted Persons" has the meaning specified therefor in Section 12.07(a)(iv)(H).

"Non-U.S. Secured Party" has the meaning specified therefor in Section 2.09(d).

"Note" means a promissory note of the Borrower, substantially in the form of (a) in the case of the Term Loans, Exhibit E and (b) in the case of the Revolving Loans, Exhibit F, evidencing the Indebtedness resulting from the making of the Loans and delivered to any Lender that requests such Note pursuant to Section 2.03(f) hereof, as such promissory note may be modified or extended from time to time, and any promissory note or notes issued in exchange or replacement therefor.

"Notice of Borrowing" has the meaning specified therefor in Section 2.02(a).

"Obligations" means all present and future indebtedness, obligations, and liabilities of each Loan Party to the Agents and the Lenders arising under or in connection with this Agreement or any other Loan Document, whether or not the right of payment in respect of such claim is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, disputed, undisputed, legal, equitable, secured, unsecured, and whether or not such claim is discharged, stayed or otherwise affected by any proceeding referred to in Section 9.01. Without limiting the generality of the foregoing, the Obligations of each Loan Party under the Loan Documents include (a) the obligation (irrespective of whether a claim therefor is allowed in an Insolvency Proceeding) to pay principal, interest, charges, expenses, fees, premiums (including the Applicable Prepayment Premium), attorneys' fees and disbursements, indemnities and other amounts payable by such Person under the Loan Documents and (b) the obligation of such Person to reimburse any amount in respect of any of the foregoing that any Agent or any Lender (in its sole discretion) may elect to pay or advance on behalf of such Person. Notwithstanding any of the foregoing, Obligations shall not include any Excluded Hedge Liability.

"OFAC Sanctions Programs" means (a) the Requirements of Law and executive orders administered by OFAC, including, without limitation, Executive Order No. 13224, and (b) the list of Specially Designated Nationals and Blocked Persons administered by OFAC, in each case, as renewed, extended, amended, or replaced.

"Other Taxes" has the meaning specified therefor in Section 2.09(b).

"Parent" has the meaning specified therefor in the preamble hereto.

"Participant Register" has the meaning specified therefor in Section 12.07(i).

"Payment Office" means the Administrative Agent's office located at 875 Third Avenue, New York, New York 10022, or at such other office or offices of the Administrative Agent as may be designated in writing from time to time by the Administrative Agent to the Collateral Agent and the Borrower.

"PBGC" means the Pension Benefit Guaranty Corporation or any successor thereto.

"Perfection Certificate" means a certificate in form and substance reasonably satisfactory to the Collateral Agent providing information with respect to the property of each Loan Party.

"Permitted Acquisition" means any Acquisition by a Loan Party or any wholly-owned Subsidiary of a Loan Party that either (x) the Collateral Agent has provided its prior written consent thereto or (y) to the extent that each of the following conditions shall have been satisfied:

(a) no Default or Event of Default shall have occurred and be continuing or would result from the consummation of the proposed Acquisition;

(b) to the extent the Acquisition will be financed in whole or in part with the proceeds of any Loan, the conditions set forth in Section 5.02 shall have been satisfied;

(c) the Borrower shall have furnished to the Agents at least 10 Business Days (or such later date approved by Administrative Agent in its sole discretion) prior to the consummation of such Acquisition (i) an executed term sheet and/or commitment letter (setting forth in reasonable detail the terms and conditions of such Acquisition) and, at the request of any Agent, such other information and documents that any Agent may reasonably request, including, without limitation, executed counterparts of the respective agreements, instruments or other documents pursuant to which such Acquisition is to be consummated (including, without limitation, any related management, non-compete, employment, option or other material agreements), any schedules to such agreements, instruments or other documents and all other material ancillary agreements, instruments or other documents to be executed or delivered in connection therewith, (ii) pro forma financial statements of the Parent and its Subsidiaries after the consummation of such Acquisition, and (iii) a certificate of the chief financial officer of the Parent, demonstrating on a pro forma basis compliance with clause (g) below after the consummation of such Acquisition, provided that if the Purchase Price for such Acquisition is equal to or less than $5,000,000, the Loan Parties shall not be required to deliver any of the documents described in this clause (c);

(d) the agreements, instruments and other documents referred to in paragraph (c)(i) above shall provide that (i) neither the Loan Parties nor any of their Subsidiaries shall, in connection with such Acquisition, assume or remain liable in respect of any Indebtedness of the Seller or Sellers, or other obligation of the Seller or Sellers (except for obligations incurred in the ordinary course of business in operating the property so acquired and necessary or desirable to the continued operation of such property and except for Permitted Indebtedness), and (ii) all property to be so acquired in connection with such Acquisition shall be free and clear of any and all Liens, except for Permitted Liens (and if any such property is subject to any Lien not permitted by this clause (ii) then substantially concurrently with such Acquisition such Lien shall be released);

(e) such Acquisition shall be effected in such a manner so that the acquired assets or Equity Interests are owned either by a Loan Party or a wholly-owned Subsidiary of a Loan Party and, if effected by merger or consolidation involving a Loan Party, such Loan Party shall be the continuing or surviving Person or the continuing or surviving Person shall become a Loan Party;

(f) Liquidity of the Loan Parties shall be in an amount equal to or greater than $15,000,000 immediately after giving effect to the consummation of the proposed Acquisition;

(g) the assets being acquired or the Person whose Equity Interests are being acquired did not have negative Consolidated EBITDA in excess of $10,000,000 during the 12 consecutive month period most recently concluded prior to the date of the proposed Acquisition as determined on a pro forma basis after giving effect to such Acquisition (including, without limitation, any pro forma cost savings adjustments);

(h) the assets being acquired (other than a de minimis amount of assets in relation to the Loan Parties' and their Subsidiaries' Total Assets), or the Person whose Equity Interests are being acquired, are useful in or engaged in, as applicable, the business of the Loan Parties and their Subsidiaries or a business reasonably related or ancillary thereto;

(i) any such newly acquired subsidiary or assets shall, as applicable, become a Loan Party or become part of the “Collateral”, and, in each case, comply with or be subject to, as applicable, the requirements of Section 7.01(b);

(j) such Acquisition shall be consensual and shall have been approved by the board of directors or similar governing body of the Person whose Equity Interests or assets are proposed to be acquired (or such Acquisition shall be court-approved in the case of a sale pursuant to Section 363 of the Bankruptcy Code) and shall not have been preceded by an unsolicited tender offer for such Equity Interests by, or proxy contest initiated by, Parent or any of its Subsidiaries or an Affiliate thereof;

(k) any such Subsidiary (and its equityholders) shall execute and deliver the agreements, instruments and other documents required by Section 7.01(b) within the time period provided in Section 7.01(b) (or such later date approved by Administrative Agent in its sole discretion); and

(l) the aggregate Purchase Price for all such Acquisitions (including the proposed Acquisition) shall not exceed the sum of $30,000,000.

"Permitted Cure Equity" means Qualified Equity Interests of the Parent.

"Permitted Disposition" means:

(a) the use or transfer of money or Cash Equivalents in a manner that is not prohibited by the terms of this Agreement or the other Loan Documents and the conversion of Cash Equivalents into cash or other Cash Equivalents;

(b) the granting of Permitted Liens;

(c) sale of Inventory in the ordinary course of business;

(d) licensing, on a non-exclusive basis, Intellectual Property rights in the ordinary course of business;

(e) leasing or subleasing assets (including Real Property) in the ordinary course of business;

(f) (i) the lapse of Registered Intellectual Property of the Parent and its Subsidiaries to the extent not economically desirable in the conduct of their business or (ii) the abandonment of Intellectual Property rights in the ordinary course of business, so long as (in each case under clauses (i) and (ii)), (A) with respect to copyrights, such copyrights are not material revenue generating copyrights, and (B) such lapse is not materially adverse to the interests of the Secured Parties;

(g) any involuntary loss, damage or destruction of property;

(h) any involuntary condemnation, seizure or taking, by exercise of the power of eminent domain or otherwise, or confiscation or requisition of use of property;

(i) the sale or discount, in each case without recourse, of Accounts Receivable arising in the ordinary course of business, but only in connection with the compromise or collection thereof;

(j) Permitted Intercompany Dispositions;

(k) Disposition of obsolete or worn-out equipment in the ordinary course of business;

(l) the issuance and sale by the Parent of its Qualified Equity Interests after the date hereof, provided that no Change of Control or other Event of Default results therefrom;

(m) the termination by any Loan Party of contracts (including, without limitation, Hedging Agreements) in the ordinary course of business;

(n) any Disposition described in clause (b) of the definition of Disposition to the extent such Disposition could not reasonably be expected to have a Material Adverse Effect;

(o) Investments permitted by Section 7.02(e);

(p) Dispositions of assets acquired by the Parent and its Subsidiaries pursuant to any Permitted Acquisition consummated within 6 months of the date of the proposed Disposition so long as (i) the consideration received for the assets to be so disposed is at least equal to the fair market value of such assets, (ii) the assets to be so disposed are not necessary or economically desirable in connection with the business of the Parent and its Subsidiaries taken as a whole, (iii) the assets to be so disposed are readily identifiable as assets acquired pursuant to such Permitted Acquisition, and (iv) the aggregate fair market value of all assets so sold by the Loan Parties and their Subsidiaries shall not exceed 2.5% of the value of all assets acquired pursuant to such Permitted Acquisition; and

(q) Dispositions not otherwise permitted hereunder which are made for fair market value; provided that (i) at the time of any such Disposition, no Event of Default shall exist or shall result from such Disposition, (ii) not less than 75% of the aggregate sales price from such disposition shall be paid in cash, and (iii) the aggregate fair market value of all assets so sold by the Loan Parties and their Subsidiaries shall not exceed $2,500,000 in any Fiscal Year;

provided that the Net Cash Proceeds of such Dispositions are paid to the Administrative Agent for the benefit of the Agents and the Lenders pursuant to (and to the extent required by) the terms of Section 2.05(c)(ii) or applied as provided in Section 2.05(c)(vi).

"Permitted Holder" means, collectively, the Sponsor and/or any Controlled Investment Affiliate thereof on the Effective Date.

"Permitted Indebtedness" means:

(a) any Indebtedness owing to any Agent or any Lender under this Agreement and the other Loan Documents;

(b) any other Indebtedness listed on Schedule 7.02(b), and any Permitted Refinancing Indebtedness in respect of such Indebtedness;

(c) Permitted Purchase Money Indebtedness and any Permitted Refinancing Indebtedness in respect of such Indebtedness;

(d) Permitted Intercompany Investments;

(e) Indebtedness constituting Permitted Investments;

(f) Indebtedness incurred in the ordinary course of business under performance, surety, statutory, and appeal bonds and Contingent Obligations in respect thereof;

(g) Indebtedness owed to any Person providing property, casualty, liability, or other insurance to the Loan Parties, so long as the amount of such Indebtedness is not in excess of the amount of the unpaid cost of, and shall be incurred only to defer the cost of, such insurance for the period in which such Indebtedness is incurred and such Indebtedness is outstanding only during such period;

(h) the incurrence by any Loan Party of Indebtedness under Hedging Agreements that are incurred for the bona fide purpose of hedging the interest rate, commodity, or foreign currency risks associated with such Loan Party's operations;

(i) Indebtedness incurred in respect of credit cards, credit card processing services, debit cards, stored value cards, purchase cards or other similar cash management services, in each case, incurred in the ordinary course of business;

(j) contingent liabilities in respect of any indemnification obligation, adjustment of purchase price, non-compete, earn-outs or similar obligation of any Loan Party incurred in connection with the consummation of one or more Permitted Acquisitions;

(k) Indebtedness of a Person whose assets or Equity Interests are acquired by the Parent or any of its Subsidiaries in a Permitted Acquisition; provided that such Indebtedness (i) is either Permitted Purchase Money Indebtedness or a Capitalized Lease with respect to fixed assets, equipment or mortgage financing with respect to a Facility, (ii) was in existence prior to the date of such Permitted Acquisition, and (iii) was not incurred in connection with, or in contemplation of, such Permitted Acquisition;

(l) Contingent Obligations with respect to Indebtedness of the Parent and its Subsidiaries to the extent that the Person incurring such Contingent Obligations was permitted to incur such underlying Indebtedness under this Agreement and subordinated to the same extent as the Indebtedness to which it relates is subordinated to the Obligations;

(m) unsecured Subordinated Indebtedness incurred by the Loan Parties so long as (i) before and after giving effect thereto, no Event of Default has occurred and is continuing or would result therefrom, (ii) such unsecured Subordinated Indebtedness does not mature prior to the date that is 12 months after the Final Maturity Date, (iii) such unsecured Subordinated Indebtedness does not amortize until 12 months after the Final Maturity Date, (iv) such unsecured Subordinated Indebtedness does not provide for the payment of interest thereon in cash or Cash Equivalents prior to the date that is 12 months after the Final Maturity Date, and (v) the Loan Parties shall be in compliance with the financial covenants set forth in Section 7.03 after giving pro forma effect to the incurrence of such Indebtedness;

(n) Indebtedness in respect of cash management obligations (including ordinary course overdraft obligations) and netting services, automatic clearinghouse and similar arrangements in connection with deposit accounts in the ordinary course of business;

(o) Indebtedness (i) arising from endorsements of checks, drafts or other items of payment for collection or deposit in the ordinary course of business or (ii) constituting guaranties, endorsement or other liabilities incurred in the course of business in respect of obligations of (or to) suppliers, customers, lessors and licensees;

(p) Indebtedness consisting of obligations to reimburse the issuers of letters of credit incurred in the ordinary course of business in an aggregate amount not to exceed $5,000,000 at any time outstanding;

(q) accrual of interest, accretion or amortization of original issue discount, or the payment of interest in kind, in each case, on Indebtedness that otherwise constitutes Permitted Indebtedness;

(r) unsecured Indebtedness of the Parent owing to former employees, officers, or directors (or any spouses, ex-spouses, or estates of any of the foregoing) incurred in connection with the repurchase by the Parent of the Equity Interests of the Parent that has been issued to such Persons, so long as (i) no Event of Default has occurred and is continuing or would result from the incurrence of such Indebtedness, (ii) the aggregate amount of all such Indebtedness outstanding at any one time does not exceed $1,000,000, and (iii) such Indebtedness is subordinated to the Obligations on terms and conditions reasonably acceptable to the Administrative Agent; and

(s) unsecured Indebtedness incurred by the Loan Parties not otherwise permitted by any one or more of the foregoing clauses; provided that the aggregate amount of all such Indebtedness outstanding at any one time does not exceed $1,000,000.

"Permitted Intercompany Dispositions" means Dispositions of assets from (a) Loan Parties to other Loan Parties; (b) Subsidiaries that are not Loan Parties to Loan Parties or to other Subsidiaries that are not Loan Parties; and (c) Loan Parties to Subsidiaries that are not Loan Parties; provided that the aggregate consideration paid for all such Dispositions in clause (c) shall not exceed $500,000 during any Fiscal Year.

"Permitted Intercompany Investments" means Investments made by (a) a Loan Party to or in another Loan Party (other than the Parent), (b) a Subsidiary that is not a Loan Party to or in another Subsidiary that is not a Loan Party, (c) a Subsidiary that is not a Loan Party to or in a Loan Party, so long as, in the case of a loan or advance, the parties thereto are party to the Intercompany Subordination Agreement, and (d) a Loan Party to or in a Subsidiary that is not a Loan Party so long as (i) the aggregate amount of all such Investments made by the Loan Parties to or in Subsidiaries that are not Loan Parties does not exceed $500,000 at any time outstanding, (ii) no Default or Event of Default has occurred and is continuing either before or after giving effect to such Investment, (iii) the Liquidity of the Loan Parties shall not be less than $10,000,000 after giving effect to such Investment and (iv) to the extent such Investment is a loan, an advance or other extension of credit, such loan, advance or other extension of credit shall be evidenced by a promissory note that is pledged to the Collateral Agent for the benefit of the Secured Parties to the extent required to be delivered under the applicable Security Document.

"Permitted Investments" means:

(a) Investments in cash and Cash Equivalents;

(b) Investments in negotiable instruments deposited or to be deposited for collection in the ordinary course of business;

(c) advances made in connection with purchases of goods or services in the ordinary course of business;

(d) Investments received in settlement of amounts due to any Loan Party or any of its Subsidiaries effected in the ordinary course of business or owing to any Loan Party or any of its Subsidiaries as a result of Insolvency Proceedings involving an Account Debtor or upon the foreclosure or enforcement of any Lien in favor of a Loan Party or its Subsidiaries;

(e) Investments existing on the date hereof, as set forth on Schedule 7.02(e) hereto, but not any increase in the amount thereof as set forth in such Schedule or any other modification of the terms thereof;

(f) to the extent constituting Investments, deposit and securities accounts maintained in the ordinary course of business and in compliance with the provisions of the Loan Documents;

(g) Permitted Intercompany Investments;

(h) Permitted Acquisitions and earnest money deposits in connection therewith;

(i) Equity Interests or other securities acquired in connection with the satisfaction or enforcement of Indebtedness or claims due or owing to a Loan Party or any of its Subsidiaries (in bankruptcy of customers or suppliers or otherwise) or as security for any such Indebtedness or claims, in each case, in the ordinary course of business;

(j) deposits of cash made in the ordinary course of business to secure performance of operating leases, so long as such underlying operating lease is not otherwise prohibited hereunder;

(k) (i) non-cash loans and advances to employees, officers, and directors of the Parent or any of its Subsidiaries for the purpose of purchasing Equity Interests in the Parent so long as the proceeds of such loans or advances are used in their entirety to purchase such Equity Interests in the Parent, and (ii) loans and advances to employees, officers, and directors of the Parent or any of its Subsidiaries in the ordinary course of business for any business purpose or (including for the payment of taxes relating to the purchase of Equity Interests directly from the Parent);

(l) loans, advances, guarantees and Investments constituting Indebtedness permitted by Section 7.02(b);

(m) to the extent constituting an Investment, Hedging Agreements permitted by Section 7.02(b);

(n) [reserved];

(o) Contingent Obligations permitted under the definition of Permitted Indebtedness;

(p) Investments made solely with Qualified Equity Interests, so long as no Change of Control results therefrom;

(q) equity Investments by any Loan Party in any Subsidiary of a Loan Party which is required by law to maintain a minimum net capital requirement or as may be otherwise required by applicable law;

(r) Investments held by a Person acquired in a Permitted Acquisition to the extent such Investments were not made in contemplation of or in connection with such Permitted Acquisition and were in existence on the date of such Permitted Acquisition;

(s) other Investments not otherwise permitted by any one or more of the foregoing clauses; provided that the aggregate amount of all such Investments does not exceed at $3,500,000 at any time outstanding; and

(t) to the extent constituting Investments, advances in respect of transfer pricing and cost-sharing arrangements that are in the ordinary course of business.

"Permitted Liens" means:

(a) Liens securing the Obligations;

(b) Liens for Taxes, assessments and governmental charges the payment of which is not required under Section 7.01(c)(ii);

(c) Liens imposed by law, such as carriers', warehousemen's, mechanics', materialmen's, landlords' and other similar Liens arising in the ordinary course of business and securing obligations (other than Indebtedness for borrowed money) that are not overdue by more than 30 days or are being contested in good faith and by appropriate proceedings promptly initiated and diligently conducted, and a reserve or other appropriate provision, if any, as shall be required by GAAP shall have been made therefor;

(d) Liens described on Schedule 7.02(a), provided that any such Lien shall only secure the Indebtedness that it secures on the Effective Date and any Permitted Refinancing Indebtedness in respect thereof;

(e) purchase money Liens on equipment acquired or held by any Loan Party or any of its Subsidiaries in the ordinary course of its business to secure Permitted Purchase Money Indebtedness so long as such Lien only (i) attaches to such property and (ii) secures the Indebtedness that was incurred to acquire such property or any Permitted Refinancing Indebtedness in respect thereof;

(f) deposits and pledges of cash securing (i) obligations incurred in respect of workers' compensation, unemployment insurance or other forms of governmental insurance or benefits, (ii) the performance of bids, tenders, leases, contracts (other than for the payment of money) and statutory obligations or (iii) obligations on surety or appeal bonds, but only to the extent such deposits or pledges are made or otherwise arise in the ordinary course of business and secure obligations not past due;

(g) with respect to any Facility, easements, zoning restrictions and similar encumbrances on real property and minor irregularities in the title thereto that do not (i) secure obligations for the payment of money or (ii) materially impair the value of such property or its use by any Loan Party or any of its Subsidiaries in the normal conduct of such Person's business;

(h) Liens of landlords and mortgagees of landlords (i) arising by statute or under any lease or related Contractual Obligation entered into in the ordinary course of business, (ii) on fixtures and movable tangible property located on the real property leased or subleased from such landlord, (iii) for amounts not yet due or that are being contested in good faith by appropriate proceedings diligently conducted and (iv) for which adequate reserves or other appropriate provisions are maintained on the books of such Person in accordance with GAAP;

(i) the title and interest of a lessor or sublessor in and to personal property leased or subleased (other than through a Capitalized Lease), in each case extending only to such personal property;

(j) non-exclusive licenses of Intellectual Property rights in the ordinary course of business;

(k) Liens granted by a Subsidiary of the Parent that is not a Loan Party in favor of any Loan Party;

(l) judgment liens (other than for the payment of taxes, assessments or other governmental charges) securing judgments and other proceedings not constituting an Event of Default under Section 9.01(j);

(m) rights of set-off or bankers' liens upon deposits of cash in favor of banks or other depository institutions, solely to the extent incurred in connection with the maintenance of such deposit accounts in the ordinary course of business;

(n) Liens granted in the ordinary course of business on the unearned portion of insurance premiums securing the financing of insurance premiums to the extent the financing is permitted under the definition of Permitted Indebtedness;

(o) Liens assumed by the Parent and its Subsidiaries in connection with a Permitted Acquisition that secure Indebtedness permitted by clause (k) of the definition of Permitted Indebtedness;

(p) precautionary financing statement filings in connection with operating leases;

(q) Liens solely on any cash earnest money deposits made by any Loan Party in connection with any letter of intent or purchase agreement with respect to a Permitted Acquisition;

(r) Liens securing Indebtedness permitted under clauses (h) and (p) of the definition of Permitted Indebtedness, provided that, such Indebtedness shall be secured solely by cash collateral posted by the applicable Loan Parties to secure such Indebtedness; and

(s) other Liens which do not secure Indebtedness for borrowed money or letters of credit and as to which the aggregate amount of the obligations secured thereby does not exceed $250,000.

"Permitted Purchase Money Indebtedness" means, as of any date of determination, Indebtedness (other than the Obligations, but including Capitalized Lease Obligations) incurred to finance the acquisition of any fixed and/or capital assets secured by a Lien permitted under clause (e) of the definition of "Permitted Liens"; provided that (a) such Indebtedness is incurred within 60 days after such acquisition, (b) such Indebtedness when incurred shall not exceed the purchase price of the asset financed and (c) the aggregate amount of all such Indebtedness outstanding at any one time does not exceed $5,000,000.

"Permitted Refinancing Indebtedness" means the extension of maturity, refinancing or modification of the terms of Indebtedness so long as:

(a) after giving effect to such extension, refinancing or modification, the amount of such Indebtedness is not greater than the amount of Indebtedness outstanding immediately prior to such extension, refinancing or modification (other than by the amount of premiums paid thereon and the fees and expenses incurred in connection therewith and by the amount of unfunded commitments with respect thereto);

(b) such extension, refinancing or modification does not result in a shortening of the average weighted maturity (measured as of the extension, refinancing or modification) of the Indebtedness so extended, refinanced or modified;

(c) such extension, refinancing or modification is pursuant to terms that are not less favorable, taken as a whole, to the Loan Parties and the Lenders than the terms of the Indebtedness (including, without limitation, terms relating to the collateral (if any) and subordination (if any)) being extended, refinanced or modified, provided that the interest rate of the Indebtedness being extended, refinanced or modified may be set at a market rate; and

(d) the Indebtedness that is extended, refinanced or modified is not recourse to any Person that is liable on account of the obligations other than those Persons which were obligated with respect to the Indebtedness that was refinanced, renewed, or extended.

"Permitted Restricted Payments" means any of the following Restricted Payments made by:

(a) any Loan Party to the Parent (for further distribution by the Parent to its equityholders) to be used for (i) customary director indemnification and expense reimbursement payments to the directors of such Person, (ii) reasonable and customary fees to directors of the Parent, (iii) operating expenses and corporate overhead expenses of the Parent in the ordinary course and (iv) financial and other reporting and similar customary administrative costs and expenses of the Parent (or any direct or indirect parent thereof), so long as no Default or Event of Default shall have occurred and be continuing or would result from the making of such payment;

(b) any Subsidiary of a Loan Party may pay dividends or make similar distributions to a Loan Party (other than the Parent or any other Holdco);

(c) any Loan Party may make distributions to the Parent (for further distribution by the Parent to its equityholders) on a quarterly basis; provided that (i) the aggregate amount of any such distributions made in any taxable year shall not exceed the amount that the Parent and its Subsidiaries would have been required to pay with respect to U.S. federal, state and local Taxes (as the case may be) for such taxable year if the Parent and its Subsidiaries paid such Taxes directly as a stand-alone taxpayer (or stand-alone consolidated group), (ii) if any amount used to calculate the amount determined in accordance with subclause (i) of this clause (c) is determined to be inaccurate for any reason or the applicable tax return is amended in a manner, subclause (i) of this clause (c) shall promptly be re-calculated to give effect to the correction of such inaccuracy and/or such amendment and to the extent that the amount that the Loan Parties distributed during the applicable calendar year in accordance with this clause (c) is determined to be in excess of such re-calculated amount, then ModusLink or its Subsidiaries (other than the Parent or any of its Subsidiaries) shall promptly make a cash capital contribution to the Parent in an amount equal to such excess amount and (iii) no Default or Event of Default shall have occurred and be continuing or would result from the making of any such distribution;

(d) any Loan Party may make distributions to the Parent (for further distribution by the Parent to an Affiliate of ModusLink) to pay (i) management fees in an aggregate amount not to exceed $5,000,000 in any Fiscal Year and (ii) reasonable and documented indemnities and expenses in connection with services performed by such Affiliate on behalf of the Parent or any of its Subsidiaries, so long as, in the case of subclauses (i) and (ii), (A) no Event of Default shall have occurred and be continuing, or would result from the making of such distribution, (B) the aggregate amount of distributions made pursuant to this clause (d) shall not exceed $5,000,000 in any Fiscal Year and (C) such management fees are for services rendered, for fair consideration and on terms no less favorable to the Loan Parties or its Subsidiaries than would be obtainable in a comparable arm's length transaction with a Person that is not an Affiliate of the Loan Parties or its Subsidaries.

(e) the Parent to pay dividends in the form of Qualified Equity Interests; and

(f) Restricted Payments to repurchase, redeem or otherwise acquire or retire for value any Equity Interests of Parent held by future, current or former directors, officers, employees, members of management and consultants of any Loan Party and/or their respective estates, heirs, family members, spouses, domestic partners, former spouses or domestic partners pursuant to any employee equity subscription agreement, stock option agreement or stock ownership arrangement upon the death, disability, retirement or termination of employment of any such director, officer, employee, member of management or consultant to the extent (i) not exceeding during any Fiscal Year an aggregate amount equal to $250,000 and (ii) both before and after giving effect to any such payment, no Event of Default exists or would occur as a result thereof.

"Permitted Specified Liens" means Permitted Liens described in clauses (a), (b) and (c) of the definition of Permitted Liens, and, solely in the case of Section 7.01(b)(i), including clauses (g), (h) and (i) of the definition of Permitted Liens.

"Person" means an individual, corporation, limited liability company, partnership, association, joint-stock company, trust, unincorporated organization, joint venture or other enterprise or entity or Governmental Authority.

"Petty Cash Accounts" means Cash Management Accounts that do not contain deposits at any time in an aggregate amount in excess of $100,000 for any one account and $250,000 in the aggregate for all such accounts.

"Plan" means any Employee Plan or Multiemployer Plan.

"Post-Default Rate" means a rate of interest per annum equal to the rate of interest otherwise in effect from time to time pursuant to the terms of this Agreement plus 2.00%, or, if a rate of interest is not otherwise in effect, interest at the highest rate specified herein for any Loan then outstanding prior to an Event of Default plus 2.00%.

"pro forma" or "pro forma basis" or "pro forma effect" means, with respect to any calculation of compliance with any financial covenant (including, without limitation, the Leverage Ratio and Consolidated EBITDA and any component financial definitions thereof), (a) the making of such calculation after giving effect on a pro forma basis to the consummation of the applicable Subject Transaction as if such Subject Transaction had been consummated on the first day of such calculation period; (b) if such Subject Transaction constitutes: (i) a Disposition, any income statement items (whether positive or negative) attributable to the property or Person subject to such Disposition shall be excluded and (ii) a Permitted Acquisition or an Investment, any income statement items (whether positive or negative) attributable to the property or Person subject to such Permitted Acquisition or Investment shall be included; and (c) with respect to any Indebtedness described in clause (d) of the definition of Subject Transaction, (i) any retirement, redemption or repayment thereof by the Parent or any of its Subsidiaries (including any Person which becomes a Subsidiary pursuant to or in connection with such Subject Transaction) shall be deemed to have occurred on the first day of such calculation period and (ii) any incurrence or issuance (and the proceeds thereof applied) or assumption of such Indebtedness by the Parent or any of its Subsidiaries (including any Person which becomes a Subsidiary pursuant to or in connection with such Subject Transaction) shall be deemed to have occurred (and the proceeds thereof applied) on the first day of such calculation period only to the extent that such Indebtedness remains outstanding as of the last day of such test period; provided that, (A) if such Indebtedness has a floating or formula rate, such Indebtedness shall have an implied rate of interest for the applicable period for purposes of this definition determined by utilizing the rate that is or would be in effect with respect to such Indebtedness at the relevant date of determination (taking into account any interest hedging arrangements applicable to such Indebtedness), (B) interest on any obligations with respect to Capital Leases shall be deemed to accrue at an interest rate reasonably determined by an Authorized Officer of the Borrower to be the rate of interest implicit in such obligation in accordance with GAAP and (C) interest on any Indebtedness that may optionally be determined at an interest rate based upon a factor of a prime or similar rate, a eurocurrency interbank offered rate or other rate shall be determined to have been based upon the rate actually chosen, or if none, then based upon such optional rate chosen as the Borrower or such Subsidiary may designate; provided further, that, the foregoing pro forma adjustments described in clause (b) above may be applied to any such test or covenant solely to the extent that such adjustments (w) are consistent with the definition of "Consolidated EBITDA", (x) give effect to events (including operating expense reductions) that are (1) directly attributable to such transaction, (2) expected to have a continuing impact on the Parent and its Subsidiaries, (3) factually supportable, reasonably verifiable and made in good faith, and (4) described in a reasonably detailed statement or schedule and certified by an Authorized Officer of the Borrower.

"Pro Rata Share" means, with respect to:

(a) a Lender's obligation to make Revolving Loans and the right to receive payments of interest, fees, and principal with respect thereto, the percentage obtained by dividing (i) such Lender's Revolving Credit Commitment, by (ii) the Total Revolving Credit Commitment, provided that, if the Total Revolving Credit Commitment has been reduced to zero, the numerator shall be the aggregate unpaid principal amount of such Lender's Revolving Loans (including Agent Advances) and the denominator shall be the aggregate unpaid principal amount of all Revolving Loans (including Agent Advances),

(b) with respect to a Lender's obligation to make the Term Loan and the right to receive payments of interest, fees, and principal with respect thereto, the percentage obtained by dividing (i) such Lender's Term Loan Commitment, by (ii) the Total Term Loan Commitment, provided that, if the Total Term Loan Commitment has been reduced to zero, the numerator shall be the aggregate unpaid principal amount of such Lender's portion of the Term Loan and the denominator shall be the aggregate unpaid principal amount of the Term Loan, and

(c) with respect to all other matters (including, without limitation, the indemnification obligations arising under Section 10.05) regarding a Lender, the percentage obtained by dividing (i) the sum of such Lender's Revolving Credit Commitment and the unpaid principal amount of such Lender's portion of the Term Loans and the Agent Advances, by (ii) the sum of the Total Revolving Credit Commitment and the aggregate unpaid principal amount of the Term Loans and Agent Advances, provided that, if such Lender's Revolving Credit Commitment shall have been reduced to zero, such Lender's Revolving Credit Commitment shall be deemed to be the aggregate unpaid principal amount of such Lender's Revolving Loans (including Agent Advances) and if the Total Revolving Credit Commitment shall have been reduced to zero, the Total Revolving Credit Commitment shall be deemed to be the aggregate unpaid principal amount of all Revolving Loans (including Agent Advances).

"Proceeds" means (a) all "proceeds" (as defined in Article 9 of the Uniform Commercial Code) with respect to the Collateral and (b) whatever is recoverable or recovered when any Collateral is sold, exchanged, collected, or disposed of, whether voluntarily or involuntarily.

"Projections" means financial projections of the Parent and its Subsidiaries delivered pursuant to Section 6.01(g)(ii), as updated from time to time pursuant to Section 7.01(a)(vi).

"Published Rate" means the rate of interest published each Business Day in the Wall Street Journal "Money Rates" listing under the caption "London Interbank Offered Rates" for a one month period (or, if no such rate is published therein for any reason, then the Published Rate shall be the LIBOR Rate for a one month period as published in another publication selected by the Administrative Agent).

"Purchase Price" means, with respect to any Acquisition, an amount equal to the sum of (a) the aggregate consideration, whether cash, property or securities (including, without limitation, the fair market value of any Equity Interests of any Loan Party or any of its Subsidiaries issued in connection with such Acquisition), paid or delivered by a Loan Party or any of its Subsidiaries (whether as initial consideration or through the payment or disposition of deferred consideration, including, without limitation, in the form of seller financing, royalty payments, payments allocated towards non-compete covenants, payments to principals for consulting services or other similar payments) in connection with such Acquisition, plus (b) the aggregate amount of liabilities of the acquired business (net of current assets of the acquired business) that would be reflected on a balance sheet (if such were to be prepared) of the Parent and its Subsidiaries after giving effect to such Acquisition.

"Qualified Cash" means, as of any date of determination, the aggregate amount of unrestricted cash and Cash Equivalents of the Loan Parties maintained in deposit accounts in the name of a Loan Party as of such date, which deposit accounts are subject to Control Agreements (or equivalent account direction letters in respect of deposit accounts located outside the United States) in form and substance reasonably satisfactory to the Collateral Agent.

"Qualified ECP Loan Party" means each Guarantor that on the Eligibility Date is (a) a corporation, partnership, proprietorship, organization, trust, or other entity other than a "commodity pool" as defined in Section 1a(10) of the Commodities Exchange Act and CFTC regulations thereunder that has total assets exceeding $10,000,000 or (b) an Eligible Contract Participant that can cause another person to qualify as an Eligible Contract Participant on the Eligibility Date under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act by entering into or otherwise providing a "letter of credit or keepwell, support, or other agreement" for purposes of Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

"Qualified Equity Interests" means, with respect to any Person, all Equity Interests of such Person that are not Disqualified Equity Interests.

"Real Property Deliverables" means each of the following agreements, instruments and other documents (or, in the case of a Facility not located in the United States of America, any equivalent instruments and other documents) in respect of each Facility owned by any Loan Party:

(a) a Mortgage duly executed by the applicable Loan Party,

(b) evidence of the recording of each Mortgage in such office or offices as may be necessary or, in the opinion of the Collateral Agent, desirable to perfect the Lien purported to be created thereby or to otherwise protect the rights of the Collateral Agent and the Lenders thereunder;

(c) a Title Insurance Policy or bring-down of the existing Title Insurance Policy with respect to each Mortgage;

(d) either (x) a current ALTA survey and a surveyor's certificate, in form and substance reasonably satisfactory to the Collateral Agent, certified to the Collateral Agent and to the issuer of the Title Insurance Policy with respect thereto by a professional surveyor licensed in the state in which such Facility is located and reasonably satisfactory to the Collateral Agent or (y) a prior ALTA survey in form and substance reasonably satisfactory to the Collateral Agent, together with an affidavit of the applicable Loan Party certifying that there has been no material change to the Facility since the date of such ALTA Survey;

(e) either (x) a copy of each letter issued by the applicable Governmental Authority, evidencing each Facility's compliance with all applicable building codes, fire codes, other health and safety rules and regulations, parking, density and height requirements and other building and zoning laws together with a copy of all certificates of occupancy issued with respect to each Facility or (y) a zoning report reasonably acceptable to the Collateral Agent;

(f) an opinion of counsel, reasonably satisfactory to the Collateral Agent, in the state where such Facility is located with respect to the enforceability of the Mortgage to be recorded and such other matters as the Collateral Agent may reasonably request;

(g) a satisfactory ASTM 1527-00 Phase I Environmental Site Assessment ("Phase I ESA") (and, if requested by the Collateral Agent based upon the results of such Phase I ESA, an ASTM 1527-00 Phase II Environmental Site Assessment) of each Facility, in form and substance and by an independent firm satisfactory to the Collateral Agent;

(h) flood insurance for such Facility if all or a portion of such Facility is located in an area designated by the Federal Emergency Management Agency as an area having special flood hazards (including, without limitation, those areas designated as Zone A or Zone V), and in which flood insurance has been made available under the U.S. National Flood Insurance Program, in an amount equal to the full replacement cost of the buildings, fixtures and personalty located on such real property or such other amount as may be agreed to by the Collateral Agent in writing; and

(i) such other agreements, instruments and other documents (including guarantees and opinions of counsel) as the Collateral Agent may reasonably require.

"Reference Rate" means, for any day, a rate per annum equal to the highest of (a) 4.00% per annum and (b) the rate last quoted by JPMorgan Chase Bank in New York, New York as its "reference rate", "base rate" or "prime rate", or if JPMorgan Chase Bank 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 Reference Rate shall be effective from and including the date such change is publicly announced as being effective.

"Reference Rate Loan" means each portion of a Loan that bears interest at a rate determined by reference to the Reference Rate.

"Register" has the meaning specified therefor in Section 12.07(f).

"Registered Intellectual Property" means Intellectual Property issued, registered, renewed or the subject of a pending application.

"Registered Loans" has the meaning specified therefor in Section 12.07(f).

"Regulation T", "Regulation U" and "Regulation X" mean, respectively, Regulations T, U and X of the Board or any successor, as the same may be amended or supplemented from time to time.

"Related Fund" means, with respect to any Person, an Affiliate of such Person, or a fund or account managed by such Person or an Affiliate of such Person.

"Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, seeping, migrating, dumping or disposing of any Hazardous Material (including the abandonment or discarding of barrels, containers and other closed receptacles containing any Hazardous Material) into the indoor or outdoor environment, including, without limitation, the movement of Hazardous Materials through or in the ambient air, soil, surface or ground water, or property.

"Remedial Action" means all actions taken to (a) clean up, remove, remediate, contain, treat, monitor, assess, evaluate or in any other way address Hazardous Materials in the indoor or outdoor environment; (b) prevent or minimize a Release or threatened Release of Hazardous Materials so they do not migrate or endanger or threaten to endanger public health or welfare or the indoor or outdoor environment; (c) perform pre-remedial studies and investigations and post-remedial operation and maintenance activities; or (d) perform any other actions authorized by 42 U.S.C. § 9601.

"Replacement Lender" has the meaning specified therefor in Section 12.02(b).

"Reportable Event" means an event described in Section 4043 of ERISA (other than an event not subject to the provision for 30-day notice to the PBGC under the regulations promulgated under such Section).

"Required Lenders" means Lenders whose Pro Rata Shares (calculated in accordance with clause (c) of the definition thereof) aggregate at least 50.1%. The Pro Rata Share of any Defaulting Lender shall be disregarded in determining Required Lenders at any time.

"Requirements of Law" means, with respect to any Person, collectively, the common law and all federal, state, provincial, local, foreign, multinational or international laws, statutes, codes, treaties, standards, rules and regulations, guidelines, ordinances, orders, judgments, writs, injunctions, decrees (including administrative or judicial precedents or authorities) and the interpretation or administration thereof by, and other determinations, directives, requirements or requests of, any Governmental Authority, in each case that are applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

"Reserve Percentage" means, on any day, for any Lender, the maximum percentage prescribed by the Board (or any successor Governmental Authority) for determining the reserve requirements (including any basic, supplemental, marginal, or emergency reserves) that are in effect on such date with respect to eurocurrency funding (currently referred to as "eurocurrency liabilities") of that Lender, but so long as such Lender is not required or directed under applicable regulations to maintain such reserves, the Reserve Percentage shall be zero.

"Restricted Affiliated Lender" means any Affiliated Lender (excluding any Affiliated Investment Fund and any natural person).

"Restricted Payment" means (a) the declaration or payment of any dividend or other distribution, direct or indirect, on account of any Equity Interests of any Loan Party or any of its Subsidiaries, now or hereafter outstanding, (b) the making of any repurchase, redemption, retirement, defeasance, sinking fund or similar payment, purchase or other acquisition for value, direct or indirect, of any Equity Interests of any Loan Party or any direct or indirect parent of any Loan Party, now or hereafter outstanding, (c) the making of any payment to retire, or to obtain the surrender of, any outstanding warrants, options or other rights for the purchase or acquisition of shares of any class of Equity Interests of any Loan Party, now or hereafter outstanding, (d) the return of any Equity Interests to any shareholders or other equity holders of any Loan Party or any of its Subsidiaries, or make any other distribution of property, assets, shares of Equity Interests, warrants, rights, options, obligations or securities thereto as such or (e) the payment of any management, consulting, monitoring or advisory fees or any other fees or expenses (including the reimbursement thereof by any Loan Party or any of its Subsidiaries, but excluding payment of customary indemnification obligations owing by any Loan Party or any of its Subsidiaries) pursuant to any management, consulting, monitoring, advisory or other services agreement to any of the shareholders or other equityholders of any Loan Party or any of its Subsidiaries or other Affiliates, or to any other Subsidiaries or Affiliates of any Loan Party.

"Revolving Credit Commitment" means, with respect to each Lender, the commitment of such Lender to make Revolving Loans to the Borrower in the amount set forth opposite such Lender's name in Schedule 1.01(A) hereto or in the Assignment and Acceptance pursuant to which such Lender became a Lender under this Agreement, as such amount may be terminated or reduced from time to time in accordance with the terms of this Agreement.

"Revolving Loan" means a loan made by a Lender to the Borrower pursuant to Section 2.01(a)(i).

"Revolving Loan Lender" means a Lender with a Revolving Credit Commitment or a Revolving Loan.

"Sale and Leaseback Transaction" means, with respect to the Parent or any of its Subsidiaries, any arrangement, directly or indirectly, with any Person whereby the Parent or any of its Subsidiaries shall sell or transfer any property used or useful in its business, whether now owned or hereafter acquired, and thereafter rent or lease such property or other property that it intends to use for substantially the same purpose or purposes as the property being sold or transferred.

"SEC" means the Securities and Exchange Commission or any other similar or successor agency of the Federal government administering the Securities Act.

"Secured Party" means any Agent and any Lender.

"Securities Act" means the Securities Act of 1933, as amended, or any similar Federal statute, and the rules and regulations of the SEC thereunder, all as the same shall be in effect from time to time.

"Securitization" has the meaning specified therefor in Section 12.07(l).

"Security Agreement" means a Pledge and Security Agreement, in form and substance reasonably satisfactory to the Collateral Agent, made by a Loan Party in favor of the Collateral Agent for the benefit of the Secured Parties securing the Obligations.

"Security Documents" means, collectively, any Security Agreement, any IP Security Agreement, any Mortgage, any Control Agreement, and any other agreement executed and delivered by a Loan Party which purports to grant a Lien to any Collateral Agent for the benefit of the Secured Parties, in each case, as amended, amended and restated, supplemented or otherwise modified from time to time, securing all or any portion of the Obligations as set forth therein.

"Seller" means any Person that sells Equity Interests or other property or assets to a Loan Party or a Subsidiary of a Loan Party in a Permitted Acquisition.

"Settlement Period" has the meaning specified therefor in Section 2.02(d)(i) hereof.

"Solvent" means, with respect to any Person on a particular date, that on such date (a) the present fair value of the property of such Person and its subsidiaries on a consolidated basis and measured on a going concern basis, is not less than the total liabilities of such Person and its subsidiaries on a consolidated basis, (b) the present fair salable value of the property of such Person and its subsidiaries on a consolidated basis and measured on a going concern basis, will be greater than the amount that will be required to pay the probable liability of such Person and its subsidiaries on a consolidated basis as they become absolute and matured in the ordinary course of business, (c) such Person and its subsidiaries on a consolidated basis will be able to pay their debts and liabilities, contingent obligations and other commitments as they mature in the ordinary course of business, (d) such Person and its subsidiaries on a consolidated basis do not intend to, and do not believe that they will, incur debts or liabilities beyond their ability to pay as such debts and liabilities mature in the ordinary course of business, and (e) such Person and its subsidiaries on a consolidated basis are not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such Person's and its subsidiaries' property on a consolidated basis would constitute unreasonably small capital.

"Specified Representations" has the meaning specified therefor in Section 5.01(b).

"Specified Acquisition Representations" has the meaning specified therefor in Section 5.01(b).

"Sponsor" means SPH Group Holdings LLC, a Delaware limited liability company and any of its Affiliates, and funds or partnerships managed or advised by any of them or any of their respective Affiliates but not including, however, any portfolio company of any of the foregoing.

"Standard & Poor's" means S&P Global Ratings, a division of S&P Global Inc. and any successor thereto.

"Subject Transaction" means, with respect to any test period, (a) the Transactions, (b) any Permitted Acquisition or other Investment permitted under this Agreement that results in a Person becoming a Subsidiary (whether by acquiring all or substantially all of the assets or any business line, unit or division or any plant of such Person or by acquiring a majority of the Equity Interests of such Person), (c) any Disposition of all or substantially all of the assets or Equity Interests of any Loan Party (or any business unit, line of business or division of a Loam Party or any of its Subsidiaries) that is expressly permitted by this Agreement, (d) to extent expressly permitted by this Agreement, all Indebtedness (other than revolving Indebtedness, except to the extent such revolving Indebtedness is incurred to refinance other outstanding Indebtedness, to finance Permitted Acquisitions or other Investments or to finance a Restricted Payment) incurred or issued after the first day of the relevant calculation period (whether incurred to finance a Permitted Acquisition, to refinance Indebtedness or otherwise) that remains outstanding as of the last day of such test period and/or (e) any other event that by the terms of the Loan Documents requires "pro forma" compliance with a test or covenant hereunder or requires such test or covenant to be calculated on a "pro forma basis".

"Subordinated Indebtedness" means Indebtedness of any Loan Party the terms of which (including, without limitation, payment terms, interest rates, covenants, remedies, defaults and other material terms) are reasonably satisfactory to the Collateral Agent and the Required Lenders and which has been expressly subordinated in right of payment to all Indebtedness of such Loan Party under the Loan Documents (i) by the execution and delivery of a subordination agreement, in form and substance reasonably satisfactory to the Collateral Agent and the Required Lenders, or (ii) otherwise on terms and conditions satisfactory to the Collateral Agent and the Required Lenders.

"Subsidiary" means, with respect to any Person at any date, any corporation, limited or general partnership, limited liability company, trust, estate, association, joint venture or other business entity (a) the accounts of which would be consolidated with those of such Person in such Person's consolidated financial statements if such financial statements were prepared in accordance with GAAP or (b) of which more than 50% of (i) the outstanding Equity Interests having (in the absence of contingencies) ordinary voting power to elect a majority of the Board of Directors of such Person, (ii) in the case of a partnership or limited liability company, the interest in the capital or profits of such partnership or limited liability company or (iii) in the case of a trust, estate, association, joint venture or other entity, the beneficial interest in such trust, estate, association or other entity business is, at the time of determination, owned or controlled directly or indirectly through one or more intermediaries, by such Person. References to a Subsidiary shall mean a Subsidiary of the Parent unless the context expressly provides otherwise.

"Swap" means any "swap" as defined in Section 1a(47) of the Commodities Exchange Act and regulations thereunder other than (a) a swap entered into on, or subject to the rules of, a board of trade designated as a contract market under Section 5 of the Commodities Exchange Act, or (b) a commodity opinion entered into pursuant to Commodity Futures Trading Commission Regulation 32.3(a).

"Swap Obligation" means, with respect to any Guarantor, any obligation to pay or perform under any agreement, contract or transaction that constitutes a Swap.

"Taxes" has the meaning specified therefor in Section 2.09(a).

"Termination Date" means the first date on which all of the Obligations are paid in full in cash and the Commitments of the Lenders are terminated.

"Termination Event" means (a) a Reportable Event with respect to any Employee Plan, (b) any event that causes any Loan Party to incur liability under Section 409, 502(i), 502(l), 515, 4062, 4063, 4064, 4069, 4201, 4204 or 4212 of ERISA or Section 4971 or 4975 of the Internal Revenue Code, (c) the filing of a notice of intent to terminate an Employee Plan or the treatment of an Employee Plan amendment as a termination under Section 4041 of ERISA, (d) the institution of proceedings by the PBGC to terminate an Employee Plan, or (e) any other event or condition that could reasonably be expected to constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Employee Plan.

"Term Loan" and "Term Loans" means the loans made by the Term Loan Lenders to the Borrower pursuant to Section 2.01(a)(ii).

"Term Loan Commitment" means, with respect to each Lender, the commitment of such Lender to make the Term Loan to the Borrower in the amount set forth in Schedule 1.01(A) hereto or in the Assignment and Acceptance pursuant to which such Lender became a Lender under this Agreement, as the same may be terminated or reduced from time to time in accordance with the terms of this Agreement.

"Term Loan Lender" means a Lender with a Term Loan Commitment or a Term Loan.

"Term Loan Obligations" means any Obligations with respect to the Term Loan (including, without limitation, the principal thereof, the interest thereon, and the fees and expenses specifically related thereto).

"Title Insurance Policy" means a mortgagee's loan policy, in form and substance reasonably satisfactory to the Collateral Agent, together with all endorsements made from time to time thereto, issued to the Collateral Agent by or on behalf of a title insurance company selected by or otherwise reasonably satisfactory to the Collateral Agent, insuring the Lien created by a Mortgage in an amount and on terms and with such endorsements reasonably satisfactory to the Collateral Agent, delivered to the Collateral Agent.

"Total Assets" means the total consolidated assets of the Parent and its Subsidiaries (other than Excluded Subsidiaries), as shown on the most recent financial statements of the Parent that the Agents has received in accordance with the terms of this Agreement.

"Total Commitment" means the sum of the Total Revolving Credit Commitment and the Total Term Loan Commitment.

"Total Revolving Credit Commitment" means the sum of the amounts of the Lenders' Revolving Credit Commitments.

"Total Term Loan Commitment" means the sum of the amounts of the Lenders' Term Loan Commitments, which, as of the Effective Date, equals $393,000,000.

"Transactions" means, collectively, (a) the Closing Equity Investment, (b) the consummation of the IWCO Acquisition and the other transactions contemplated by the IWCO Acquisition Agreement, (c) the execution and delivery of the Loan Documents and the incurrence of the Term Loans under this Agreement and (e) the payment of the fees, costs and expenses related to the foregoing.

"Transferee" has the meaning specified therefor in Section 2.09(a).

"Uniform Commercial Code" or "UCC" has the meaning specified therefor in Section 1.04(b).

"USA PATRIOT Act" means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (PATRIOT) Act of 2001 (Title III of Pub. L. 107-56, Oct. 26, 2001)) as amended by the USA Patriot Improvement and Reauthorization Act of 2005 (Pub. L. 109-177, March 9, 2006).

"WARN" has the meaning specified therefor in Section 6.01(p).

"Working Capital" means, at any date of determination thereof, (a) the sum, for any Person and its Subsidiaries, of (i) the unpaid face amount of all Account Receivables of such Person and its Subsidiaries as at such date of determination, *plus* (ii) the aggregate amount of prepaid expenses and other current assets of such Person and its Subsidiaries as at such date of determination (other than cash, Cash Equivalents and any Indebtedness owing to such Person or any of its Subsidiaries by Affiliates of such Person), *minus* (b) the sum, for such Person and its Subsidiaries, of (i) the unpaid amount of all accounts payable of such Person and its Subsidiaries as at such date of determination, *plus* (ii) the aggregate amount of all accrued expenses of such Person and its Subsidiaries as at such date of determination (other than the current portion of long-term debt and all accrued interest and taxes).

Section 1.02 Terms Generally. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation". The word "will" shall be construed to have the same meaning and effect as the word "shall". Unless the context requires otherwise, (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (b) any reference herein to any Person shall be construed to include such Person's successors and assigns, (c) the words "herein", "hereof" and "hereunder", and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement and (e) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any right or interest in or to assets and properties of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible.

Section 1.03 Certain Matters of Construction. References in this Agreement to "determination" by any Agent include good faith estimates by such Agent (in the case of quantitative determinations) and good faith beliefs by such Agent (in the case of qualitative determinations). A Default or Event of Default shall be deemed to exist at all times during the period commencing on the date that such Default or Event of Default occurs to the date on which such Default or Event of Default is waived in writing pursuant to this Agreement or is cured within any period of cure expressly provided for in this Agreement. Any Lien referred to in this Agreement or any other Loan Document as having been created in favor of any Agent (or any subagent or designee or delegee of any Agent), any agreement entered into by any Agent (or any subagent or designee or delegee of any Agent) pursuant to this Agreement or any other Loan Document, any payment made by or to or funds received by any Agent (or any subagent or designee or delegee of any Agent) pursuant to or as contemplated by this Agreement or any other Loan Document, or any act taken or omitted to be taken by any Agent (or any subagent or designee or delegee of any Agent), shall, unless otherwise expressly provided, be created, entered into, made or received, or taken or omitted, for the benefit or account of the Agents and the Lenders. Wherever the phrase "to the knowledge of any Loan Party" or words of similar import relating to the knowledge or the awareness of any Loan Party are used in this Agreement or any other Loan Document, such phrase shall mean and refer to (i) the actual knowledge of a senior officer of any Loan Party or (ii) the knowledge that a senior officer would have obtained if such officer had engaged in good faith and diligent performance of such officer's duties, including the making of such reasonably specific inquiries as may be necessary of the employees or agents of such Loan Party and a good faith attempt to ascertain the existence or accuracy of the matter to which such phrase relates. All covenants hereunder shall be given independent effect so that if a particular action or condition is not permitted by any of such covenants, the fact that it would be permitted by an exception to, or otherwise within the limitations of, another covenant shall not avoid the occurrence of a default if such action is taken or condition exists. In addition, all representations and warranties hereunder shall be given independent effect so that if a particular representation or warranty proves to be incorrect or is breached, the fact that another representation or warranty concerning the same or similar subject matter is correct or is not breached will not affect the incorrectness of a breach of a representation or warranty hereunder.

Section 1.04 Accounting and Other Terms.

(a) Unless otherwise expressly provided herein, each accounting term used herein shall have the meaning given it under GAAP. For purposes of determining compliance with any incurrence or expenditure tests set forth in this Agreement, any amounts so incurred or expended (to the extent incurred or expended in a currency other than Dollars) shall be converted into Dollars on the basis of the exchange rates (as shown on the Bloomberg currency page for such currency or, if the same does not provide such exchange rate, by reference to such other publicly available service for displaying exchange rates as may be reasonably selected by the Agents or, in the event no such service is selected, on such other basis as is reasonably satisfactory to the Agents) as in effect on the date of such incurrence or expenditure under any provision of any such Section that has an aggregate Dollar limitation provided for therein (and to the extent the respective incurrence or expenditure test regulates the aggregate amount outstanding at any time and it is expressed in terms of Dollars, all outstanding amounts originally incurred or spent in currencies other than Dollars shall be converted into Dollars on the basis of the exchange rates (as shown on the Bloomberg currency page for such currency or, if the same does not provide such exchange rate, by reference to such other publicly available service for displaying exchange rates as may be reasonably selected by the Agents or, in the event no such service is selected, on such other basis as is reasonably satisfactory to the Agents) as in effect on the date of any new incurrence or expenditures made under any provision of any such Section that regulates the Dollar amount outstanding at any time). Notwithstanding the foregoing, (i) with respect to the accounting for leases as either operating leases or capital leases and the impact of such accounting in accordance with FASB ASC 840 on the definitions and covenants herein, GAAP as in effect on the Effective Date shall be applied and (ii) for purposes of determining compliance with any covenant (including the computation of any financial covenant) contained herein, Indebtedness of the Parent and its Subsidiaries shall be deemed to be carried at 100% of the outstanding principal amount thereof, and the effects of FASB ASC 825 and FASB ASC 470-20 on financial liabilities shall be disregarded.

(b) All terms used in this Agreement which are defined in Article 8 or Article 9 of the Uniform Commercial Code as in effect from time to time in the State of New York (the "Uniform Commercial Code" or the "UCC") and which are not otherwise defined herein shall have the same meanings herein as set forth therein, provided that terms used herein which are defined in the Uniform Commercial Code as in effect in the State of New York on the date hereof shall continue to have the same meaning notwithstanding any replacement or amendment of such statute except as any Agent may otherwise determine.

(c) Notwithstanding anything to the contrary herein, financial ratios and tests (including the Leverage Ratio and Consolidated EBITDA) contained in this Agreement that are calculated with respect to any test period during which any Subject Transaction occurs shall be calculated with respect to such test period and such Subject Transaction on a pro forma basis. Further, if since the beginning of any such Test Period and on or prior to the date of any required calculation of a financial ratio or test (x) a Subject Transaction shall have occurred or (y) any Person that subsequently became a Subsidiary or was merged, amalgamated or consolidated with or into the Borrower or any of its Subsidiaries since the beginning of such test period shall have consummated any Subject Transaction, then, in each case, any such applicable financial ratio or test shall be calculated on a pro forma basis for such test period as if such Subject Transaction had occurred at the beginning of the applicable test period.

(d) Notwithstanding anything to the contrary contained in paragraph (a) above or the definition of "Capital Lease," in the event of an accounting change requiring all leases to be capitalized, only those leases (assuming for purposes hereof that they were in existence on the date hereof) that would constitute Capital Leases on the date hereof shall be considered Capital Leases and all calculations and deliverables under this Agreement or any other Loan Document shall be made or delivered, as applicable, in accordance therewith (provided that together with all financial statements delivered to the Administrative Agent in accordance with the terms of this Agreement after the date of such accounting change, the Borrower shall deliver a schedule showing the adjustments necessary to reconcile such financial statements with GAAP as in effect immediately prior to such accounting change).

Section 1.05 Time References. Unless otherwise indicated herein, all references to time of day refer to Eastern Standard Time or Eastern daylight saving time, as in effect in New York City on such day. For purposes of the computation of a period of time from a specified date to a later specified date, the word "from" means "from and including" and the words "to" and "until" each means "to but excluding"; provided, however, that with respect to a computation of fees or interest payable to any Secured Party, such period shall in any event consist of at least one full day.

ARTICLE II

THE LOANS

Section 2.01 Commitments.

(a) Subject to the terms and conditions and relying upon the representations and warranties herein set forth:

(i) each Revolving Loan Lender severally agrees to make Revolving Loans to the Borrower at any time and from time to time during the term of this Agreement, in an aggregate principal amount of Revolving Loans at any time outstanding not to exceed the amount of such Lender's Revolving Credit Commitment; provided that no Revolving Loans shall be advanced on the Effective Date; and

(ii) each Term Loan Lender severally agrees to make the Term Loan to the Borrower on the Effective Date, in an aggregate principal amount not to exceed the amount of such Lender's Term Loan Commitment.

(b) Notwithstanding the foregoing:

(i) The aggregate principal amount of Revolving Loans outstanding at any time to the Borrower shall not exceed the Total Revolving Credit Commitment. The Revolving Credit Commitment of each Lender shall automatically and permanently be reduced to zero on the Final Maturity Date. Within the foregoing limits, the Borrower may borrow, repay and reborrow, the Revolving Loans on or after the Effective Date and prior to the Final Maturity Date, subject to the terms, provisions and limitations set forth herein.

(ii) The aggregate principal amount of the Term Loan made on the Effective Date shall not exceed the Total Term Loan Commitment. Any principal amount of the Term Loan which is repaid or prepaid may not be reborrowed.

Section 2.02 Making the Loans.

(a) The Borrower shall give the Administrative Agent prior telephonic notice (immediately confirmed in writing, in substantially the form of Exhibit C hereto (a "Notice of Borrowing")), not later than 12:00 noon (New York City time) on the date which is 3 Business Days prior to the date of the proposed Loan (or such shorter period as the Administrative Agent is willing to accommodate from time to time, but in no event later than 12:00 noon (New York City time) on the borrowing date of the proposed Loan). Such Notice of Borrowing shall be irrevocable and shall specify (i) the principal amount of the proposed Loan, (ii) in the case of Loans requested on the Effective Date, whether such Loan is requested to be a Revolving Loan or the Term Loan, (iii) whether the Loan is requested to be a Reference Rate Loan or a LIBOR Rate Loan and, in the case of a LIBOR Rate Loan, the initial Interest Period with respect thereto, (iv) the use of the proceeds of such proposed Loan, and (v) the proposed borrowing date, which must be a Business Day, and, with respect to (A) the Term Loan, must be the Effective Date and (B) with respect to the Revolving Loans, must be a Business Day after the Effective Date. If no Interest Period is specified with respect to any requested LIBOR Rate Loan, then the Borrower shall be deemed to have selected an Interest Period of one month's duration. The Administrative Agent and the Lenders may act without liability upon the basis of written, telecopied or telephonic notice believed by the Administrative Agent in good faith to be from the Borrower (or from any Authorized Officer thereof designated in writing purportedly from the Borrower to the Administrative Agent). Each Borrower hereby waives the right to dispute the Administrative Agent's record of the terms of any such telephonic Notice of Borrowing. The Administrative Agent and each Lender shall be entitled to rely conclusively on any Authorized Officer's authority to request a Loan on behalf of the Borrower until the Administrative Agent receives written notice to the contrary. The Administrative Agent and the Lenders shall have no duty to verify the authenticity of the signature appearing on any written Notice of Borrowing.

(b) Each Notice of Borrowing pursuant to this Section 2.02 shall be irrevocable and the Borrower shall be bound to make a borrowing in accordance therewith. Each Revolving Loan shall be made in a minimum amount of $500,000 and shall be in integral multiples of $100,000.

(c) (i) Except as otherwise provided in this Section 2.02(c), all Loans under this Agreement shall be made by the Lenders simultaneously and proportionately to their Pro Rata Shares of the Total Revolving Credit Commitment and the Term Loan Commitment it being understood that no Lender shall be responsible for any default by any other Lender in that other Lender's obligations to make a Loan requested hereunder, nor shall the Commitment of any Lender be increased or decreased as a result of the default by any other Lender in that other Lender's obligation to make a Loan requested hereunder, and each Lender shall be obligated to make the Loans required to be made by it by the terms of this Agreement regardless of the failure by any other Lender.

(iii) Notwithstanding any other provision of this Agreement, and in order to reduce the number of fund transfers among the Borrower, the Agents and the Lenders, the Borrower, the Agents and the Lenders agree that the Administrative Agent may (but shall not be obligated to), and the Borrower and the Lenders hereby irrevocably authorize the Administrative Agent to, fund, on behalf of the Revolving Loan Lenders, Revolving Loans pursuant to Section 2.01, subject to the procedures for settlement set forth in Section 2.02(d); provided, however, that (A) the Administrative Agent shall in no event fund any such Revolving Loans if the Administrative Agent shall have received written notice from the Collateral Agent or the Required Lenders on the Business Day prior to the date of the proposed Revolving Loan that one or more of the conditions precedent contained in Section 5.02 will not be satisfied at the time of the proposed Revolving Loan, and (B) the Administrative Agent shall not otherwise be required to determine that, or take notice whether, the conditions precedent in Section 5.02 have been satisfied. If the Borrower gives a Notice of Borrowing requesting a Revolving Loan and the Administrative Agent elects not to fund such Revolving Loan on behalf of the Revolving Loan Lenders, then promptly after receipt of the Notice of Borrowing requesting such Revolving Loan, the Administrative Agent shall notify each Revolving Loan Lender of the specifics of the requested Revolving Loan and that it will not fund the requested Revolving Loan on behalf of the Revolving Loan Lenders. If the Administrative Agent notifies the Revolving Loan Lenders that it will not fund a requested Revolving Loan on behalf of the Revolving Loan Lenders, each Revolving Loan Lender shall make its Pro Rata Share of the Revolving Loan available to the Administrative Agent, in immediately available funds, in the Administrative Agent's Account no later than 3:00 p.m. (New York City time) (provided that the Administrative Agent requests payment from such Revolving Loan Lender not later than 1:00 p.m. (New York City time)) on the date of the proposed Revolving Loan. The Administrative Agent will make the proceeds of such Revolving Loans available to the Borrower on the day of the proposed Revolving Loan by causing an amount, in immediately available funds, equal to the proceeds of all such Revolving Loans received by the Administrative Agent in the Administrative Agent's Account or the amount funded by the Administrative Agent on behalf of the Revolving Loan Lenders to be deposited in an account designated by the Borrower.

(iv) If the Administrative Agent has notified the Revolving Loan Lenders that the Administrative Agent, on behalf of the Revolving Loan Lenders, will not fund a particular Revolving Loan pursuant to Section 2.02(c)(ii), the Administrative Agent may assume that each such Revolving Loan Lender has made such amount available to the Administrative Agent on such day and the Administrative Agent, in its sole discretion, may, but shall not be obligated to, cause a corresponding amount to be made available to the Borrower on such day. If the Administrative Agent makes such corresponding amount available to the Borrower and such corresponding amount is not in fact made available to the Administrative Agent by any such Revolving Loan Lender, the Administrative Agent shall be entitled to recover such corresponding amount on demand from such Revolving Loan Lender, together with interest thereon, for each day from the date such payment was due until the date such amount is paid to the Administrative Agent, at the Federal Funds Rate for 3 Business Days and thereafter at the Reference Rate. During the period in which such Revolving Loan Lender has not paid such corresponding amount to the Administrative Agent, notwithstanding anything to the contrary contained in this Agreement or any other Loan Document, the amount so advanced by the Administrative Agent to the Borrower shall, for all purposes hereof, be a Revolving Loan made by the Administrative Agent for its own account. Upon any such failure by a Revolving Loan Lender to pay the Administrative Agent, the Administrative Agent shall promptly thereafter notify the Borrower of such failure and the Borrower shall immediately pay such corresponding amount to the Administrative Agent for its own account.

(v) Nothing in this Section 2.02(c) shall be deemed to relieve any Revolving Loan Lender from its obligations to fulfill its Revolving Credit Commitment hereunder or to prejudice any rights that the Administrative Agent or the Borrower may have against any Revolving Loan Lender as a result of any default by such Revolving Loan Lender hereunder.

(d) (i) With respect to all periods for which the Administrative Agent has funded Revolving Loans pursuant to Section 2.02(c), on Friday of each week, or if the applicable Friday is not a Business Day, then on the following Business Day, or such shorter period as the Administrative Agent may from time to time select (any such week or shorter period being herein called a "Settlement Period"), the Administrative Agent shall notify each Revolving Loan Lender of the unpaid principal amount of the Revolving Loans outstanding as of the last day of each such Settlement Period. In the event that such amount is greater than the unpaid principal amount of the Revolving Loans outstanding on the last day of the Settlement Period immediately preceding such Settlement Period (or, if there has been no preceding Settlement Period, the amount of the Revolving Loans made on the date of such Revolving Loan Lender's initial funding), each Revolving Loan Lender shall promptly (and in any event not later than 2:00 p.m. (New York City time) if the Administrative Agent requests payment from such Lender not later than 12:00 noon (New York City time) on such day) make available to the Administrative Agent its Pro Rata Share of the difference in immediately available funds. In the event that such amount is less than such unpaid principal amount, the Administrative Agent shall promptly pay over to each Revolving Loan Lender its Pro Rata Share of the difference in immediately available funds. In addition, if the Administrative Agent shall so request at any time when a Default or an Event of Default shall have occurred and be continuing, or any other event shall have occurred as a result of which the Administrative Agent shall determine that it is desirable to present claims against the Borrower for repayment, each Revolving Loan Lender shall promptly remit to the Administrative Agent or, as the case may be, the Administrative Agent shall promptly remit to each Revolving Loan Lender, sufficient funds to adjust the interests of the Revolving Loan Lenders in the then outstanding Revolving Loans to such an extent that, after giving effect to such adjustment, each such Revolving Loan Lender's interest in the then outstanding Revolving Loans will be equal to its Pro Rata Share thereof. The obligations of the Administrative Agent and each Revolving Loan Lender under this Section 2.02(d) shall be absolute and unconditional. Each Revolving Loan Lender shall only be entitled to receive interest on its Pro Rata Share of the Revolving Loans which have been funded by such Revolving Loan Lender.

(ii) In the event that any Revolving Loan Lender fails to make any payment required to be made by it pursuant to Section 2.02(d)(i), the Administrative Agent shall be entitled to recover such corresponding amount on demand from such Revolving Loan Lender together with interest thereon, for each day from the date such payment was due until the date such amount is paid to the Administrative Agent, at the Federal Funds Rate for 3 Business Days and thereafter at the Reference Rate. During the period in which such Revolving Loan Lender has not paid such corresponding amount to the Administrative Agent, notwithstanding anything to the contrary contained in this Agreement or any other Loan Document, the amount so advanced by the Administrative Agent to the Borrower shall, for all purposes hereof, be a Revolving Loan made by the Administrative Agent for its own account. Upon any such failure by a Revolving Loan Lender to pay the Administrative Agent, the Administrative Agent shall promptly thereafter notify the Borrower of such failure and the Borrower shall immediately pay such corresponding amount to the Administrative Agent for its own account. Nothing in this Section 2.02(d)(ii) shall be deemed to relieve any Revolving Loan Lender from its obligation to fulfill its Revolving Credit Commitment hereunder or to prejudice any rights that the Administrative Agent or the Borrower may have against any Revolving Loan Lender as a result of any default by such Revolving Loan Lender hereunder.

Section 2.03 Repayment of Loans; Evidence of Debt.

(a) The outstanding principal of all Revolving Loans, and all accrued and unpaid interest thereon and all other Obligations relating thereto, shall be due and payable on the Final Maturity Date or, if earlier, on the date on which they are declared due and payable pursuant to the terms of this Agreement.

(b) The Term Loans shall be repayable in consecutive quarterly installments, each of which shall be in an amount equal per quarter to $1,500,000 and each such installment to be due and payable, in arrears, on the last day of each quarter commencing on March 31, 2018 and ending on the Final Maturity Date; provided, however, that the last such installment shall be in the amount necessary to repay in full the unpaid principal amount of the Term Loans. The outstanding unpaid principal amount of the Term Loans, and all accrued and unpaid interest thereon, shall be due and payable on the earlier of (i) the Final Maturity Date and (ii) the date on which any Term Loan is declared due and payable pursuant to the terms of this Agreement.

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

(d) The Administrative Agent shall maintain accounts in which it shall record (i) the amount 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) the amount of any sum received by the Administrative Agent hereunder for the account of the Lenders and each Lender's share thereof.

(e) The entries made in the accounts maintained pursuant to Section 2.03(c) or Section 2.03(d) shall be prima facie evidence of the existence and amounts of the obligations recorded therein unless within 30 days after the Administrative Agent or the applicable Lender makes such statement available to the Borrower, the Borrower shall deliver to the Administrative Agent, and such Lender if applicable, written objection thereto describing the error or errors contained in such statement; provided that (i) the failure of any Lender or the Administrative Agent to maintain such accounts or any error therein shall not in any manner affect the obligation of the Borrower to repay the Loans in accordance with the terms of this Agreement and (ii) in the event of any conflict between the entries made in the accounts maintained pursuant to Section 2.03(c) and the accounts maintained pursuant to Section 2.03(d), the accounts maintained pursuant to Section 2.03(d) shall govern and control.

Section 2.04 Interest.

(a) Revolving Loans. Subject to the terms of this Agreement, at the option of the Borrower, each Revolving Loan shall be either a Reference Rate Loan or a LIBOR Rate Loan. Each Revolving Loan that is a Reference Rate Loan shall bear interest on the principal amount thereof from time to time outstanding, from the date of such Loan until repaid, at a rate per annum equal to the Reference Rate *plus* the Applicable Margin. Each Revolving Loan that is a LIBOR Rate Loan shall bear interest on the principal amount thereof from time to time outstanding, from the date of such Loan until repaid, at a rate per annum equal to the LIBOR Rate for the Interest Period in effect for such Loan *plus* the Applicable Margin.

(b) Term Loan. Subject to the terms of this Agreement, at the option of the Borrower, the Term Loan or any portion thereof shall be either a Reference Rate Loan or a LIBOR Rate Loan. Each portion of the Term Loan that is a Reference Rate Loan shall bear interest on the principal amount thereof from time to time outstanding, from the date of the Term Loan until repaid, at a rate per annum equal to the Reference Rate *plus* the Applicable Margin. Each portion of the Term Loan that is a LIBOR Rate Loan shall bear interest on the principal amount thereof from time to time outstanding, from the date of the Term Loan until repaid, at a rate per annum equal to the LIBOR Rate for the Interest Period in effect for the Term Loan (or such portion thereof) *plus* the Applicable Margin.

(c) Default Interest. To the extent permitted by law and notwithstanding anything to the contrary in this Section, upon the occurrence and during the continuance of an Event of Default, at the election of the Required Lenders, the principal of, and all accrued and unpaid interest on, all Loans, fees, indemnities or any other Obligations of the Loan Parties under this Agreement and the other Loan Documents, shall bear interest, from the date of the occurrence such Event of Default occurred until the date such Event of Default is cured or waived in writing in accordance herewith, at a rate per annum equal at all times to the Post-Default Rate. Notwithstanding anything to the contrary contained in this Section 2.04(c), the Loan Parties hereby acknowledge and agree that no election or notice of the imposition of the Post-Default Rate shall be required in the case of an Event of Default arising under Section 9.01(f) or Section 9.01(g) (it being understood and agreed that such imposition shall occur automatically and without the need for any action by any Person).

(d) Interest Payment. Interest on each Loan shall be payable monthly, in arrears, on the last day of each month, commencing on the last day of the month following the month in which such Loan is made and at maturity (whether upon demand, by acceleration or otherwise). Interest at the Post-Default Rate shall be payable on demand. Each Borrower hereby authorizes the Administrative Agent to, and the Administrative Agent may, from time to time, charge the Loan Account pursuant to Section 4.01 with the amount of any interest payment due hereunder.

(e) General. All interest shall be computed on the basis of a year of 360 days for the actual number of days, including the first day but excluding the last day, elapsed.

Section 2.05 Reduction of Commitment; Prepayment of Loans.

(a) Reduction of Commitments.

(i) Revolving Credit Commitments. The Total Revolving Credit Commitment shall terminate on the Final Maturity Date. The Borrower may reduce the Total Revolving Credit Commitment to an amount (which may be zero) not less than the sum of (A) the aggregate unpaid principal amount of all Revolving Loans then outstanding and (B) the aggregate principal amount of all Revolving Loans not yet made as to which a Notice of Borrowing has been given by the Borrower under Section 2.02. In no event shall the Total Revolving Credit Commitment be reduced to less than $5,000,000 (unless reduced to zero). Each such reduction shall be (1) in an amount which is an integral multiple of $1,000,000 (or by the full amount of the Total Revolving Credit Commitment in effect immediately prior to such reduction if such amount at that time is less than $1,000,000), (2) made by providing not less than 5 Business Days' prior written notice to the Administrative Agent, (3) irrevocable and (4) accompanied by the payment of the Applicable Prepayment Premium, if any, payable in connection with such reduction of the Total Revolving Credit Commitment. Once reduced, the Total Revolving Credit Commitment may not be increased. Each such reduction of the Total Revolving Credit Commitment shall reduce the Revolving Credit Commitment of each Lender proportionately in accordance with its Pro Rata Share thereof.

(ii) Term Loan. The Total Term Loan Commitment shall terminate concurrently with the making of the Term Loans on the Effective Date.

(b) Optional Prepayment.

(i) Revolving Loans. The Borrower may, at any time and from time to time, prepay the principal of any Revolving Loan, in whole or in part. Each prepayment made pursuant to this clause (b)(i) in connection with a reduction of the Total Revolving Credit Commitment pursuant to clause (a)(i) above shall be accompanied by the payment of the Applicable Prepayment Premium, if any, payable in connection with such reduction of the Total Revolving Credit Commitment.

(ii) Term Loan. The Borrower may, at any time and from time to time, upon at least 3 Business Days' prior written notice to the Administrative Agent, prepay the principal of any Term Loan, in whole or in part. Each prepayment made pursuant to this Section 2.05(b)(ii) shall be accompanied by the payment of (A) accrued interest to the date of such payment on the amount prepaid and (B) the Applicable Prepayment Premium, if any, payable in connection with such prepayment of the Term Loan. Each such prepayment shall be applied against the remaining installments of principal due on the Term Loan in the inverse order of maturity.

(iii) Termination of Agreement. The Borrower may, upon at least 10 Business Days' prior written notice to the Agents (or such shorter period that may be agreed to by the Agents), terminate this Agreement by paying to the Administrative Agent, in cash, the Obligations, in full, plus the Applicable Prepayment Premium, if any, payable in connection with such termination of this Agreement. If the Borrower has sent a notice of termination pursuant to this Section 2.05(b)(iii), then the Lenders' obligations to extend credit hereunder shall terminate and the Borrower shall be obligated to repay the Obligations, in full, plus the Applicable Prepayment Premium, if any, payable in connection with such termination of this Agreement on the date set forth as the date of termination of this Agreement in such notice; provided that, if such notice states that it is conditioned upon the effectiveness of other credit facilities or the receipt of the proceeds from the issuance of other Indebtedness or the occurrence of a Change of Control, such notice of prepayment may be revoked by the Borrower if such condition is not satisfied.

(c) Mandatory Prepayment.

(i) Contemporaneously with the delivery to the Agents and the Lenders of audited annual financial statements pursuant to Section 7.01(a)(iii), commencing with the delivery to the Agents and the Lenders of the financial statements for the Fiscal Year ended on December 31, 2018 or, if such financial statements are not delivered to the Agents and the Lenders on the date such statements are required to be delivered pursuant to Section 7.01(a)(iii), on the date such statements are required to be delivered to the Agents and the Lenders pursuant to Section 7.01(a)(iii) (each such date, a "ECF Due Date"), the Borrower shall, if the Leverage Ratio of the Parent and its Subsidiaries as of the end of such Fiscal Year is (A) greater than 3.50:1.00, prepay the outstanding principal amount of the Loans in accordance with Section 2.05(d) in an amount equal to the result of (to the extent positive) (1) 50% of the Excess Cash Flow of the Parent and its Subsidiaries for such Fiscal Year minus (2) the aggregate principal amount of all payments made by the Borrowers pursuant to Section 2.05(b) for such Fiscal Year (in the case of payments made by the Borrowers pursuant to Section 2.05(b)(i), only to the extent that the Total Revolving Credit Commitment is permanently reduced by the amount of such payments), or (B) equal to or less than 3.50:1.00, prepay the outstanding principal amount of the Loans in accordance with Section 2.05(d) in an amount equal to the result of (to the extent positive) (1) 25% of the Excess Cash Flow of the Parent and its Subsidiaries for such Fiscal Year minus (2) the aggregate principal amount of all payments made by the Borrowers pursuant to Section 2.05(b) for such Fiscal Year (in the case of payments made by the Borrowers pursuant to Section 2.05(b)(i), only to the extent that the Total Revolving Credit Commitment is permanently reduced by the amount of such payments). Notwithstanding the foregoing, Excess Cash Flow shall exclude any amounts attributable to periods prior to (x) the Effective Date and (y) in the case of any Person that becomes a Subsidiary of the Parent after the Effective Date pursuant to a Permitted Acquisition, the consummation date of such Permitted Acquisition.

(ii) Subject to Section 2.05(c)(vi) below, within three (3) Business Days of the receipt of any Net Cash Proceeds from any Disposition (excluding Dispositions which qualify as Permitted Dispositions under clauses (a) through (j), and (l) through (o) of the definition thereof)) by any Loan Party or its Subsidiaries, the Borrower shall prepay the outstanding principal amount of the Loans in accordance with Section 2.05(d) in an amount equal to 100% of the Net Cash Proceeds received by such Person in connection with such Disposition to the extent that the aggregate amount of Net Cash Proceeds received by all Loan Parties and their Subsidiaries (and not paid to the Administrative Agent as a prepayment of the Loans) shall exceed for all such Dispositions $250,000 in any Fiscal Year. Nothing contained in this Section 2.05(c)(ii) shall permit any Loan Party or any of its Subsidiaries to make a Disposition of any property other than in accordance with Section 7.02(c)(ii).

(iii) Within three (3) Business Days of the receipt of any Net Cash Proceeds from the issuance or incurrence by any Loan Party or any of its Subsidiaries of any Indebtedness (other than Permitted Indebtedness), or upon an Equity Issuance (other than any Excluded Equity Issuances or Permitted Cure Equity), the Borrower shall prepay the outstanding amount of the Loans in accordance with Section 2.05(d) in an amount equal to 100% of the Net Cash Proceeds received by such Person in connection therewith. The provisions of this Section 2.05(c)(iii) shall not be deemed to be implied consent to any such issuance, incurrence or sale otherwise prohibited by the terms and conditions of this Agreement.

(iv) Subject to Section 2.05(c)(vi) below, within three (3) Business Days of the receipt by any Loan Party or any of its Subsidiaries of any Extraordinary Receipts, the Borrower shall prepay the outstanding principal of the Loans in accordance with Section 2.05(d) in an amount equal to 100% of the Net Cash Proceeds received by such Person in connection therewith.

(v) Immediately upon receipt by the Loan Parties of the Net Cash Proceeds of any Permitted Cure Equity pursuant to Section 7.03, the Borrower shall apply 100% of such Net Cash Proceeds first, to prepay the outstanding principal of the Revolving Loans (without a corresponding permanent reduction in the Revolving Credit Commitments), until paid in full and second, all remaining Net Cash Proceeds shall be deposited in an account subject to a Control Agreement.

(vi) Notwithstanding the foregoing, with respect to Net Cash Proceeds received by any Loan Party or any of its Subsidiaries in connection with Dispositions or the receipt of Extraordinary Receipts consisting of insurance proceeds or condemnation awards that are required to be used to prepay the Obligations pursuant to Section 2.05(c)(ii) or Section 2.05(c)(iv), as the case may be, up to $500,000 in the aggregate in any calendar year of the Net Cash Proceeds from all such Dispositions and Extraordinary Receipts shall not be required to be so used to prepay the Obligations to the extent that such Net Cash Proceeds are used to replace, repair, restore, develop or otherwise purchase properties or assets (other than current assets) used in such Person's business, provided that (A) no Default or Event of Default has occurred and is continuing on the date such Person receives such Net Cash Proceeds, (B) the Borrower delivers a certificate to the Administrative Agent within 5 Business Days after such Disposition or such Extraordinary Receipt, as the case may be, stating that such Net Cash Proceeds shall be contractually committed to be used to replace, repair, restore, develop or otherwise purchase properties or assets used in such Person's business within a period specified in such certificate not to exceed 180 days after the date of receipt of such Net Cash Proceeds and such Net Cash Proceeds must actually be used to replace, repair, restore or develop properties or assets used in such Person's business within a period not exceeding 360 days after the date of receipt of such Net Cash Proceeds (which certificate shall set forth estimates of the Net Cash Proceeds to be so expended), (C) such Net Cash Proceeds received by a Loan Party are deposited in an account subject to a Control Agreement, and (D) upon the earlier of (1) the expiration of the period specified in the relevant certificate furnished to the Administrative Agent pursuant to clause (B) above or (2) the occurrence of a Default or an Event of Default, such Net Cash Proceeds, if not theretofore so used, shall be used to prepay the Obligations in accordance with Section 2.05(c)(ii) or Section 2.05(c)(iv) as applicable.

(vii) Without any reduction in the Total Revolving Credit Commitment, the Borrower will immediately prepay the Revolving Loans at any time when the aggregate principal amount of all Revolving Loans exceeds any of the limits set forth in Section 2.01(b)(i) to the full extent of such excess.

(viii) Notwithstanding any other provisions of Section 2.05(c), (A) to the extent that any of or all the of the relevant Excess Cash Flow or Net Cash Proceeds described in clauses (i) through (iv) are attributable to a Foreign Subsidiary that would otherwise give rise to a prepayment obligation under any such clause or Excess Cash Flow attributable to a Foreign Subsidiary that would otherwise give rise to a prepayment obligation under Section 2.05(c), (x) are prohibited, restricted or delayed by applicable local law or restrictions (not effected in anticipation or contemplation of such prepayment) or under such Foreign Subsidiary's Governing Documents (including as a result of minority ownership) from being repatriated to the United States or (y) the upstreaming or transfer as a distribution or dividend of which would, in the good faith determination of the Borrower, cause any Loan Party or Subsidiary thereof to incur a material adverse liability (including, without limitation, any withholding tax) or a material adverse tax consequence (including, without limitation, a deemed dividend) and (B) to the extent that any or all of the relevant Excess Cash Flow is generated by any joint venture or the relevant Net Cash Proceeds described in clauses (ii) through (iv) above are received by any joint venture for so long as the repatriation to the Borrower of such Excess Cash Flow or Net Cash Proceeds would be prohibited under the Governing Documents governing such joint venture or the existing documents governing the Indebtedness of such joint venture (such amount described in the foregoing clause (A) or (B), as the case may be, a "Restricted Amount"), then the amount the Borrower will be required to mandatorily prepay shall be reduced by the Restricted Amount and such Restricted Amount may be retained by the applicable Subsidiary, and the failure to apply any such Restricted Amounts toward any such mandatory prepayment shall not result in a Default or Event of Default hereunder; provided, that the Borrowers hereby agree to cause the applicable Subsidiary to promptly take all commercially reasonable actions required by the applicable local law to permit such repatriation, or as the case may be, to eliminate such material adverse tax liability or material adverse tax consequence, in each case, in its reasonable control in order to make such prepayment (subject to the considerations above); provided, further, that if and to the extent any such repatriation ceases to be prohibited or delayed by applicable local law or such material adverse tax liability or material adverse tax consequence is eliminated, in each case, any time during the one (1) year period immediately following the date on which the applicable mandatory prepayment pursuant to this Section 2.05 was required to be made, the Loan Parties shall reasonably promptly repatriate, or cause to be repatriated, an amount equal to the applicable portion of such Restricted Amount, and the Loan Parties shall reasonably promptly pay such portion of the Restricted Amount to the Lenders, which payment shall be applied in accordance with Section 2.05(d).

(d) Application of Payments. Each prepayment pursuant to subsections (c)(i), (c)(ii), (c)(iii) and (c)(iv) above shall be applied, first, ratably to the Term Loans, until paid in full, and, second, to the Revolving Loans (without a corresponding permanent reduction in the Revolving Credit Commitments), until paid in full. Each prepayment of the Term Loans shall be applied against the remaining installments of principal of the Term Loans in the inverse order of maturity. Notwithstanding the foregoing, after the occurrence and during the continuance of an Event of Default, if the Administrative Agent has elected, or has been directed by the Collateral Agent or the Required Lenders, to apply payments and other proceeds of Collateral in accordance with Section 4.03(b), prepayments required under Section 2.05(c) shall be applied in the manner set forth in Section 4.03(b). Notwithstanding the foregoing, any Lender may decline to accept any mandatory prepayment described above, in which case, the declined amount of such prepayment shall be distributed, first, to the prepayment of the Term Loans held by the Lenders that have elected to accept such declined amount based on their respective Pro Rata Shares, second, to the repayment of the Revolving Loans then outstanding (without a corresponding permanent reduction of the Revolving Credit Commitment) and, third, any remaining amount may be retained by the Borrower..

(e) Interest and Fees. Any prepayment made pursuant to this Section 2.05 shall be accompanied by (i) accrued interest on the principal amount being prepaid to the date of prepayment, (ii) any Funding Losses payable pursuant to Section 2.08, (iii) the Applicable Prepayment Premium, if any, payable in connection with such prepayment of the Loans and (iv) if such prepayment would reduce the amount of the outstanding Loans to zero at a time when the Total Revolving Credit Commitment has been terminated, such prepayment shall be accompanied by the payment of all fees accrued to such date pursuant to Section 2.06.

(f) Cumulative Prepayments. Except as otherwise expressly provided in this Section 2.05, payments with respect to any subsection of this Section 2.05 are in addition to payments made or required to be made under any other subsection of this Section 2.05.

Section 2.06 Fees.

(a) Fee Letter. As and when due and payable under the terms of the Fee Letter, the Borrower shall pay the fees set forth in the Fee Letter.

(b) Applicable Prepayment Premium.

(i) Upon the occurrence of an Applicable Prepayment Premium Trigger Event, the Borrower shall pay to the Administrative Agent, for the account of the Lenders in accordance with their Pro Rata Shares, the Applicable Prepayment Premium.

(ii) Any Applicable Prepayment Premium payable in accordance with this Section 2.06(b) shall be presumed to be equal to the liquidated damages sustained by the Lenders as the result of the occurrence of the Applicable Premium Trigger Event and the Loan Parties agree that it is reasonable under the circumstances currently existing. THE LOAN PARTIES EXPRESSLY WAIVE THE PROVISIONS OF ANY PRESENT OR FUTURE STATUTE OR LAW THAT PROHIBITS OR MAY PROHIBIT THE COLLECTION OF THE FOREGOING APPLICABLE PREPAYMENT PREMIUM IN CONNECTION WITH ANY ACCELERATION.

(iii) The Loan Parties expressly agree that: (A) the Applicable Prepayment Premium is reasonable and is the product of an arm's length transaction between sophisticated business people, ably represented by counsel; (B) the Applicable Prepayment Premium shall be payable notwithstanding the then prevailing market rates at the time payment is made; (C) there has been a course of conduct between the Lender and the Loan Parties giving specific consideration in this transaction for such agreement to pay the Applicable Prepayment Premium; (D) the Loan Parties shall be estopped hereafter from claiming differently than as agreed to in this paragraph; (E) their agreement to pay the Applicable Prepayment Premium is a material inducement to Lenders to provide the Commitments and make the Loans, and (F) the Applicable Prepayment Premium represents a good faith, reasonable estimate and calculation of the lost profits or damages of the Agents and the Lenders and that it would be impractical and extremely difficult to ascertain the actual amount of damages to the Agents and the Lenders or profits lost by the Agents and the Lenders as a result of such Applicable Prepayment Premium Trigger Event.

(iv) Nothing contained in this Section 2.06(b) shall permit any prepayment of the Loans or reduction of the Commitments not otherwise permitted by the terms of this Agreement or any other Loan Document.

(c) Audit and Collateral Monitoring Fees. The Borrower acknowledges that pursuant to Section 7.01(f), representatives of the Agents may visit any or all of the Loan Parties and/or conduct certain inspections, audits, and/or examinations described therein, at the times and upon advance notice described therein. The Borrower agrees to pay (i) $1,500 per day per examiner plus the examiner's out-of-pocket costs and reasonable expenses incurred in connection with all such visits, inspections and audits and (ii) the reasonable out-of-pocket cost of all visits, inspections and audits conducted by a third party on behalf of the Agents; provided that, so long as no Event of Default shall have occurred and be continuing, the Borrower shall not be obligated to reimburse the Agents for more than one (1) audit or examination during any calendar year.

Section 2.07 LIBOR Option.

(a) In lieu of having interest charged at the rate based upon the Reference Rate, the Borrower shall have the option (the "LIBOR Option") to have interest on all or a portion of the Loans be charged at a rate of interest based upon the LIBOR Rate. Each Interest Period of a LIBOR Rate Loan made to the Borrower shall commence on the date such LIBOR Rate Loan is made and shall end on such date as the Borrower may elect as set forth in subsection 2.02(a) above; provided that no Interest Period shall end after the last day of the Final Maturity Date.

(b) The Borrower shall elect the initial Interest Period applicable to a LIBOR Rate Loan made to the Borrower by its Notice of Borrowing given to the Administrative Agent pursuant to Section 2.02(a) or by its notice of conversion given to the Administrative Agent pursuant to Section 2.07(c), as the case may be. The Borrower shall elect the duration of each succeeding Interest Period by giving irrevocable written notice to the Administrative Agent of such duration not later than 11:00 a.m. (New York City time) on the day which is not less than three (3) Business Days prior to the last day of the then current Interest Period applicable to such LIBOR Rate Loan (or such shorter period of time as may be agreed to by the Administrative Agent in its sole discretion). If the Administrative Agent does not receive timely notice of the Interest Period elected by the Borrower, the Borrower shall be deemed to have elected to convert such LIBOR Rate Loan to a Reference Rate Loan, subject to Section 2.07(c) herein below.

(c) The Borrower may, on the last Business Day of the then current Interest Period applicable to any outstanding LIBOR Rate Loan made to the Borrower, or on any Business Day with respect to Reference Rate Loans, convert any such loan into a loan of another type (*i.e.*, a Reference Rate Loan or a LIBOR Rate Loan) in the same aggregate principal amount, provided that any conversion of a LIBOR Rate Loan made to the Borrower not made on the last Business Day of the then current Interest Period applicable to such LIBOR Rate Loan shall be subject to Section 2.07(e). If the Borrower desires to convert a Loan, the Borrower shall give the Administrative Agent a Notice of Borrowing by no later than 11:00 a.m. (New York City time) (i) on the day which is three (3) Business Days' (or such shorter period of time as may be agreed to by the Administrative Agent in its sole discretion) prior to the date on which such conversion is to occur with respect to a conversion from a Reference Rate Loan to a LIBOR Rate Loan, or (ii) on the day which is one (1) Business Day (or such shorter period of time as may be agreed to by the Administrative Agent in its sole discretion) prior to the date on which such conversion is to occur with respect to a conversion from a LIBOR Rate Loan to a Reference Rate Loan, specifying, in each case, the date of such conversion, the Loans to be converted and if the conversion is from a Reference Rate Loan to a LIBOR Rate Loan, the duration of the first Interest Period therefor.

(d) Subject to Section 2.05(b), the Borrower may prepay the LIBOR Rate Loans in whole at any time or in part from time to time, together with accrued interest on the principal being prepaid to the date of such repayment in the case of any LIBOR Rate Loan made to the Borrower, and the Borrower shall specify the date of prepayment of Loans which are LIBOR Rate Loans, the Loan to which such prepayment is to be applied and the amount of such prepayment. In the event that any prepayment of a LIBOR Rate Loan is required or permitted on a date other than the last Business Day of the then-current Interest Period with respect thereto, the Borrower shall indemnify the Agents and Lenders therefor in accordance with Section 2.07(e) hereof.

(e) In connection with each LIBOR Rate Loan, the Borrower shall indemnify, defend, and hold the Agents and the Lenders harmless against any loss, cost, or expense incurred by any Agent or any Lender as a result of (a) the payment of any principal of any LIBOR Rate Loan other than on the last day of an Interest Period applicable thereto (including as a result of a Default or an Event of Default or any mandatory prepayment required pursuant to Section 2.05(c)), (b) the conversion of any LIBOR Rate Loan other than on the last day of the Interest Period applicable thereto (including as a result of a Default or an Event of Default), or (c) the failure to borrow, convert, continue or prepay any LIBOR Rate Loan on the date specified in any Notice of Borrowing or LIBOR Notice delivered pursuant hereto (such losses, costs, and expenses, collectively, "Funding Losses"). Funding Losses shall, with respect to any Agent or any Lender, be deemed to equal the amount reasonably determined by such Agent or such Lender to be the excess, if any, of (i) the amount of interest that would have accrued on the principal amount of such LIBOR Rate Loan had such event not occurred, at the LIBOR Rate that would have been applicable thereto, for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to borrow, convert or continue, for the period that would have been the Interest Period therefor), *minus* (ii) the amount of interest that would accrue on such principal amount for such period at the interest rate which such Agent or such Lender would be offered were it to be offered, at the commencement of such period, Dollar deposits of a comparable amount and period in the London interbank market. A certificate as to any additional amounts payable pursuant to the foregoing sentence submitted by any Agent or any Lender to the Borrower shall be conclusive absent manifest error.

(f) Notwithstanding any other provision hereof, if any Requirement of Law, or any Change in Law, shall make it unlawful for any Lender (for purposes of this subsection (f), the term "Lender" shall include any Lender and the office or branch where any Lender or any corporation or bank controlling such Lender makes or maintains any LIBOR Rate Loans) to make or maintain its LIBOR Rate Loans, Administrative Agent shall provide notice of same to the Borrower and the obligation of Lenders to make LIBOR Rate Loans hereunder shall forthwith be suspended until such notice is withdrawn by the Administrative Agent, and the Borrower shall, if any affected LIBOR Rate Loans are then outstanding, promptly upon request from the Administrative Agent, either pay all such affected LIBOR Rate Loans or convert such affected LIBOR Rate Loans into loans of another type. If any such payment or conversion of any LIBOR Rate Loan is made on a day that is not the last day of the Interest Period applicable to such LIBOR Rate Loan, the Borrower shall pay the Administrative Agent, upon the Administrative Agent's request, such amount or amounts as may be necessary to compensate Lenders for any Funding Losses sustained or incurred by Lenders in respect of such LIBOR Rate Loan as a result of such payment or conversion, including (but not limited to) any interest or other amounts payable by Lenders to lenders of funds obtained by Lenders in order to make or maintain such LIBOR Rate Loan. A certificate as to any additional amounts that describes in reasonable detail the calculations thereof payable pursuant to the foregoing sentence submitted by Lenders to the Borrower shall be conclusive absent manifest error.

(g) In the event that any Agent or any Lender shall have determined that:

(i) reasonable means do not exist for ascertaining the LIBOR Rate applicable pursuant to Section 2.02(a) hereof for any Interest Period;

(ii) dollar deposits in the relevant amount and for the relevant maturity are not available in the London interbank LIBOR market, with respect to an outstanding LIBOR Rate Loan, a proposed LIBOR Rate Loan, or a proposed conversion of a Reference Rate Loan into a LIBOR Rate Loan;

(iii) at any time that an Event of Default under Section 9.01(a), 9.01(c) (solely as a result of the Loan Parties' failure to comply with Section 7.03), Section 9.01(f) or Section 9.01 (g) has occurred and is continuing; or

(iv) the LIBOR Rate will not adequately and fairly reflect the cost to such Lender of the establishment or maintenance of any LIBOR Rate Loan,

then Administrative Agent shall give the Borrower prompt written, telephonic or facsimile notice of such determination. If such notice is given, (i) any such requested LIBOR Rate Loan shall be made as a Reference Rate Loan, unless the Borrower shall notify the Administrative Agent no later than 1:00 p.m. (New York City time) two (2) Business Days prior to the date of such proposed borrowing, that its request for such borrowing shall be cancelled or made as an unaffected type of LIBOR Rate Loan, (ii) any Reference Rate Loan or LIBOR Rate Loan which was to have been converted to an affected type of LIBOR Rate Loan shall be continued as or converted into a Reference Rate Loan, or, if the Borrower shall notify the Administrative Agent, no later than 11:00 a.m. (New York time) two (2) Business Days prior to the proposed conversion, shall be maintained as an unaffected type of LIBOR Rate Loan, and (iii) any outstanding affected LIBOR Rate Loans shall be converted into a Reference Rate Loan at the end of the applicable Interest Period. Until such notice has been withdrawn, Lenders shall have no obligation to make an affected type of LIBOR Rate Loan or maintain outstanding affected LIBOR Rate Loans and the Borrower shall not have the right to convert a Reference Rate Loan or an unaffected type of LIBOR Rate Loan into an affected type of LIBOR Rate Loan.

(h) Anything to the contrary contained herein notwithstanding, neither any Agent nor any Lender, nor any of their participants, is required actually to acquire eurodollar deposits to fund or otherwise match fund any Obligation as to which interest accrues at the LIBOR Rate. The provisions of this Article II shall apply as if each Lender or its participants had match funded any Obligation as to which interest is accruing at the LIBOR Rate by acquiring eurodollar deposits for each Interest Period in the amount of the LIBOR Rate Loans.

(i) Notwithstanding anything to the contrary contained in this Agreement, the Borrower (i) shall have not more than 5 separate Interest Periods for LIBOR Rate Loans in effect at any given time, and (ii) only may exercise the LIBOR Option for LIBOR Rate Loans of at least $500,000 and integral multiples of $100,000 in excess thereof.

Section 2.08 [Reserved].

Section 2.09 Taxes.

(a) Any and all payments by any Loan Party hereunder or under any other Loan Document shall be made free and clear of and without deduction for any and all present or future taxes, levies, imposts, deductions, charges or withholdings, and all interest, additions to tax, penalties or other liabilities with respect thereto (collectively, "Taxes"), save as required by law and excluding any of the following Taxes imposed on or with respect to a Secured Party or required to be withheld or deducted from a payment to a Secured Party: Taxes imposed on or measured by the net income received or receivable (but not any sum deemed to be received or receivable) by any Secured Party (or any transferee or assignee thereof, including a participation holder (any such entity, a "Transferee")), franchise Taxes and branch profits Taxes (A) imposed by the jurisdiction in which such Person is organized or has its principal lending office or (B) imposed as a result of a present or former connection between a Secured Party and the jurisdiction imposing such Tax (other than connections arising from such Secured Party having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document or sold or assigned an interest in any Loan or Loan Document (all such Taxes described in this clause (B), "Other Connection Taxes"), (all Taxes, other than those excluded under this Section 2.09(a), collectively or individually, "Indemnified Taxes"). If any Loan Party shall be required to deduct any Indemnified Taxes from or in respect of any sum payable hereunder to any Secured Party (or any Transferee), (i) the sum payable shall be increased by the amount (an "Additional Amount") necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 2.09(a)) such Secured Party (or such Transferee) shall receive an amount equal to the sum it would have received had no such deductions been made, (ii) such Loan Party shall make such deductions and (iii) such Loan Party shall pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law.

(b) In addition, each Loan Party agrees to pay to the relevant Governmental Authority in accordance with applicable law any present or future court, stamp, documentary, intangible, recording or filing taxes or any other excise or property taxes, charges or similar levies that arise from any payment made hereunder or from the execution, delivery or registration of, or otherwise with respect to, this Agreement or any other Loan Document (except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 2.13, "Other Taxes"). Each Loan Party shall deliver to each Secured Party the original or a certified copy of receipts in respect of any Indemnified Taxes or Other Taxes payable hereunder promptly after payment of such Indemnified Taxes or Other Taxes.

(c) The Loan Parties hereby jointly and severally indemnify and agree to hold each Secured Party harmless from and against any loss, liability or cost which that Secured Party suffers for or on account of Indemnified Taxes and Other Taxes (including, without limitation, Indemnified Taxes and Other Taxes imposed on any amounts payable under this Section 2.09(c)) paid by such Person, whether or not such Indemnified Taxes or Other Taxes are correctly or legally asserted save that such indemnity shall not apply if and to the extent that a loss, liability or cost:

(i) is compensated for by an increased payment pursuant to Section 2.11 or an Additional Amount;

(ii) would have been so compensated but was not so compensated solely because any of the exclusions in Section 2.10(d) applied; or

(iii) (for the avoidance of doubt) is compensated for by Clause 2.09(b);

Such indemnification shall be paid within 10 days from the date on which any such Person makes written demand therefore specifying in reasonable detail the nature and amount of such Indemnified Taxes or Other Taxes.

(d) Each Lender (or Transferee) that is organized under the laws of a jurisdiction outside the United States (a "Non-U.S. Secured Party") agrees that it shall, to the extent it is legally entitled to do so, no later than the Effective Date (or, in the case of a Lender which becomes a party hereto pursuant to Section 12.07 hereof after the Effective Date, promptly after the date upon which such Lender becomes a party hereto) deliver to the Agents one properly completed and duly executed copy of either U.S. Internal Revenue Service Form W-8BEN, W-8BEN-E, W-8ECI or W-8IMY or any subsequent versions thereof or successors thereto, in each case claiming complete exemption from, or reduced rate of, U.S. Federal withholding tax and payments of interest hereunder. In addition, in the case of a Non-U.S. Secured Party claiming exemption from U.S. Federal withholding tax under Section 871(h) or 881(c) of the Internal Revenue Code, such Non-U.S. Secured Party hereby represents to the Agents and the Borrower that such Non-U.S. Secured Party is not a bank for purposes of Section 881(c) of the Internal Revenue Code, is not a 10-percent shareholder (within the meaning of Section 871(h)(3)(B) of the Internal Revenue Code) of the Parent and is not a controlled foreign corporation related to the Parent (within the meaning of Section 864(d)(4) of the Internal Revenue Code), and such Non-U.S. Secured Party agrees that it shall promptly notify the Agents in the event any such representation is no longer accurate. If a payment made to a Lender (or Transferee) or any Agent under any Loan Document would be subject to U.S. Federal withholding tax imposed by FATCA if such Lender (or Transferee) or Agent were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Internal Revenue Code, as applicable), such Lender (or Transferee) or Agent shall deliver to the Borrower and the Agents at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Agents such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Internal Revenue Code) and such additional documentation reasonably requested by the Borrower or the Agents as may be necessary for the Borrower and the Agents to comply with their obligations under FATCA and to determine that such Lender (or Transferee) or Agent has complied with its obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (d), "FATCA" shall include any amendments made to FATCA after the date of this Agreement. Any forms, certifications or other documentation under this clause (d) shall be delivered by each Lender (or Transferee) to the Borrower and each Agent. Such forms shall be delivered by each Non-U.S. Secured Party on or before the date it becomes a party to this Agreement (or, in the case of a Transferee that is a participation holder, on or before the date such participation holder becomes a Transferee hereunder) and on or before the date, if any, such Non-U.S. Secured Party changes its applicable lending office by designating a different lending office (a "New Lending Office"). In addition, such Lender (or Transferee) or Agent shall deliver such forms within 20 days after receipt of a written request therefor from the Borrower or any Agent, the assigning Lender or the Lender granting a participation, as applicable. Notwithstanding any other provision of this Section 2.09(d), a Non-U.S. Secured Party shall not be required to deliver any form pursuant to this Section 2.09(d) that such Non-U.S. Secured Party is not legally able to deliver. Any Secured Party that is not a Non-U.S. Secured Party shall deliver to the Borrower and the Agents on or prior to the date on which such Secured Party becomes a Secured Party under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Agents), executed copies of Internal Revenue Service Form W-9 certifying that such Secured Party is exempt from U.S. federal backup withholding tax.

(e) Notwithstanding anything to the contrary set forth in this Agreement (including, but not limited to, any other provision of this Section 2.09), the Loan Parties shall not be required to indemnify any Secured Party, or pay any Additional Amounts to any Secured Party, in respect of United States Federal withholding tax pursuant to this Section 2.09 to the extent that (i) the obligation to withhold amounts with respect to United States Federal withholding tax existed on the date such Secured Party became a party to this Agreement (or, in the case of a Transferee that is a participation holder, on the date such participation holder became a Transferee hereunder) or, with respect to the designation of a New Lending Office, the date such Secured Party designated such New Lending Office with respect to a Loan; provided, however, that this clause (i) shall not apply to the extent the indemnity payment or Additional Amounts any Transferee, or Lender (or Transferee) through a New Lending Office, would be entitled to receive (without regard to this clause (i)) do not exceed the indemnity payment or Additional Amounts that the Person making the assignment, participation or transfer to such Transferee, or Lender (or Transferee) making the designation of such New Lending Office, would have been entitled to receive in the absence of such assignment, participation, transfer or designation, (ii) the obligation to indemnify or pay such Additional Amounts would not have arisen but for a failure by such Secured Party to comply with the provisions of clause (d) above, or (iii) such U.S. Federal withholding tax is imposed under FATCA (or any amended or successor version of FATCA that is substantively comparable and not materially more onerous to comply with).

(f) Any Secured Party (or Transferee) claiming any indemnity payment or Additional Amounts payable pursuant to this Section 2.09(f) shall use reasonable efforts (consistent with legal and regulatory restrictions) to file any certificate or document reasonably requested in writing by the Borrower or to change the jurisdiction of its applicable lending office if the making of such a filing or change would avoid the need for or reduce the amount of any such indemnity payment or Additional Amount that may thereafter accrue, would not require such Secured Party (or Transferee) to disclose any information such Secured Party (or Transferee) deems confidential and would not, in the sole determination of such Secured Party (or Transferee), be otherwise disadvantageous to such Secured Party (or Transferee).

(g) The obligations of the Loan Parties under this Section 2.09 shall survive the termination of this Agreement and the payment of the Loans and all other amounts payable hereunder.

(h) If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 2.09 (including by the payment of Additional Amounts pursuant to this Section 2.09), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section 2.09 with respect to the Taxes giving rise to such refund), net of all out of pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (h) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this Agreement (including, but not limited to, this Section 2.09), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (h) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or Additional Amounts with respect to such Tax had never been paid. This paragraph shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

Section 2.10 [Reserved].

Section 2.11 Increased Costs and Reduced Return.

(a) If any Secured Party shall have reasonably determined that any Change in Law shall (i) subject such Secured Party, or any Person controlling such Secured Party to any tax, duty or other charge with respect to this Agreement or any Loan made by such Agent or such Lender, or change the basis of taxation of payments to such Secured Party or any Person controlling such Secured Party of any amounts payable hereunder (except for Indemnified Taxes or Taxes described in Section 2.09(e), in each case, of such Secured Party or any Person controlling such Secured Party), (ii) impose, modify or deem applicable any reserve, special deposit or similar requirement against any Loan or against assets of or held by, or deposits with or for the account of, or credit extended by, such Secured Party or any Person controlling such Secured Party or (iii) impose on such Secured Party or any Person controlling such Secured Party any other condition regarding this Agreement or any Loan, and the result of any event referred to in clauses (i), (ii) or (iii) above shall be to increase the cost to such Secured Party of making any Loan or agreeing to make any Loan, or to reduce any amount received or receivable by such Secured Party hereunder, then, upon demand by such Secured Party, the Borrower shall pay to such Secured Party such additional amounts as will compensate such Secured Party for such increased costs or reductions in amount.

(b) If any Secured Party shall have reasonably determined that any Change in Law either (i) affects or would affect the amount of capital required or expected to be maintained by such Secured Party or any Person controlling such Secured Party, and such Secured Party determines that the amount of such capital is increased as a direct or indirect consequence of any Loans made or maintained or any guaranty or participation with respect thereto, such Secured Party's or such other controlling Person's other obligations hereunder, or (ii) has or would have the effect of reducing the rate of return on such Secured Party's or such other controlling Person's capital to a level below that which such Secured Party or such controlling Person could have achieved but for such circumstances as a consequence of any Loans made or maintained or any guaranty or participation with respect thereto, or any agreement to make Loans or such Secured Party's or such other controlling Person's other obligations hereunder (in each case, taking into consideration, such Secured Party's or such other controlling Person's policies with respect to capital adequacy), then, upon demand by such Secured Party, the Borrower shall pay to such Secured Party from time to time such additional amounts as will compensate such Secured Party for such cost of maintaining such increased capital or such reduction in the rate of return on such Secured Party's or such other controlling Person's capital.

(c) Clauses (a) and (b) of this Section 2.11 do not apply to the extent any cost or reduction is:

(i) attributable to a withholding or deduction for or on account of Tax required by law to be made from a payment by a Borrower or Guarantor;

(ii) compensated for by Section 2.09(c) or would have been compensated for under that Section 2.09(c) but was not so compensated solely because any of the exclusions set out therein applied;

(iii) compensated for by Section 2.09(b);

(iv) attributable to the implementation or application of, or compliance with, Basel III or any law or regulation that implements or applies Basel III (whether such implementation, application or compliance is by a government, regulator, Secured Party or any of its Affiliates), unless such cost or reduction was not, in the reasonable opinion of that Secured Party, capable of being calculated by the relevant Secured Party with sufficient accuracy or in reasonable detail on the date of this Agreement or, if later, as at the date on which the relevant Secured Party became a Secured Party; or

(v) attributable to the implementation or application of or compliance with the "International Convergence of Capital Measurement and Capital Standards, a Revised Framework" published by the Basel Committee on Banking Supervision in June 2004 in the form existing on the date of this Agreement (but excluding any amendment taking account of or incorporating any measure from Basel III) ("Basel II") or any other law or regulation which implements Basel II (whether such implementation, application or compliance is by a government, regulator, Secured Party or any of its Affiliates.

(d) Failure or delay on the part of any Lender to demand compensation pursuant to the foregoing provisions of this Section 2.11 shall not constitute a waiver of such Lender's right to demand such compensation; provided that the Borrower shall not be required to compensate a Lender pursuant to the foregoing provisions of this Section 2.11 for any increased costs incurred or reductions suffered more than twelve months prior to the date that such Lender notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine-month period referred to above shall be extended to include the period of retroactive effect thereof).

(e) The obligations of the Loan Parties under this Section 2.11 shall survive the termination of this Agreement and the payment of the Loans and all other amounts payable hereunder.

Section 2.12 Changes in Law; Impracticability or Illegality.

(a) The LIBOR Rate may be adjusted by the Administrative Agent with respect to any Lender on a prospective basis to take into account any additional or increased costs to such Lender of maintaining or obtaining any eurodollar deposits or increased costs due to changes in applicable law occurring subsequent to the commencement of the then applicable Interest Period, including changes in tax laws (except changes of general applicability in corporate income tax laws) and changes in the reserve requirements imposed by the Board of Governors of the Federal Reserve System (or any successor), excluding the Reserve Percentage, which additional or increased costs would increase the cost of funding loans bearing interest at the LIBOR Rate. In any such event, the affected Lender shall give the Borrower and the Administrative Agent notice of such a determination and adjustment and the Administrative Agent promptly shall transmit the notice to each other Lender and, upon its receipt of the notice from the affected Lender, the Borrower may, by notice to such affected Lender (i) require such Lender to furnish to the Borrower a statement setting forth the basis for adjusting such LIBOR Rate and the method for determining the amount of such adjustment, or (ii) repay the LIBOR Rate Loans with respect to which such adjustment is made (together with any amounts due under Section 2.09).

(b) In the event that any change in market conditions or any law, regulation, treaty, or directive, or any change therein or in the interpretation of application thereof, shall at any time after the date hereof, in the reasonable opinion of any Lender, make it unlawful or impractical for such Lender to fund or maintain LIBOR Rate Loans or to continue such funding or maintaining, or to determine or charge interest rates at the LIBOR Rate, such Lender shall give notice of such changed circumstances to the Borrower and the Administrative Agent, and the Administrative Agent promptly shall transmit the notice to each other Lender and (i) in the case of any LIBOR Rate Loans of such Lender that are outstanding, the date specified in such Lender's notice shall be deemed to be the last day of the Interest Period of such LIBOR Rate Loans, and interest upon the LIBOR Rate Loans of such Lender thereafter shall accrue interest at the rate then applicable to Reference Rate Loans of the same type hereunder, and (ii) the Borrower shall not be entitled to elect the LIBOR Option (including in any borrowing, conversion or continuation then being requested) until such Lender determines that it would no longer be unlawful or impractical to do so.

(c) The obligations of the Loan Parties under this Section 2.12 shall survive the termination of this Agreement and the payment of the Loans and all other amounts payable hereunder.

Section 2.13 Mitigation Obligations; Replacement of Lenders.

(a) If any Lender requires the Borrower to pay any Additional Amounts under Section 2.09 or requests compensation under Section 2.11, then such Lender shall (at the request of the Borrower) use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the reasonable judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to such Section in the future, and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) If any Lender requires the Borrower to pay any Additional Amounts under Section 2.09 or requests compensation under Section 2.11 and, in each case, such Lender has declined or is unable to designate a different lending office in accordance with clause (a) above, or if any Lender is a Defaulting Lender, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 12.07), all of its interests, rights and obligations under this Agreement and the other Loan Documents to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that:

(i) the Borrower shall have paid or cause to be paid to the Agents any assignment fees specified in Section 12.07;

(ii) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 2.09) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts);

(iii) in the case of any such assignment resulting from payments required to be made pursuant to Section 2.09 or a claim for compensation under Section 2.11, such assignment will result in a reduction in such compensation or payments thereafter; and

(iv) such assignment does not conflict with applicable law.

Prior to the effective date of such assignment, the assigning Lender shall execute and deliver an Assignment and Acceptance, subject only to the conditions set forth above. If the assigning Lender shall refuse or fail to execute and deliver any such Assignment and Acceptance prior to the effective date of such assignment, the assigning Lender shall be deemed to have executed and delivered such Assignment and Acceptance. Any such assignment shall be made in accordance with the terms of Section 12.07.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

ARTICLE III

[RESERVED]

ARTICLE IV

APPLICATION OF PAYMENTS; DEFAULTING LENDERS; JOINT AND SEVERAL LIABILITY OF BORROWERS

Section 4.01 Payments; Computations and Statements.

(a) The Borrower will make each payment under this Agreement not later than 12:00 noon (New York City time) on the day when due, in lawful money of the United States of America and in immediately available funds, to the Administrative Agent's Account. All payments received by the Administrative Agent after 12:00 noon (New York City time) on any Business Day will be credited to the Loan Account on the next succeeding Business Day. All payments shall be made by the Borrower without set-off, counterclaim, recoupment, deduction or other defense to the Agents and the Lenders. Except as provided in Section 2.02, after receipt, the Administrative Agent will promptly thereafter cause to be distributed like funds relating to the payment of principal ratably to the Lenders in accordance with their Pro Rata Shares and like funds relating to the payment of any other amount payable to any Lender to such Lender, in each case to be applied in accordance with the terms of this Agreement, provided that the Administrative Agent will cause to be distributed all interest and fees received from or for the account of the Borrower not less than once each month and in any event promptly after receipt thereof. The Lenders and the Borrower hereby authorize the Administrative Agent to, and the Administrative Agent may, from time to time, charge the Loan Account of the Borrower with any amount due and payable by the Borrower under any Loan Document. Each of the Lenders and the Borrower agrees that the Administrative Agent shall have the right to make such charges whether or not any Default or Event of Default shall have occurred and be continuing or whether any of the conditions precedent in Section 5.02 have been satisfied. Any amount charged to the Loan Account of the Borrower shall be deemed a Revolving Loan hereunder made by the Revolving Loan Lenders to the Borrower, funded by the Administrative Agent on behalf of the Revolving Loan Lenders and subject to Section 2.02 of this Agreement. The Lenders and the Borrower confirm that any charges which the Administrative Agent may so make to the Loan Account of the Borrower as herein provided will be made as an accommodation to the Borrower and solely at the Administrative Agent's discretion; provided that the Administrative Agent shall from time to time upon the request of the Collateral Agent, charge the Loan Account of the Borrower with any amount due and payable under any Loan Document. Whenever any payment to be made under any such Loan Document shall be stated to be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day and such extension of time shall in such case be included in the computation of interest or fees, as the case may be. All computations of fees shall be made by the Administrative Agent on the basis of a year of 360 days for the actual number of days (including the first day, but excluding the last day) occurring in the period for which such fees are payable. Each determination by the Administrative Agent of an interest rate or fees hereunder shall be conclusive and binding for all purposes in the absence of manifest error.

(b) The Administrative Agent shall provide the Borrower, promptly after the end of each calendar month, a summary statement (in the form from time to time used by the Administrative Agent) of the opening and closing daily balances in the Loan Account of the Borrower during such month, the amounts and dates of all Loans made to the Borrower during such month, the amounts and dates of all payments on account of the Loans to the Borrower during such month, and the Loans to which such payments were applied, the amount of interest accrued on the Loans to the Borrower during such month and the amount and nature of any charges to the Loan Account made during such month on account of fees, commissions, expenses and other Obligations. All entries on any such statement shall be presumed to be correct and, 30 days after the same is sent, shall be final and conclusive absent manifest error.

Section 4.02 Sharing of Payments. Except as provided in Section 2.02 hereof, if any Lender shall obtain any payment (whether voluntary, involuntary, through the exercise of any right of set-off, or otherwise) on account of any Obligation in excess of its ratable share of payments on account of similar obligations obtained by all the Lenders, such Lender shall forthwith (a) turn the same over to Administrative Agent, in kind, and with such endorsements as may be required to negotiate the same to Administrative Agent, or in immediately available funds, as applicable, for the account of all of the Lenders and for application to the Obligations in accordance with the applicable provisions of this Agreement, or (b) purchase from the other Lenders such participations in such similar obligations held by them as shall be necessary to cause such purchasing Lender to share the excess payment ratably with each of them in accordance with the applicable provisions of this Agreement; provided, however, that (a) if all or any portion of such excess payment is thereafter recovered from such purchasing Lender, such purchase from each Lender shall be rescinded and each Lender shall repay to the purchasing Lender the purchase price to the extent of such recovery together with an amount equal to such Lender's ratable share (according to the proportion of (i) the amount of such Lender's required repayment to (ii) the total amount so recovered from the purchasing Lender) of any interest or other amount paid by the purchasing Lender in respect of the total amount so recovered and (b) the provisions of this Section shall not be construed to apply to (i) any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender), or (ii) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans, other than to any Loan Party or any Subsidiary thereof (as to which the provisions of this Section shall apply). The Borrower agrees that any Lender so purchasing a participation from another Lender pursuant to this Section may, to the fullest extent permitted by law, exercise all of its rights (including the Lender's right of set-off) with respect to such participation as fully as if such Lender were the direct creditor of the Borrower in the amount of such participation.

Section 4.03 Apportionment of Payments. Subject to Section 2.02 hereof and to any written agreement among the Agents and/or the Lenders:

(a) All payments of principal and interest in respect of outstanding Loans, all payments of fees (other than the fees set forth in Section 2.06 hereof to the extent set forth in any written agreement among the Agents and the Lenders) and all other payments in respect of any other Obligations, shall be allocated by the Administrative Agent among such of the Lenders as are entitled thereto, in proportion to their respective Pro Rata Shares or otherwise as provided herein or, in respect of payments not made on account of Loans, as designated by the Person making payment when the payment is made.

(b) After the occurrence and during the continuance of an Event of Default, the Administrative Agent may, and upon the direction of the Collateral Agent or the Required Lenders shall, apply all proceeds of the Collateral, subject to the provisions of this Agreement, (i) first, ratably to pay the Obligations in respect of any fees, expense reimbursements, indemnities and other amounts (other than interest or principal of the Loans) then due and payable to the Agents until paid in full; (ii) second, ratably to pay the Obligations in respect of any fees (excluding any Applicable Prepayment Premium), expense reimbursements and indemnities then due and payable to the Lenders until paid in full; (iii) third, ratably to pay interest then due and payable in respect of the Agent Advances until paid in full; (iv) fourth, ratably to pay principal of the Agent Advances until paid in full; (v) fifth, ratably to pay interest then due and payable in respect of the Loans until paid in full; (vi) sixth, ratably to pay principal of the Loans until paid in full; (vii) seventh, ratably to pay the Obligations in respect of any Applicable Prepayment Premium then due and payable to the Lenders until paid in full; (viii) eighth, to the ratable payment of all other Obligations then due and payable until paid in full; and (ix) ninth, to the Borrower or such other Person entitled thereto under applicable Requirement of Law.

(c) For purposes of Section 4.03(b) (other than clause (viii) thereof), "paid in full" means payment in cash or Cash Collateralization (as applicable) of all amounts owing under the Loan Documents according to the terms thereof, including loan fees, service fees, professional fees, interest (and specifically including interest accrued after the commencement of any Insolvency Proceeding), default interest, interest on interest, and expense reimbursements, whether or not same would be or is allowed or disallowed in whole or in part in any Insolvency Proceeding, except to the extent that default or overdue interest (but not any other interest) and loan fees, each arising from or related to a default, are disallowed in any Insolvency Proceeding; provided, however, that for the purposes of clause (viii), "paid in full" means payment in cash of all amounts owing under the Loan Documents according to the terms thereof, including loan fees, service fees, professional fees, interest (and specifically including interest accrued after the commencement of any Insolvency Proceeding), default interest, interest on interest, and expense reimbursements, whether or not the same would be or is allowed or disallowed in whole or in part in any Insolvency Proceeding.

(d) In each instance, so long as no Event of Default has occurred and is continuing and except as otherwise expressly provided herein, Section 4.03(b) shall not be deemed to apply to any payment by the Borrower specified by the Borrower to the Administrative Agent to be for the payment of Term Loan Obligations then due and payable under any provision of this Agreement or the prepayment of all or part of the principal of the Term Loans in accordance with the terms and conditions of Section 2.05.

(e) In the event of a direct conflict between the priority provisions of this Section 4.03 and other provisions contained in any other Loan Document, it is the intention of the parties hereto that both such priority provisions in such documents shall be read together and construed, to the fullest extent possible, to be in concert with each other. In the event of any actual, irreconcilable conflict that cannot be resolved as aforesaid, the terms and provisions of this Section 4.03 shall control and govern.

Section 4.04 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 any Requirement of Law:

(a) Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in the definition of Required Lenders.

(b) The Administrative Agent shall not be obligated to transfer to such Defaulting Lender any payments made by the Borrower to the Administrative Agent for such Defaulting Lender's benefit, and, in the absence of such transfer to such Defaulting Lender, the Administrative Agent shall transfer any such payments to each other non-Defaulting Lender ratably in accordance with their Pro Rata Shares (without giving effect to the Pro Rata Shares of such Defaulting Lender) (but only to the extent that such Defaulting Lender's Loans were funded by the other Lenders) or, if so directed by the Borrower and if no Default or Event of Default has occurred and is continuing (and to the extent such Defaulting Lender's Loans were not funded by the other Lenders), retain the same to be re-advanced to the Borrower as if such Defaulting Lender had made such Loans to the Borrower. Subject to the foregoing, the Administrative Agent may hold and, in its discretion, re-lend to the Borrower for the account of such Defaulting Lender the amount of all such payments received and retained by the Administrative Agent for the account of such Defaulting Lender.

(c) Any such failure to fund by any Defaulting Lender shall constitute a material breach by such Defaulting Lender of this Agreement and shall entitle the Borrower to replace the Defaulting Lender in accordance with Section 2.13.

(d) The operation of this Section shall not be construed to increase or otherwise affect the Commitments of any Lender, to relieve or excuse the performance by such Defaulting Lender or any other Lender of its duties and obligations hereunder, or to relieve or excuse the performance by the Borrower of its duties and obligations hereunder to the Administrative Agent or to the Lenders other than such Defaulting Lender.

(e) This Section shall remain effective with respect to such Lender until either (i) the Obligations under this Agreement shall have been declared or shall have become immediately due and payable or (ii) the non-Defaulting Lenders, the Agents, and the Borrower shall have waived such Defaulting Lender's default in writing, and the Defaulting Lender makes its Pro Rata Share of the applicable defaulted Loans and pays to the Agents all amounts owing by such Defaulting Lender in respect thereof; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while such Lender was a Defaulting Lender; provided further that, except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from such Lender's having been a Defaulting Lender.

ARTICLE V

CONDITIONS TO LOANS

Section 5.01 Conditions Precedent to Effectiveness. This Agreement shall become effective as of the Business Day (the "Effective Date") when each of the following conditions precedent shall have been satisfied in a manner reasonably satisfactory to the Agents:

(a) Payment of Fees, Etc. The Borrower shall have paid on or before the Effective Date all reasonable, documented and out-of-pocket fees, costs, expenses and Taxes required to be paid pursuant to Section 2.06 and Section 12.04.

(b) Representations and Warranties; No Event of Default. The following statements shall be true and correct: (i) the only representations and warranties relating to the Parent and its Subsidiaries the accuracy of which shall be a condition to the availability of the Loans on the Effective Date, shall be (A) the representations and warranties contained in Section 6.01(a), (b), (c), (d), (h), (k), (s), (t), (w), (x) and (z), and, subject to Permitted Liens, any representation and warranty with respect to the creation and perfection of the Collateral Agent's security interest in the Collateral (the foregoing being the "Specified Representations"), in each case, as they relate to the entering into or performance of the Loan Documents by the Loan Parties on the Effective Date, and (B) the representations and warranties made by the Sellers (as defined in the IWCO Acquisition Agreement) or the Parent or any of its Affiliates that are material to the Agents and the Lenders, but only to the extent that Parent or any of its Affiliates have the right under the IWCO Acquisition Agreement to terminate (or cause the termination of) their obligations under the IWCO Acquisition Agreement or not to consummate the transactions contemplated by the IWCO Acquisition Agreement as a result of a breach of such representations and warranties in the IWCO Acquisition Agreement (the "Specified Acquisition Representations") without regard to Parent's waiver of such breach and after giving effect to all applicable cure and grace periods; provided that the representations and warranties specified in clauses (A) and (B) above are true and correct in all material respects (except to the extent qualified by materiality or "Material Adverse Effect", in which case such representations and warranties shall be true and correct in all respects) on and as of the Effective Date as though made on and as of such date, except to the extent that any such representation or warranty expressly relates solely to an earlier date (in which case such representation or warranty shall be true and correct in all material respects (except to the extent qualified by materiality or "Material Adverse Effect", in which case such representations and warranties shall be true and correct in all respects) on and as of such earlier date), and (ii) no Default or Event of Default shall have occurred and be continuing on the Effective Date or would result from this Agreement or the other Loan Documents becoming effective in accordance with its or their respective terms.

(c) Legality. The making of the initial Loans shall not contravene any law, rule or regulation applicable to any Secured Party.

(d) Delivery of Documents. The Collateral Agent shall have received on or before the Effective Date the following, each in form and substance reasonably satisfactory to the Collateral Agent and, unless indicated otherwise, dated the Effective Date and, if applicable, duly executed by the Persons party thereto:

(i) this Agreement, duly executed by each of the parties thereto;

(ii) a Security Agreement, together with the original stock certificates representing all of the Equity Interests and all promissory notes required to be pledged thereunder, accompanied by undated stock powers executed in blank and other proper instruments of transfer, as applicable, in each case, to the extent in the Loan Parties' control or received by the Loan Parties prior to the Effective Date,;

(iii) (A) payoff letters executed by or on behalf of each of the Existing Lenders stating that upon receipt of a respective amount certain (1) all Indebtedness owed by the Loan Parties under the respective Existing Credit Facility will be paid in full, (2) the respective Existing Credit Facility and all related documents will be terminated and released, (B) appropriately prepared filings related to the termination of security interest in Intellectual Property for each assignment for security recorded with respect thereto, if any, at the United States Patent and Trademark Office or the United States Copyright Office and covering any intellectual property of the Loan Parties, (C) appropriately prepared UCC-3 termination statements for all UCC-1 financing statements filed by or on behalf of the Existing Lenders and covering any portion of the Collateral and (D) appropriately prepared termination documents for any control agreements or landlord waivers existing in favor of any of the Existing Lenders;

(iv) evidence satisfactory to the Collateral Agent of the filing of appropriate financing statements on Form UCC-1 in such office or offices as may be necessary or, in the opinion of the Collateral Agent, desirable to perfect the security interests purported to be created by each Security Agreement;

(v) the results of searches for any effective UCC financing statements, tax Liens or judgment Liens filed against any Loan Party or its property, which results shall not show any such Liens (other than Permitted Liens acceptable to the Collateral Agent);

(vi) a Perfection Certificate;

(vii) the IP Security Agreements;

(viii) the Acquisition Collateral Assignment;

(ix) the Disbursement Letter;

(x) the Fee Letter;

(xi) the Intercompany Subordination Agreement;

(xii) a certificate of an Authorized Officer of each Loan Party, certifying (A) as to copies of the Governing Documents of such Loan Party, together with all amendments thereto (including, without limitation, a true and complete copy of the charter, certificate of formation or incorporation, certificate of limited partnership or other publicly filed organizational document (as applicable) of each Loan Party certified as of a recent date not more than 30 days prior to the Effective Date by an appropriate official of the jurisdiction of incorporation or organization of such Loan Party which shall set forth the same complete name of such Loan Party as is set forth herein and the organizational or company number (as applicable) of such Loan Party, if an organizational or company number is issued in such jurisdiction), (B) as to a copy of the resolutions or written consents of such Loan Party authorizing (1) the borrowings hereunder and the transactions contemplated by the Loan Documents to which such Loan Party is or will be a party, and (2) the execution, delivery and performance by such Loan Party of each Loan Document to which such Loan Party is or will be a party and the execution and delivery of the other documents to be delivered by such Person in connection herewith and therewith, (C) the names and true signatures of the representatives of such Loan Party authorized to sign each Loan Document (in the case of a Borrower, including, without limitation, Notices of Borrowing and all other notices under this Agreement and the other Loan Documents) to which such Loan Party is or will be a party and the other documents to be executed and delivered by such Loan Party in connection herewith and therewith, together with evidence of the incumbency of such Authorized Officers and (D) as to the matters set forth in Section 5.01(b);

(xiii) a certificate of an officer of the Parent, certifying as to the solvency of the Loan Parties on a consolidated basis (after giving effect to the Loans made on the Effective Date), in the form attached hereto as Exhibit G;

(xiv) a certificate of an Authorized Officer of the Borrower certifying that (A) the attached copies of the IWCO Acquisition Documents and (B) such agreements remain in full force and effect and that none of the Loan Parties has breached or defaulted in any of its obligations under such agreements (except with respect to the IStar Dispute) ;

(xv) a certificate of the appropriate official(s) of the jurisdiction of incorporation or organization certifying as of a recent date not more than 30 days prior to the Effective Date as to the subsistence in good standing (where such (or similar) concept has a legal meaning in a particular jurisdiction) of such Loan Party in such jurisdiction;

(xvi) copies of the Material Contracts as in effect on the Effective Date, certified as true and correct copies thereof by an Authorized Officer of the Borrower, together with a certificate of an Authorized Officer of the Borrower stating that such agreements remain in full force and effect;

(xvii) an opinion of (A) Olshan Frome Wolosky LLP, counsel to the Loan Parties and (B) of any other applicable local counsel reasonably requested by any Agent, in each case, as to such matters as the Collateral Agent may reasonably request; and

(xviii) evidence of the insurance coverage required by Section 7.01(h) and such other insurance coverage with respect to the business and operations of the Loan Parties as the Collateral Agent may reasonably request, together with evidence of the payment of all premiums due in respect thereof for such period as the Collateral Agent may reasonably request; and

(xix) such other agreements, instruments, approvals, opinions and other documents, each satisfactory to the Agents in form and substance, as any Agent may reasonably request.

(e) Material Adverse Effect. No IWCO Material Adverse Effect shall have occurred since December 31, 2016 that is continuing as of the Effective Date.

(f) Consummation of IWCO Acquisition. Concurrently with the making of the initial Loans, (i) the Parent shall have purchased pursuant to the IWCO Acquisition Documents (no provision of which shall have been amended or otherwise modified or waived in any material and adverse manner to the Loan Parties, the Agents or the Lenders without the prior written consent of the Required Lenders), and shall have become the owner, free and clear of all Liens other than Permitted Liens, of all of the IWCO Acquisition Assets for a cash purchase price (excluding assumed liabilities) not in excess of $475,600,000 (ii) the proceeds of the Term Loan shall have been applied in full to pay the purchase price payable pursuant to the IWCO Acquisition Documents for the IWCO Acquisition Assets and the closing and other costs relating thereto and (iii) each of the applicable Loan Parties shall have fully performed all of the obligations to be performed by it under the IWCO Acquisition Documents (other than conditions waived that could not be adverse to the Agents or Lenders or could not reasonably be expected to result in a Material Adverse Effect or with respect to consents required under the IStar Lease Agreement).

(g) Approvals. Other than in connection with the IStar Lease Agreement, all consents, authorizations and approvals of, and material filings and registrations with, and all other actions in respect of, any Governmental Authority or other Person required in connection with the making of the Loans, the IWCO Acquisition or the conduct of the Loan Parties' business shall have been obtained and shall be in full force and effect.

(h) Closing Equity Investment. The Parent shall have (i) received a cash Investment in an aggregate amount not less than $85,000,000 (the "Closing Equity Investment") on the Effective Date, the terms of which shall be reasonably acceptable to the Lenders and (ii) shall have further contributed such cash proceeds to the Borrower. The proceeds of the sale of such Equity Interests constituting the Closing Equity Investment shall be distributed pursuant to the Disbursement Letter.

(i) Availability. After giving effect to all Loans to be made on the Effective Date and the other Transactions, (i) the Borrower shall have Availability (calculated after giving effect to the Transactions) plus Qualified Cash of at least $25,000,000 and (ii) the accounts payable of the Loan Parties shall not be more than 60 days past due and all other liabilities of the Loan Parties shall be current. The Borrower shall deliver to the Collateral Agent a certificate of the chief financial officer of the Borrower certifying as to the matters set forth in clauses (i) and (ii) above and containing the calculation of Availability.

(j) KYC. The Agents and the Lenders shall have each received, at least 3 Business Days in advance of the Effective Date, all documentation and other information required by regulatory authorities with respect to the Loan Parties under applicable "know your customer" and anti-money laundering rules and regulations, including, without limitation, the PATRIOT Act.

(k) Leverage Ratio. The Leverage Ratio of the Parent and its Subsidiaries for the trailing twelve month period ended September 30, 2017, calculated on a pro forma basis after giving effect to the Loans and the Transactions, shall not be greater than 4.75:1.00. The Parent shall deliver to the Agents a certificate of the chief financial officer of the Parent certifying as to the matters set forth in this Section 5.01(k) and containing the calculation of the Leverage Ratio.

Section 5.02 Conditions Precedent to All Loans After the Effective Date. The obligation of any Agent or any Lender to make any Loan after the Effective Date is subject to the fulfillment of each of the following conditions precedent:

(a) Payment of Fees, Etc. The Borrower shall have paid all fees, costs, expenses and taxes required to be paid by the Borrower pursuant to this Agreement and the other Loan Documents, including, without limitation, Section 2.06 and Section 12.04 hereof.

(b) Representations and Warranties; No Event of Default. The following statements shall be true and correct, and the submission by the Borrower to the Administrative Agent of a Notice of Borrowing with respect to each such Loan, and the Borrower's acceptance of the proceeds of such Loan, shall each be deemed to be a representation and warranty by each Loan Party on the date of such Loan that: (i) the representations and warranties contained in Article VI and in each other Loan Document, certificate or other writing delivered to any Secured Party pursuant hereto or thereto on or prior to the date of such Loan are true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations or warranties that already are qualified or modified as to materiality or "Material Adverse Effect" in the text thereof, which representations and warranties shall be true and correct in all respects subject to such qualification) on and as of such date as though made on and as of such date, except to the extent that any such representation or warranty expressly relates solely to an earlier date (in which case such representation or warranty shall be true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations or warranties that already are qualified or modified as to "materiality" or "Material Adverse Effect" in the text thereof, which representations and warranties shall be true and correct in all respects subject to such qualification) on and as of such earlier date), (ii) at the time of and after giving effect to the making of such Loan and the application of the proceeds thereof, no Default or Event of Default has occurred and is continuing or would result from the making of the Loan to be made on such date and (iii) the conditions set forth in this Section 5.02 have been satisfied or waived in writing by the applicable Lenders as of the date of such credit extension.

(c) Notices. The Administrative Agent shall have received a Notice of Borrowing pursuant to Section 2.02 hereof.

Section 5.03 Conditions Subsequent to Effectiveness. As an accommodation to the Loan Parties, the Agents and the Lenders have agreed to execute this Agreement and to make the Loans on the Effective Date notwithstanding the failure by the Loan Parties to satisfy the conditions set forth below on or before the Effective Date. In consideration of such accommodation, the Loan Parties agree that, in addition to all other terms, conditions and provisions set forth in this Agreement and the other Loan Documents, including, without limitation, those conditions set forth in Section 5.01, the Loan Parties shall satisfy each of the conditions subsequent set forth below on or before the date applicable thereto (or such later date as is hereafter agreed to in writing by the Collateral Agent in its reasonable discretion) (it being understood that (i) the failure by the Loan Parties to perform or cause to be performed any such condition subsequent on or before the date applicable thereto shall constitute an Event of Default and (ii) to the extent that the existence of any such condition subsequent would otherwise cause any representation, warranty or covenant in this Agreement or any other Loan Document to be breached, the Required Lenders hereby waive such breach for the period from the Effective Date until the date on which such condition subsequent is required to be fulfilled pursuant to this Section 5.03):

(a) Within 30 days after the Effective Date (or such later date as determined by the Collateral Agent in its sole discretion), the Collateral Agent shall have received the insurance endorsements required to be delivered pursuant to Section 7.01(h) (i) naming the Collateral Agent, for the benefit of Secured Parties, as additional insured and loss payee, as applicable, under such insurance policy and (ii) providing that such insurance policy may be terminated or canceled (by the insurer or the insured thereunder) only upon 30 days' (10 days' in the case of non-payment) prior written notice to the Collateral Agent;

(b) The Loan Parties shall use commercially reasonable efforts to deliver to the Collateral Agent within 45 days after the Effective Date (or such later date as determined by the Collateral Agent in its sole discretion), a collateral access agreement, in form and substance satisfactory to the Collateral Agent, executed by each Person who possesses Inventory of any Loan Party;

(c) The Loan Parties shall use commercially reasonable efforts to deliver to the Collateral Agent within 45 days after the Effective Date (or such later date as determined by the Collateral Agent in its sole discretion), a landlord waiver, in form and substance reasonably satisfactory to the Collateral Agent and which may be included as a provision contained in the relevant Lease, executed by each landlord with respect to each of the Leases set forth on Schedule III to the Security Agreement; and

(d) Within 60 days after the Effective Date (or such later date as determined by the Collateral Agent in its sole discretion), the Collateral Agent shall have received all Control Agreements that, in the reasonable judgment of the Agents, are required for the Loan Parties to comply with the Loan Documents, each duly executed by, in addition to the applicable Loan Party, the applicable financial institution.

ARTICLE VI

REPRESENTATIONS AND WARRANTIES

Section 6.01 Representations and Warranties. Each Loan Party hereby represents and warrants to the Secured Parties (x) on the Effective Date, that the Specified Acquisition Representations are true and correct as required by the terms of the definition thereof and the representations described in Section 5.01(b)(ii) are true and correct and (y) on every date thereafter, to the extent required pursuant to Section 5.02, that:

(a) Organization, Good Standing, Etc. Each Loan Party (i) is a corporation, limited company, limited liability company, exempted limited partnership or limited partnership duly organized, validly existing and, where such (or similar) concept has a legal meaning in a particular jurisdiction, in good standing under the laws of the state or jurisdiction of its incorporation or organization, (ii) has all requisite power and authority to conduct its business as now conducted and as presently contemplated and, in the case of the Borrower, to make the borrowings hereunder, and to execute and deliver each Loan Document to which it is a party, and to consummate the transactions contemplated thereby, and (iii) is duly qualified to do business and, where such (or similar) concept has a legal meaning in a particular jurisdiction, is in good standing in each jurisdiction in which the character of the properties owned or leased by it or in which the transaction of its business makes such qualification necessary, except (solely for the purposes of this subclause (iii)) where the failure to be so qualified and, where such (or similar) concept has a legal meaning in a particular jurisdiction, in good standing could not reasonably be expected to have a Material Adverse Effect.

(b) Authorization, Etc. The execution, delivery and performance by each Loan Party of each Loan Document to which it is or will be a party, (i) have been duly authorized by all necessary action, (ii) do not and will not contravene (A) any of its Governing Documents, (B) any applicable material Requirement of Law or (C) any material Contractual Obligation binding on or otherwise affecting it or any of its properties (other than with respect to the IStar Dispute), (iii) do not and will not result in or require the creation of any Lien (other than pursuant to any Loan Document or with respect to the IStar Dispute) upon or with respect to any of its properties, and (iv) do not and will not result in any default, noncompliance, suspension, revocation, impairment, forfeiture or nonrenewal of any permit, license, authorization or approval applicable to its operations or any of its properties, except, in the case of clause (iv), to the extent where such contravention, default, noncompliance, suspension, revocation, impairment, forfeiture or nonrenewal could not reasonably be expected to have a Material Adverse Effect (other than with respect to the IStar Dispute).

(c) Governmental Approvals. No authorization or approval or other action by, and no notice to or filing with, any Governmental Authority is required in connection with the due execution, delivery and performance by any Loan Party of any Loan Document to which it is or will be a party other than filings and recordings with respect to Collateral to be made, or otherwise delivered to the Collateral Agent for filing or recordation, on the Effective Date, or that have been otherwise obtained.

(d) Enforceability of Loan Documents. This Agreement is, and each other Loan Document to which any Loan Party is or will be a party, when delivered hereunder, will be, a legal, valid and binding obligation of such Person, enforceable against such Person in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and by general principles of equity.

(e) Capitalization. On the Effective Date, after giving effect to the transactions contemplated hereby to occur on the Effective Date, the authorized Equity Interests of the Parent and each of its Subsidiaries and the issued and outstanding Equity Interests of the Parent and each of its Subsidiaries are as set forth on Schedule 6.01(e). All of the issued and outstanding shares of Equity Interests of the Parent and each of its Subsidiaries have been validly issued and are fully paid and nonassessable, and the holders thereof are not entitled to any preemptive, first refusal or other similar rights. All Equity Interests of such Subsidiaries of the Parent are owned by the Parent free and clear of all Liens (other than Permitted Specified Liens). Except as described on Schedule 6.01(e), there are no outstanding debt or equity securities of the Parent or any of its Subsidiaries and no outstanding obligations of the Parent or any of its Subsidiaries convertible into or exchangeable for, or warrants, options or other rights for the purchase or acquisition from the Parent or any of its Subsidiaries, or other obligations of the Parent or any of its Subsidiaries to issue, directly or indirectly, any shares of Equity Interests of the Parent or any of its Subsidiaries.

(f) Litigation. Except as set forth in Schedule 6.01(f), there is no pending or, to the knowledge of any Loan Party, threatened action in writing, suit or proceeding (including, without limitation, shareholder or derivative litigation) affecting any Loan Party or any of its properties before any court or other Governmental Authority or any arbitrator that (i) if adversely determined, could reasonably be expected to have a Material Adverse Effect or (ii) relates to this Agreement or any other Loan Document, the IWCO Acquisition Documents or any transaction contemplated hereby or thereby.

(g) Financial Statements.

(i) The Financial Statements, when delivered to each Agent pursuant to Section 7.01(a), fairly present the consolidated financial condition of the Parent and its Subsidiaries as at the respective dates thereof and the consolidated results of operations of the Parent and its Subsidiaries for the fiscal periods ended on such respective dates, all in accordance with GAAP. All material indebtedness and other liabilities (including, without limitation, Indebtedness, liabilities for Taxes, long-term leases and other unusual forward or long-term commitments), direct or contingent, of the Parent and its Subsidiaries are set forth in the Financial Statements. Since December 31, 2016, no event or development has occurred that has had or could reasonably be expected to have a Material Adverse Effect.

(ii) The Parent has heretofore furnished to each Agent and each Lender projected quarterly balance sheets, income statements and statements of cash flows of the Parent and its Subsidiaries for the period from October 1, 2017, through December 31, 2022, which projected financial statements shall be updated from time to time pursuant to Section 7.01(a)(vi).

(h) Compliance with Law, Etc. No Loan Party or any of its Subsidiaries is in violation of (i) any of its Governing Documents, (ii) any material Requirement of Law or (iii) any term of any material Contractual Obligation (including, without limitation, any Material Contract) binding on or otherwise affecting it or any of its properties, except, solely in the case of this clause (other than in respect to the IStar Dispute) (iii), where the failure to so comply could not reasonably be expected to have a Material Adverse Effect.

(i) ERISA. (i) Each Employee Plan is in substantial compliance with ERISA and the Internal Revenue Code except to the extent noncompliance could not reasonably be expected to have a Material Adverse Effect, (ii) no Termination Event has occurred nor is reasonably expected to occur with respect to any Employee Plan, (iii) the most recent annual report (Form 5500 Series) with respect to each Employee Plan, including any required Schedule B (Actuarial Information) thereto, copies of which have been filed with the Internal Revenue Service, is complete and correct and fairly presents the funding status of such Employee Plan, and since the date of such report there has been no material adverse change in such funding status, (iv) copies of each agreement entered into with the PBGC, the U.S. Department of Labor or the Internal Revenue Service with respect to any Employee Plan have been delivered to the Agents to the extent requested, (v) no Employee Plan had an accumulated or waived funding deficiency or permitted decrease which would create a deficiency in its funding standard account or has applied for an extension of any amortization period within the meaning of Section 412 of the Internal Revenue Code at any time during the previous 60 months and (vi) no Lien imposed under the Internal Revenue Code or ERISA exists on account of any Employee Plan within the meaning of Section 412 of the Internal Revenue Code. Except as set forth on Schedule 6.01(i), no Loan Party or any of its ERISA Affiliates has incurred any withdrawal liability under ERISA with respect to any Multiemployer Plan, or is aware of any facts indicating that it or any of its ERISA Affiliates may in the future incur any such withdrawal liability. No Loan Party or any of its ERISA Affiliates nor any fiduciary of any Employee Plan has (i) engaged in a nonexempt prohibited transaction described in Sections 406 of ERISA or 4975 of the Internal Revenue Code, (ii) failed to pay any required installment or other payment required under Section 412 of the Internal Revenue Code on or before the due date for such required installment or payment, (iii) engaged in a transaction within the meaning of Section 4069 of ERISA or (iv) incurred any liability to the PBGC which remains outstanding other than the payment of premiums, and there are no premium payments which have become due which are unpaid. There are no material pending or, to the knowledge of any Loan Party, threatened claims in writing, actions, proceedings or lawsuits (other than claims for benefits in the normal course) asserted or instituted against (i) any Employee Plan or its assets, (ii) any fiduciary with respect to any Employee Plan, or (iii) any Loan Party or any of its ERISA Affiliates with respect to any Employee Plan. Except as required by Section 4980B of the Internal Revenue Code, no Loan Party or any of its ERISA Affiliates maintains an employee welfare benefit plan (as defined in Section 3(1) of ERISA) which provides health or welfare benefits (through the purchase of insurance or otherwise) for any retired or former employee of any Loan Party or any of its ERISA Affiliates or coverage after a participant's termination of employment, except as otherwise required by law.

(j) Taxes, Etc. Except as previously disclosed in writing to the Administrative Agent, (i) all federal, and material foreign, state and local tax returns and other reports required by applicable Requirements of Law to be filed by any Loan Party have been filed, or extensions have been obtained, and (ii) all Taxes, assessments and other governmental charges imposed upon any Loan Party or any property of any Loan Party in an aggregate amount for all such Taxes, assessments and other governmental charges exceeding $250,000 and which have become due and payable on or prior to the date hereof have been paid, except to the extent contested in good faith by proper proceedings and with respect to which adequate reserves have been set aside for the payment thereof on the Financial Statements in accordance with GAAP.

(k) Regulations T, U and X. No Loan Party is or will be engaged in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulation T, U or X), and no proceeds of any Loan will be used to purchase or carry any margin stock or to extend credit to others for the purpose of purchasing or carrying any margin stock or for any purpose that violates, or is inconsistent with, the provisions of Regulation T, U and X.

(l) Nature of Business.

(iii) No Loan Party is engaged in any business other than as set forth on Schedule 6.01(l) and business activities reasonably related or ancillary thereto.

(iv) Neither the Parent nor any other Holdco (A) has any material liabilities (other than liabilities arising under the Loan Documents), (B) owns any material assets (other than the Equity Interests of its Subsidiaries) or (C) engages in any operations or business (other than the ownership of its Subsidiaries) and activities incidental thereto), in each case, other than as not expressly prohibited by Section 7.02(d)(ii).

(m) Adverse Agreements, Etc. No Loan Party or any of its Subsidiaries is a party to any Contractual Obligation or subject to any restriction or limitation in any Governing Document or any judgment, order, regulation, ruling or other requirement of a court or other Governmental Authority, which (either individually or in the aggregate) has, or in the future could reasonably be expected (either individually or in the aggregate) to have, a Material Adverse Effect.

(n) Permits, Etc. Each Loan Party has, and is in compliance with, all permits, licenses, authorizations, approvals, entitlements and accreditations required for such Person lawfully to own, lease, manage or operate, or to acquire, each business and Facility currently owned, leased, managed or operated, or to be acquired, by such Person if the failure to have or be in compliance therewith could reasonably be expected to have a Material Adverse Effect. Except as could not reasonably be expected to have a Material Adverse Effect, no condition exists or event has occurred which, in itself or with the giving of notice or lapse of time or both, would result in the suspension, revocation, impairment, forfeiture or non-renewal of any such permit, license, authorization, approval, entitlement or accreditation, and there is no claim that any thereof is not in full force and effect.

(o) Properties. Each Loan Party has good and marketable title to, valid leasehold interests in, or valid licenses to use, all property and assets material to its business, free and clear of all Liens, except Permitted Liens. All such properties and assets are in good working order and condition, ordinary wear and tear excepted.

(p) Employee and Labor Matters. Except as could not reasonably be expected to result in a Material Adverse Effect, there is (i) no unfair labor practice complaint pending or, to the knowledge of any Loan Party, threatened in writing against any Loan Party before any Governmental Authority and no grievance or arbitration proceeding pending or threatened in writing against any Loan Party which arises out of or under any collective bargaining agreement, (ii) no strike, labor dispute, slowdown, stoppage or similar action or grievance pending or threatened in writing against any Loan Party or (iii) to the knowledge of each Loan Party, no union representation question existing with respect to the employees of any Loan Party and no union organizing activity taking place with respect to any of the employees of any Loan Party. No Loan Party or any of its Subsidiaries has incurred any liability or obligation under the Worker Adjustment and Retraining Notification Act ("WARN") or similar state law, which remains unpaid or unsatisfied and that could reasonably be expected to have a Material Adverse Effect. The hours worked and payments made to employees of any Loan Party have not been in material violation of the Fair Labor Standards Act or any other applicable legal requirements, except to the extent such violations could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect. All payments due from any Loan Party on account of wages and employee health and welfare insurance and other benefits have been paid or accrued as a liability on the books of such Loan Party, except where the failure to do so could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(q) Environmental Matters. Except as set forth on Schedule 6.01(q), (i) the operations of each Loan Party are in compliance with all Environmental Laws in all material respects; (ii) there has been no Release at any of the properties owned or operated by any Loan Party or a predecessor-in-interest, or at any disposal or treatment facility which received Hazardous Materials generated by any Loan Party or any predecessor-in-interest which could reasonably be expected to have a Material Adverse Effect; (iii) no Environmental Action has been asserted against any Loan Party or any predecessor-in-interest nor does any Loan Party have knowledge or notice of any threatened or pending Environmental Action against any Loan Party or any predecessor in interest which could reasonably be expected to have a Material Adverse Effect; (iv) no Environmental Actions have been asserted against any facilities that may have received Hazardous Materials generated by any Loan Party or any predecessor-in-interest which could reasonably be expected to have a Material Adverse Effect; (v) no property now or formerly owned or operated by a Loan Party has been used as a treatment or disposal site for any Hazardous Material, except to the extent that such use could not reasonably be expected to have a Material Adverse Effect; (vi) no Loan Party has failed to report to the proper Governmental Authority any Release which is required to be so reported by any Environmental Laws which failure to report could reasonably be expected to have a Material Adverse Effect; (vii) each Loan Party holds all licenses, permits and approvals required under any Environmental Laws in connection with the operation of the business carried on by it, except for such licenses, permits and approvals as to which a Loan Party's failure to maintain or comply with could not reasonably be expected to have a Material Adverse Effect; and (viii) no Loan Party has received any notification pursuant to any Environmental Laws that (A) any work, repairs, construction or Capital Expenditures are required to be made in respect as a condition of continued compliance with any Environmental Laws, or any license, permit or approval issued pursuant thereto or (B) any license, permit or approval referred to above is about to be reviewed, made subject to limitations or conditions, revoked, withdrawn or terminated, in each case, except as could not reasonably be expected to have a Material Adverse Effect.

(r) Insurance. Each Loan Party maintains the insurance and required services and financial assurance as required by law and as required by Section 7.01(h). Schedule 6.01(r) sets forth a list of all insurance maintained by each Loan Party on the Effective Date.

(s) Use of Proceeds. The proceeds of the Term Loans shall be used (a) to pay a portion of the Purchase Price payable pursuant to the IWCO Acquisition Documents, (b) to pay fees and expenses in connection with the transactions contemplated hereby and under the IWCO Acquisition Documents, (c) to repay certain existing indebtedness of the Borrower and its Subsidiaries and (d) for general working capital purposes of the Loan Parties and certain of their subsidiaries. The proceeds of any Revolving Loans made after the Effective Date shall be used for general working capital and other corporate purposes of the Loan Parties.

(t) Solvency. On the Effective Date, after giving effect to the transactions contemplated by this Agreement (including the Transactions) and before and after giving effect to each Loan, the Loan Parties and their Subsidiaries, on a consolidated basis, are Solvent. No transfer of property is being made by any Loan Party and no obligation is being incurred by any Loan Party in connection with the transactions contemplated by this Agreement or the other Loan Documents with the intent to hinder, delay, or defraud either present or future creditors of such Loan Party.

(u) Intellectual Property. Except as set forth on Schedule 6.01(u), each Loan Party owns or licenses or otherwise has the right to use all Intellectual Property rights that are necessary for the operation of its business, without infringement upon or conflict with the rights of any other Person with respect thereto, except for such infringements and conflicts which, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect. Set forth on Schedule 6.01(u) is a complete and accurate list as of the Effective Date of each item of Registered Intellectual Property owned by each Loan Party. No trademark or other advertising device, product, process, method, substance, part or other material now employed, or now contemplated to be employed, by any Loan Party infringes upon or conflicts with any rights owned by any other Person, and no claim or litigation regarding any of the foregoing is pending or, to the knowledge of any Loan Party, threatened, except for such infringements and conflicts which could not reasonably be expected to have individually or in the aggregate, a Material Adverse Effect. To the knowledge of each Loan Party, no patent, invention, device, application, principle or any applicable law pertaining to Intellectual Property is pending or proposed, which, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

(v) [Reserved].

(w) Investment Company Act. None of the Loan Parties is (i) an "investment company" or an "affiliated person" or "promoter" of, or "principal underwriter" of or for, an "investment company", as such terms are defined in the Investment Company Act of 1940, as amended, or (ii) subject to regulation under any Requirement of Law that limits in any respect its ability to incur Indebtedness or which may otherwise render all or a portion of the Obligations unenforceable.

(x) Security Interests. Each Security Agreement creates or, when entered into, will create, in favor of the Collateral Agent, for the benefit of the Secured Parties, a legal, valid and enforceable security interest in the Collateral secured thereby. Upon the filing of the UCC-1 financing statements described in Section 5.01(d), the recording of the Mortgages, the delivery of appropriate Cash Management Agreements, and the recording of each relevant Assignment for Security referred to in each Security Agreement in the United States Patent and Trademark Office and the United States Copyright Office, as applicable, such security interests in and Liens on the Collateral granted thereby shall be perfected, to the extent perfection can be accomplished through such filings, agreements or recordings, first priority security interests (subject to Permitted Liens), and, except as contemplated by the Security Agreements or the Mortgages, no further recordings or filings are or will be required in connection with the creation, perfection or enforcement of such security interests and Liens, other than (A) the filing of continuation statements in accordance with applicable law, (B) the recording of the relevant Assignment for Security pursuant to each Security Agreement in the United States Patent and Trademark Office and the United States Copyright Office, as applicable (the foregoing being the "IP Security Agreements"), with respect to after-acquired U.S. patent and trademark applications and registrations and U.S. copyrights, (C) the recordation of appropriate evidence of the security interest in the appropriate foreign registry with respect to all foreign intellectual property that constitutes Collateral and (D) other applicable local law recordations or registrations.

(y) Consummation of Acquisition. The Parent has delivered to the Agents complete and correct copies of the material IWCO Acquisition Documents, including all schedules and exhibits thereto. The IWCO Acquisition Documents set forth the entire agreement and understanding of the parties thereto relating to the subject matter thereof, and there are no other agreements, arrangements or understandings, written or oral, relating to the matters covered thereby. The execution, delivery and performance of the IWCO Acquisition Documents has been duly authorized by all necessary action (including, without limitation, the obtaining of any consent of stockholders or other holders of Equity Interests required by law or by any applicable corporate or other organizational documents) on the part of each such Person. No authorization or approval or other action by, and no notice to filing with or license from, any Governmental Authority is required for such sale other than such as have been obtained on or prior to the Effective Date. Each Acquisition Document is the legal, valid and binding obligation of the parties thereto, enforceable against such parties in accordance with its terms. All conditions precedent to the IWCO Acquisition Agreement have been fulfilled (other than with respect to consents required under the IStar Lease Agreement) or (with the prior written consent of the Agents) waived, no IWCO Acquisition Document has been amended or otherwise modified, and there has been no breach of any material term or condition of any Acquisition Document.

(z) Anti-Terrorism Laws.

(i) None of the Loan Parties nor any of their Subsidiaries nor, to the knowledge of the Loan Parties, any Affiliates of any Loan Party (other than other portfolio companies), has violated or is in violation of any Anti-Terrorism Laws or engages or has engaged in or conspired to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the Anti-Terrorism Laws.

(ii) None of the Loan Parties or any of their Subsidiaries nor, to the knowledge of the Loan Parties, any Affiliate of any Loan Party (other than other portfolio companies), officer, director or principal shareholder or owner of any of the Loan Parties or such Subsidiaries, is a Blocked Person.

(iii) None of the Loan Parties, nor any of their Subsidiaries, (A) conducts any business with or for the benefit of any Blocked Person or engages in making or receiving any contribution of funds, goods or services to, from or for the benefit of any Blocked Person, or (B) deals in, or otherwise engages in any transaction relating to, any property or interests in property blocked or subject to blocking pursuant to any OFAC Sanctions Programs.

(aa) Anti-Bribery and Anti-Corruption Laws.

(i) The Loan Parties are in compliance in all material respects with the U.S. Foreign Corrupt Practices Act of 1977, as amended (the "FCPA"), and the anti-bribery and anti-corruption laws of those jurisdictions in which they do business (collectively, the "Anti-Corruption Laws").

(ii) None of the Loan Parties has at any time:

(A) offered, promised, paid, given, or authorized the payment or giving of any money, gift or other thing of value, directly or indirectly, to or for the benefit of any employee, official, representative, or other person acting on behalf of any foreign (i.e., non-U.S.) Governmental Authority thereof, or of any public international organization, or any foreign political party or official thereof, or candidate for foreign political office (collectively, "Foreign Official"), for the purpose of: (1) influencing any act or decision of such Foreign Official in his, her, or its official capacity; or (2) inducing such Foreign Official to do, or omit to do, an act in violation of the lawful duty of such Foreign Official, or (3) securing any improper advantage, in order to obtain or retain business for, or with, or to direct business to, any Person; or

(B) acted or attempted to act in any manner which would subject any of the Loan Parties to liability under any Anti-Corruption Law that could reasonably be expected to result in a Material Adverse Effect.

(iii) There are, and have been, no allegations, investigations or inquiries with regard to a potential violation of any Anti-Corruption Law by any of the Loan Parties, their Subsidiaries or, to the knowledge of the Loan Parties, any of their respective current or former directors, officers, employees, stockholders.

(iv) The Loan Parties have adopted, implemented and maintain anti-bribery and anti-corruption policies and procedures that are reasonably designed to ensure compliance with the Anti-Corruption Laws.

(bb) Full Disclosure.

(i) Each Loan Party has disclosed to the Agents all agreements, instruments and corporate or other restrictions to which it is subject, and all other matters known to it, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. None of the reports, financial statements, certificates or other written information furnished by or on behalf of any Loan Party to the Agents (other than forward-looking information and projections and information of a general economic nature and general information about Borrower's industry) in connection with the negotiation of this Agreement or delivered hereunder (as modified or supplemented by other information so furnished), taken as a whole, contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which it was made, not materially misleading.

(ii) Projections have been prepared on a reasonable basis and in good faith based on assumptions, estimates, methods and tests that are believed by the Loan Parties to be reasonable at the time such Projections were prepared and information believed by the Loan Parties to have been accurate based upon the information available to the Loan Parties at the time such Projections were furnished to the Lenders, and Parent is not be aware of any facts or information that would lead it to believe that such Projections are incorrect or misleading in any material respect; it being understood that (1) Projections are as to future events and are not to be viewed as facts and are by their nature subject to significant uncertainties and contingencies, many of which are beyond the Loan Parties' control, (2) actual results may differ materially from the Projections and such variations may be material and no assurances can be given as to any particular projections being realized, and (3) the Projections are not a guarantee of performance.

ARTICLE VII

COVENANTS OF THE LOAN PARTIES

Section 7.01 Affirmative Covenants. So long as any principal of or interest on any Loan or any other Obligation (whether or not due) shall remain unpaid (other than Contingent Indemnity Obligations) or any Lender shall have any Commitment hereunder, each Loan Party will:

(a) Reporting Requirements. Furnish to each Agent (for itself and each Lender):

(i) as soon as available, and in any event within 30 days after the end of each fiscal month of the Parent and its Subsidiaries commencing with the first fiscal month of the Parent and its Subsidiaries ending after the Effective Date, internally prepared consolidated balance sheets, statements of operations and retained earnings and statements of cash flows as at the end of such fiscal month, and for the period commencing at the end of the immediately preceding Fiscal Year and ending with the end of such fiscal month, setting forth in each case in comparative form the figures for the corresponding date or period set forth in the financial statements for the immediately preceding Fiscal Year, all in reasonable detail and certified by an Authorized Officer of the Parent as fairly presenting, in all material respects, the financial position of the Parent and its Subsidiaries as at the end of such fiscal month and the results of operations, retained earnings and cash flows of the Parent and its Subsidiaries for such fiscal month and for such year-to-date period, in accordance with GAAP applied in a manner consistent with that of the most recent audited financial statements furnished to the Agents and the Lenders, subject to the absence of footnotes and normal year-end adjustments;

(ii) as soon as available and in any event within 45 days after the end of each fiscal quarter of the Parent and its Subsidiaries commencing with the first fiscal quarter of the Parent and its Subsidiaries ending after the Effective Date, consolidated and consolidating balance sheets, statements of operations and retained earnings and statements of cash flows of the Parent and its Subsidiaries as at the end of such quarter, and for the period commencing at the end of the immediately preceding Fiscal Year and ending with the end of such quarter, setting forth in each case in comparative form the figures for the corresponding date or period set forth in the financial statements for the immediately preceding Fiscal Year, all in reasonable detail and certified by an Authorized Officer of the Parent as fairly presenting, in all material respects, the financial position of the Parent and its Subsidiaries as of the end of such quarter and the results of operations and cash flows of the Parent and its Subsidiaries for such quarter and for such year-to-date period, in accordance with GAAP applied in a manner consistent with that of the most recent audited financial statements of the Parent and its Subsidiaries furnished to the Agents and the Lenders, subject to the absence of footnotes and normal year-end adjustments;

(iii) as soon as available, and in any event within 90 days after the end of each Fiscal Year of the Parent and its Subsidiaries:

(A) consolidated and consolidating balance sheets, statements of operations and retained earnings and statements of cash flows of Moduslink and its Subsidiaries (or, at the option of Parent, of Parent and its Subsidiaries) as at the end of such Fiscal Year, setting forth in each case in comparative form the figures for the corresponding date or period set forth in the financial statements for the immediately preceding Fiscal Year, all in reasonable detail and prepared in accordance with GAAP, and accompanied by a report and an opinion, prepared in accordance with generally accepted auditing standards, of independent certified public accountants of recognized standing selected by the Parent and satisfactory to the Agents (which opinion shall be without (1) a "going concern" or like qualification or exception, (2) any qualification or exception as to the scope of such audit, or (3) any qualification which relates to the treatment or classification of any item and which, as a condition to the removal of such qualification, would require an adjustment to such item, the effect of which would be to cause any noncompliance with the provisions of Section 7.03), together with a written statement of such accountants (x) to the effect that, in making the examination necessary for their certification of such financial statements, they have not obtained any knowledge of the existence of an Event of Default or a Default under Section 7.03 and (y) if such accountants shall have obtained any knowledge of the existence of an Event of Default or such Default, describing the nature thereof, and

(B) consolidated and consolidating balance sheets, statements of operations and retained earnings and statements of cash flows of the Parent and its Subsidiaries as at the end of such Fiscal Year, setting forth in each case in comparative form the figures for the corresponding date or period set forth in (1) the financial statements for the immediately preceding Fiscal Year, and (2) the Projections, all in reasonable detail and prepared in accordance with GAAP;

(iv) simultaneously with the delivery of the financial statements of the Parent and its Subsidiaries required by clauses (ii) and (iii) of this Section 7.01(a), a certificate of an Authorized Officer of the Parent (a "Compliance Certificate"):

(A) stating that such Authorized Officer has reviewed the provisions of this Agreement and the other Loan Documents and has made or caused to be made under his or her supervision a review of the condition and operations of the Parent and its Subsidiaries during the period covered by such financial statements with a view to determining whether the Parent and its Subsidiaries were in compliance with all of the provisions of this Agreement and such Loan Documents at the times such compliance is required hereby and thereby, and that such review has not disclosed, and such Authorized Officer has no knowledge of, the occurrence and continuance during such period of an Event of Default or Default or, if an Event of Default or Default had occurred and continued or is continuing, describing the nature and period of existence thereof and the action which the Parent and its Subsidiaries propose to take or have taken with respect thereto,

(B) in the case of the delivery of the financial statements of the Parent and its Subsidiaries required by clauses (ii) and (iii) of this Section 7.01(a), (1) attaching a schedule showing the calculation of the financial covenants specified in Section 7.03, (2) attaching a schedule showing in reasonable detail the calculation of the aggregate amount of Permitted Intercompany Investments (other than Investments made by Loan Parties to or in other Loan Parties that are organized under the laws of the same jurisdiction), and (3) including a discussion and analysis of the financial condition and results of operations of the Parent and its Subsidiaries for the portion of the Fiscal Year then elapsed and discussing the reasons for any significant variations from the Projections for such period and the figures for the corresponding period in the previous Fiscal Year, and

(C) in the case of the delivery of the financial statements of the Parent and its Subsidiaries required by clause (iii) of this Section 7.01(a), (1) attaching a summary of all material insurance coverage maintained as of the date thereof by any Loan Party and all material insurance coverage planned to be maintained by any Loan Party, together with such other related documents and information as the Administrative Agent may reasonably require, (2) including the calculation of the Excess Cash Flow in accordance with the terms of Section 2.05(c)(i) and (3) including confirmation that there have been no changes to the information contained in each of the Perfection Certificates delivered on the Effective Date or the date of the most recently updated Perfection Certificate delivered pursuant to this clause (iv) and/or attaching an updated Perfection Certificate identifying any such changes to the information contained therein;

(v) [reserved];

(vi) as soon as available and in any event not later than 30 days prior to the end of each Fiscal Year, a certificate of an Authorized Officer of the Parent attaching (A) Projections for the Parent and its Subsidiaries (consisting of a balance sheet, income statement and statement of cash flow thereof), prepared on a quarterly basis and otherwise in form and substance reasonably satisfactory to the Agents, for the immediately succeeding Fiscal Year for the Parent and its Subsidiaries and (B) certifying that the representations and warranties set forth in Section 6.01(bb)(ii) are true and correct with respect to the Projections, in form previously delivered to the Agents or otherwise reasonably satisfactory to the Agents;

(vii) promptly after submission to any Governmental Authority, all documents and information furnished to such Governmental Authority in connection with any investigation of any Loan Party other than routine inquiries by such Governmental Authority;

(viii) as soon as possible, and in any event within 3 Business Days after the occurrence of an Event of Default or Default or the occurrence of any event or development that could reasonably be expected to have a Material Adverse Effect, the written statement of an Authorized Officer of the Borrower setting forth the details of such Event of Default or Default or other event or development having a Material Adverse Effect and the action which the affected Loan Party proposes to take with respect thereto;

(ix) (A) within 10 days after any Loan Party knows or has reason to know that (1) any Reportable Event with respect to any Employee Plan has occurred, (2) any other Termination Event with respect to any Employee Plan has occurred, or (3) an accumulated funding deficiency has been incurred or an application has been made to the Secretary of the Treasury for a waiver or modification of the minimum funding standard (including installment payments) or an extension of any amortization period under Section 412 of the Internal Revenue Code with respect to an Employee Plan, a statement of an Authorized Officer of the Borrower setting forth the details of such occurrence and the action, if any, which such Loan Party or such ERISA Affiliate proposes to take with respect thereto, (B) promptly and in any event within 10 days after receipt thereof by any Loan Party or any ERISA Affiliate thereof from the PBGC, copies of each notice received by any Loan Party or any ERISA Affiliate thereof of the PBGC's intention to terminate any Plan or to have a trustee appointed to administer any Plan, (C) promptly and in any event within 10 days after the filing thereof with the Internal Revenue Service if requested by any Agent, copies of each Schedule B (Actuarial Information) to the annual report (Form 5500 Series) with respect to each Employee Plan, (D) promptly and in any event within 10 days after any Loan Party thereof knows or has reason to know that a required installment within the meaning of Section 412 of the Internal Revenue Code has not been made when due with respect to an Employee Plan, (E) promptly and in any event within 10 days after receipt thereof by any Loan Party or any Loan Party has knowledge of such receipt by any ERISA Affiliate thereof from a sponsor of a Multiemployer Plan or from the PBGC, a copy of each notice received by any Loan Party or any ERISA Affiliate thereof concerning the imposition or amount of withdrawal liability under Section 4202 of ERISA, and (F) promptly and in any event within 10 days after any Loan Party sends notice of a plant closing or mass layoff (as defined in WARN) to employees, copies of each such notice sent by such Loan Party;

(x) promptly after the commencement thereof but in any event not later than 5 Business Days after service of process with respect thereto on, or the obtaining of knowledge thereof by, any Loan Party, notice of each action, suit or proceeding before any court or other Governmental Authority or other regulatory body or any arbitrator which could reasonably be expected to have a Material Adverse Effect;

(xi) within 5 Business Days after execution, receipt or delivery thereof, copies of any notices that any Loan Party executes or receives in connection with terminations of any Material Contract;

(xii) within 5 Business Days after execution, receipt or delivery thereof, copies of any material notices that any Loan Party executes or receives in connection with the sale or other Disposition of the Equity Interests of, or all or substantially all of the assets of, any Loan Party;

(xiii) within 10 Business Days after the consummation of any transaction using the Available Basket Amount, a certificate of an Authorized Officer of the Borrower certifying as to the matters described in the definition of "Available Basket Amount" and attaching reasonably detailed supporting calculations related thereto, in form reasonably satisfactory to the Collateral Agent;

(xiv) promptly after (A) the sending or filing thereof, copies of all material statements, reports and other material information any Loan Party sends to any holders of its Indebtedness for borrowed money with a principal amount in excess of $1,000,000 or its securities or files with the SEC or any national (domestic or foreign) securities exchange, except to the extent such statements, reports or other information are publicly available on the SEC's website and (B) the receipt thereof, a copy of any material notice received from any holder of its Indebtedness for borrowed money with a principal amount in excess of $1,000,000;

(xv) promptly upon receipt thereof, copies of all financial reports (including, without limitation, management letters), if any, submitted to any Loan Party by its auditors in connection with any annual or interim audit of the books thereof; and

(xvi) promptly upon request, such other information concerning the condition or operations, financial or otherwise, of any Loan Party as any Agent from time to time may reasonably request.

(b) Additional Borrowers, Guarantors and Collateral Security. Cause:

(i) each Subsidiary of any Loan Party (other than an Excluded Subsidiary) created or acquired after the Effective Date, and each Subsidiary of any Loan Party which is an Excluded Subsidiary on the Effective Date or upon formation or acquisition but later ceases to be an Excluded Subsidiary, to execute and deliver to the Collateral Agent promptly and in any event within 10 Business Days (or, in the case of matters specified in clause (C) below, 30 days (or such later date as agreed to in writing by the Collateral Agent in its sole discretion)) after the formation, acquisition or change in status thereof, (A) a Joinder Agreement, pursuant to which such Subsidiary shall be made a party to this Agreement as a Borrower or a Guarantor, (B) a supplement to the Security Agreement, together with (1) certificates (if any) evidencing all of the Equity Interests of any Person owned by such Subsidiary required to be pledged under the terms of the applicable Security Documents, (2) undated stock powers for such Equity Interests executed in blank, and (3) such opinions of counsel as the Collateral Agent may reasonably request, (C) to the extent required under the terms of this Agreement, one or more Mortgages creating on the fee owned real property of such Subsidiary a perfected, first priority Lien (in terms of priority, subject only to Permitted Specified Liens) on such real property and such other Real Property Deliverables as may be required by the Collateral Agent with respect to each such real property, and (D) such other agreements, instruments, approvals or other documents reasonably requested by the Collateral Agent in order to create, perfect, establish the first priority of or otherwise protect any Lien purported to be covered by the Security Documents (including, any such Mortgage) or otherwise to effect the intent that such Subsidiary shall become bound by all of the terms, covenants and agreements contained in the Loan Documents that are applicable to the Guarantors and that all property and assets of such Subsidiary shall become Collateral for the Obligations, other than exclusions expressly set forth in the Security Documents; and

(ii) each owner of the Equity Interests of any such Subsidiary to execute and deliver promptly and in any event within 10 Business Days after the formation or acquisition of such Subsidiary a Pledge Amendment (as defined in the Security Agreement), together with (A) certificates evidencing all of the Equity Interests of such Subsidiary to the extent required to be pledged under the terms of the Security Agreement or any other applicable Security Document, (B) undated stock powers or other appropriate instruments of assignment for such Equity Interests executed in blank, (C) such opinions of counsel as the Collateral Agent may reasonably request and (D) such other agreements, instruments, approvals or other documents reasonably requested by the Collateral Agent; it being understood and agreed that there shall be no requirement to obtain or deliver security documents governed by a Law other than the Law of the United States or take perfection steps with respect to the Collateral in any jurisdiction other than the United States.

(c) Compliance with Laws; Payment of Taxes.

(i) Comply, and cause each of its Subsidiaries to comply, with all Requirements of Law (including, without limitation, all Environmental Laws), judgments and awards (including any settlement of any claim that, if breached, could give rise to any of the foregoing); except to the extent that the failure to so comply could not reasonably be expected to have a Material Adverse Effect.

(ii) Pay, and cause each of its Subsidiaries to pay, in full before delinquency or before the expiration of any extension period, all Taxes, assessments and other governmental charges imposed upon any Loan Party or any of its Subsidiaries or any property of any Loan Party or any of its Subsidiaries in an aggregate amount for all such Taxes, assessments and other governmental charges exceeding $250,000, except to the extent contested in good faith by proper proceedings and with respect to which adequate reserves have been set aside for the payment thereof in accordance with GAAP.

(d) Preservation of Existence, Etc. Maintain and preserve, and cause each of its Subsidiaries to maintain and preserve, its existence, rights and privileges, and become or remain, and cause each of its Subsidiaries to become or remain, duly qualified and, where such (or similar) concept has a legal meaning in a particular jurisdiction, in good standing in each jurisdiction in which the character of the properties owned or leased by it or in which the transaction of its business makes such qualification necessary, except to the extent that the failure to be so qualified could not reasonably be expected to have a Material Adverse Effect.

(e) Keeping of Records and Books of Account. Keep, and cause each of its Subsidiaries to keep, adequate records and books of account, with complete entries made to permit the preparation of financial statements in accordance with GAAP.

(f) Inspection Rights. Permit, and cause each of its Subsidiaries to permit, the agents and representatives of any Agent at any reasonable time and from time to time during normal business hours and, in the absence of a continuing Event of Default, upon reasonable advance notice to Borrower, at the reasonable expense of the Borrower (subject to the limitations contained in Section 2.06(c)), to examine and make copies of and abstracts from its records and books of account, to visit and inspect its properties, to verify materials, leases, notes, accounts receivable, deposit accounts and its other assets, to conduct audits, physical counts, valuations or examinations and to discuss its affairs, finances and accounts with any of its directors, officers, managerial employees, independent accountants or any of its other representatives. In furtherance of the foregoing, each Loan Party hereby authorizes its independent accountants, and the independent accountants of each of its Subsidiaries, to discuss the affairs, finances and accounts of such Person (independently or together with representatives of such Person) with the agents and representatives of any Agent in accordance with this Section 7.01(f).

(g) Maintenance of Properties, Etc. Maintain and preserve, and cause each of its Subsidiaries to maintain and preserve, all of its properties which are necessary or useful in the proper conduct of its business in good working order and condition, ordinary wear and tear, and casualty excepted, and comply, and cause each of its Subsidiaries to comply, at all times with the provisions of all leases to which it is a party as lessee or under which it occupies property, so as to prevent any loss or forfeiture thereof or thereunder, except to the extent the failure to so maintain and preserve or so comply could not reasonably be expected to have a Material Adverse Effect.

(h) Maintenance of Insurance. Maintain, and cause each of its Subsidiaries to maintain, insurance with responsible and reputable insurance companies or associations (including, without limitation, comprehensive general liability, and worker's compensation) with respect to its properties (including all real properties leased or owned by it) and business, in such amounts and covering such risks as is required by any Governmental Authority having jurisdiction with respect thereto or as is carried generally in accordance with sound business practice by companies in similar businesses similarly situated. All policies covering the Collateral are to be made payable to the Collateral Agent for the benefit of the Agents and the Lenders, as its interests may appear, in case of loss, under a standard non-contributory "lender" or "secured party" clause and are to contain such other provisions as the Collateral Agent may reasonably require to fully protect the Lenders' interest in the Collateral and to any payments to be made under such policies. Subject to Section 5.03(b), all certificates of insurance are to be delivered to the Collateral Agent and the policies are to be premium prepaid, with the Lender's loss payable and/or additional insured, as applicable, endorsement in favor of the Collateral Agent and such other Persons as the Collateral Agent may designate from time to time. All certificates of insurance shall provide for not less than 30 days' (10 days' in the case of non-payment) prior written notice to the Collateral Agent of the exercise of any right of cancellation. If any Loan Party or any of its Subsidiaries fails to maintain such insurance, the Collateral Agent may arrange for such insurance, but at the Borrower's expense and without any responsibility on the Collateral Agent's part for obtaining the insurance, the solvency of the insurance companies, the adequacy of the coverage, or the collection of claims; provided that, in the absence of an Event of Default, the Collateral Agent shall provide the Borrower with reasonable prior written notice before arranging for any such insurance. Upon the occurrence and during the continuance of an Event of Default, the Collateral Agent shall have the sole right, in the name of the Lenders, any Loan Party and its Subsidiaries, to file claims under any insurance policies, to receive, receipt and give acquittance for any payments that may be payable thereunder, and to execute any and all endorsements, receipts, releases, assignments, reassignments or other documents that may be necessary to effect the collection, compromise or settlement of any claims under any such insurance policies.

(i) Obtaining of Permits, Etc. Obtain, maintain and preserve, and cause each of its Subsidiaries to obtain, maintain and preserve, and take all necessary action to timely renew, all permits, licenses, authorizations, approvals, entitlements and accreditations which are necessary or useful in the proper conduct of its business, in each case, except to the extent the failure to obtain, maintain, preserve or take such action could not reasonably be expected to have a Material Adverse Effect.

(j) Environmental. (i) Keep any property either owned or operated by it or any of its Subsidiaries free of any Environmental Liens; (ii) comply, and cause each of its Subsidiaries to comply, with all Environmental Laws, except to the extent the failure to so comply could not reasonably be expected to have a Material Adverse Effect, and provide to the Collateral Agent any documentation of such compliance which the Collateral Agent may reasonably request; (iii) provide the Agents written notice within 10 days of an Authorized Officer gaining knowledge of any Release of a Hazardous Material in excess of any reportable quantity from or onto property at any time owned or operated by it or any of its Subsidiaries and take any Remedial Actions required to abate said Release, except for such Releases which could not reasonably be expected to have a Material Adverse Effect; and (iv) provide the Agents with written notice within 10 days of the receipt of any of the following: (A) notice that an Environmental Lien has been filed against any property of any Loan Party or any of its Subsidiaries; (B) commencement of any Environmental Action or notice that an Environmental Action will be filed against any Loan Party or any of its Subsidiaries; and (C) notice of a violation, citation or other administrative order from any Governmental Authority which could reasonably be expected to have a Material Adverse Effect.

(k) Fiscal Year. Cause the Fiscal Year of the Parent and its Subsidiaries to end on December 31st of each calendar year unless the Agents consent to a change in such Fiscal Year (and appropriate related changes to this Agreement).

(l) Landlord Waivers; Collateral Access Agreements. Unless otherwise waived by the Collateral Agent in its sole discretion, at any time any Collateral with a book value in excess of $500,000 (when aggregated with all other Collateral at the same location) is located on any real property of a Loan Party (whether such real property is now existing or acquired after the Effective Date) which is not owned by a Loan Party, or is stored on the premises of a bailee, warehouseman, or similar party, use commercially reasonable efforts to obtain written subordinations or waivers or collateral access agreements, as the case may be, in form and substance satisfactory to the Collateral Agent.

(m) After Acquired Real Property. Upon the acquisition by it or any of its Subsidiaries after the date hereof of any fee interest in any real property (wherever located and including, for the avoidance of doubt, any freehold interest in any English real property) (each such interest being a "New Facility") with a Current Value (as defined below) in excess of $1,000,000 immediately so notify the Collateral Agent, setting forth with specificity a description of the interest acquired, the location of the real property, any structures or improvements thereon and either an appraisal or such Loan Party's good-faith estimate of the current value of such real property (for purposes of this Section, the "Current Value"). The Collateral Agent shall notify such Loan Party whether it intends to require a Mortgage (and any other Real Property Deliverables) with respect to such New Facility. Upon receipt of such notice requesting a Mortgage (and any other Real Property Deliverables), the Loan Party that has acquired such New Facility shall furnish the same to the Collateral Agent within 30 Business Days of such request (or such later date as agreed to in writing by the Collateral Agent in its sole discretion). The Borrower shall pay all fees and expenses, including, without limitation, reasonable, documented attorneys' fees and expenses, and all title insurance charges and premiums, in connection with each Loan Party's obligations under this Section 7.01(m).

(n) Lender Meetings. Upon the reasonable prior written request of any Agent or the Required Lenders (which request, so long as no Event of Default shall have occurred and be continuing, shall not be made more than once during each Fiscal Year), participate in a meeting (which, at the option of the Borrower and reasonably acceptable to the Collateral Agent, may be by conference call) with the Agents and the Lenders, at such time as may be agreed to by the Borrower and such Agent or the Required Lenders; provided that, if such meeting is attended in person, the Loan Parties shall not be required to reimburse the Agent or any Lender for its costs and expenses incurred in connection therewith more than once in any 12 consecutive month period.

(o) Further Assurances. Take such action and execute, acknowledge and deliver, and cause each of its Subsidiaries to take such action and execute, acknowledge and deliver, at its sole cost and expense, such agreements, instruments or other documents as any Agent may reasonably require from time to time in order (i) to carry out more effectively the purposes of this Agreement and the other Loan Documents, (ii) to subject to valid and perfected first priority Liens any of the Collateral or any other property of any Loan Party and its Subsidiaries to the extent required by the Loan Documents, (iii) to establish and maintain the validity and effectiveness of any of the Loan Documents and the validity, perfection and priority of the Liens intended to be created thereby (subject to Permitted Liens) (including making all filings and registrations) and (iv) to better assure, convey, grant, assign, transfer and confirm unto each Secured Party the rights now or hereafter intended to be granted to it under this Agreement or any other Loan Document. In furtherance of the foregoing, to the maximum extent permitted by applicable law, each Loan Party (i) authorizes each Agent to execute any such agreements, instruments or other documents in such Loan Party's name and to file such agreements, instruments or other documents in any appropriate filing office, (ii) authorizes each Agent to file any financing statement required hereunder or under any other Loan Document, and any continuation statement or amendment with respect thereto, in any appropriate filing office without the signature of such Loan Party, and (iii) ratifies the filing of any financing statement, and any continuation statement or amendment with respect thereto, filed without the signature of such Loan Party prior to the date hereof.

Section 7.02 Negative Covenants. So long as any principal of or interest on any Loan or any other Obligation (whether or not due) shall remain unpaid (other than Contingent Indemnity Obligations) or any Lender shall have any Commitment hereunder, each Loan Party shall not, and shall not permit any of its Subsidiaries to:

(a) Liens, Etc. Create, incur, assume or suffer to exist, or permit any of its Subsidiaries to create, incur, assume or suffer to exist, any Lien upon or with respect to any of its properties, whether now owned or hereafter acquired; file or suffer to exist under the Uniform Commercial Code or any Requirement of Law of any jurisdiction, a financing statement (or the equivalent thereof) that names it or any of its Subsidiaries as debtor; sign or suffer to exist any security agreement authorizing any secured party thereunder to file such financing statement (or the equivalent thereof) other than, as to all of the above, Permitted Liens.

(b) Indebtedness. Create, incur, assume, guarantee or suffer to exist, or otherwise become or remain liable with respect to, or permit any of its Subsidiaries to create, incur, assume, guarantee or suffer to exist or otherwise become or remain liable with respect to, any Indebtedness other than Permitted Indebtedness.

(c) Fundamental Changes; Dispositions.

(i) Merge, consolidate or amalgamate with any Person, or permit any of its Subsidiaries to do (or agree to do) any of the foregoing; provided, however, that any wholly-owned Subsidiary of any Loan Party may be merged into such Loan Party (other than the Parent or any other Holdco) or another wholly-owned Subsidiary of such Loan Party, or may consolidate or amalgamate with another wholly-owned Subsidiary of such Loan Party, so long as (A) no other provision of this Agreement would be violated thereby, (B) such Loan Party gives the Agents at least 10 days' prior written notice of such merger, consolidation or amalgamation accompanied by true, correct and complete copies of all material agreements, documents and instruments relating to such merger, consolidation or amalgamation, including, but not limited to, the certificate or certificates of merger or amalgamation to be filed with each appropriate Secretary of State (with a copy as filed promptly after such filing), (C) no Default or Event of Default shall have occurred and be continuing either before or after giving effect to such transaction, (D) the Lenders' rights in any Collateral, including, without limitation, the existence, perfection and priority of any Lien thereon, are not adversely affected by such merger, consolidation or amalgamation and (E) in the case of mergers, consolidations and amalgamations involving a Loan Party, the surviving Subsidiary, if any, if not already a Loan Party, is joined as a Loan Party hereunder pursuant to a Joinder Agreement and is a party to the applicable Security Documents and the Equity Interests of such Subsidiary is the subject of the applicable Security Documents, in each case, which is in full force and effect on the date of and immediately after giving effect to such merger or consolidation; and (F) if a Borrower is a party to such merger, consolidation or amalgamation, a Borrower shall be the surviving entity in such merger, consolidation or amalgamation;

(ii) Wind-up, liquidate or permit any of its Subsidiaries to do any of the foregoing; provided, however, any Subsidiary of a Loan Party (other than Parent or the Borrower) may wind up, liquidate or dissolve if (A) the governing body of such Subsidiary shall determine that the preservation thereof is no longer desirable in the conduct of the business of the Parent and its Subsidiaries and (B) the assets of such Subsidiary are distributed to a Loan Party or a wholly-owned Subsidiary of a Loan Party (provided that if the Subsidiary is a Loan Party such Subsidiary's assets must be distributed to a Loan Party); and

(iii) Other than Permitted Dispositions and Permitted Restricted Payments, convey, sell, lease or sublease, transfer or otherwise dispose of, whether in one transaction or a series of related transactions, all or any part of its business, property or assets, whether now owned or hereafter acquired (or agree to do any of the foregoing), or permit any of its Subsidiaries to do any of the foregoing.

(d) Change in Nature of Business.

(i) Make, or permit any of its Subsidiaries to make, any change in the nature of its business as described in Section 6.01(l); provided, that this Section 7.02(d) shall not prohibit Parent or any of its Subsidiaries from engaging in any business activities reasonably related, ancillary or incidental thereto.

(ii) Permit the Parent or any other Holdco to have any material liabilities (other than liabilities arising or permitted under the Loan Documents), own any material assets (other than the Equity Interests of its Subsidiaries) or engage in any operations or business (other than the ownership of its Subsidiaries), except that each of the Parent and such Holdco may (A) incur liabilities under the Loan Documents or any documents evidencing Permitted Indebtedness, (B) perform its obligations under the Loan Documents, the IWCO Acquisition Documents and any other documents evidencing Permitted Indebtedness to which it is a party, (C) make investments, Restricted Payments and other transactions not prohibited by this Agreement or any of the other Loan Documents, (D) own the Equity Interests of its Subsidiaries and activities incidental thereto, including payment of dividends and other amounts in respect of its Equity Interests, in each case, solely as permitted pursuant to this Agreement, (E) maintain its legal existence (including the ability to incur fees, costs and expenses relating to such maintenance), (F) if applicable, participate in tax, accounting and other administrative matters as a member of a consolidated group, (G) provide indemnification to officers and directors in the ordinary course of business, (H) comply with Requirements of Law applicable to it, (I) obtain, and the pay any fees and expenses for, management, consulting, investment banking and advisory services to the extent otherwise permitted by this Agreement, and (J) any activities incidental or reasonably related to the foregoing.

(e) Loans, Advances, Investments, Etc. Make or commit or agree to make, or permit any of its Subsidiaries make or commit or agree to make, any Investment in any other Person except for Permitted Investments.

(f) Sale and Leaseback Transactions. Enter into, or permit any of its Subsidiaries to enter into, any Sale and Leaseback Transaction.

(g) Capital Expenditures. Make or commit or agree to make, or permit any of its Subsidiaries to make or commit or agree to make, any Capital Expenditure (by purchase or Capitalized Lease) that would cause the aggregate amount of all Capital Expenditures made by the Loan Parties and their Subsidiaries in any fiscal period set forth in the table below to exceed the amount set forth opposite such fiscal period:

Period	Capital Expenditure
Fiscal Year ended 2018	$15,000,000
Fiscal Year ended 2019	$15,000,000
Fiscal Year ended 2020	$15,000,000
Fiscal Year ended 2021	$15,000,000
Fiscal Year ended 2022	$15,000,000

; provided, however, that the amount of Capital Expenditures permitted to be made in any fiscal period set forth in the table above may be increased as follows: if the amount of the Capital Expenditures permitted to be made in any fiscal period set forth in the table above is greater than the actual amount of the Capital Expenditures actually made in such fiscal period (the amount by which such permitted Capital Expenditures for such fiscal period exceeds the actual amount of Capital Expenditures for such fiscal period, the "Excess Amount"), then such Excess Amount (such amount, the "Carry-Over Amount") may be carried forward to the next succeeding fiscal period (the "Succeeding Fiscal Period"); provided that the Carry-Over Amount applicable to a particular Succeeding Fiscal Period may not be carried forward to another fiscal period and Capital Expenditures made by the Loan Parties and their Subsidiaries in any fiscal period shall be deemed to reduce first, the amount set forth in the table above for such fiscal period, and then the Carry-Over Amount.

(h) Restricted Payments. Make or permit any of its Subsidiaries to make any Restricted Payment other than Permitted Restricted Payments.

(i) Federal Reserve Regulations. Permit any Loan or the proceeds of any Loan under this Agreement to be used for any purpose that would cause such Loan to be a margin loan under the provisions of Regulation T, U or X of the Board.

(j) Transactions with Affiliates. Enter into, renew, extend or be a party to, or permit any of its Subsidiaries to enter into, renew, extend or be a party to, any transaction or series of related transactions (including, without limitation, the purchase, sale, lease, transfer or exchange of property or assets of any kind or the rendering of services of any kind) with any Affiliate, except (i) transactions consummated in the ordinary course of business in a manner and to an extent consistent with past practice and necessary or desirable for the prudent operation of its business, for fair consideration and on terms no less favorable to it or its Subsidiaries than would be obtainable in a comparable arm's length transaction with a Person that is not an Affiliate thereof, and that are consented to by the Collateral Agent prior to the consummation thereof, if they involve one or more payments by the Parent or any of its Subsidiaries in excess of $250,000 for any single transaction or series of related transactions, (ii) transactions among Loan Parties and their Subsidiaries in the ordinary course of business to the extent not otherwise prohibited by this Agreement, (iii) transactions permitted by Section 7.02(c), Section 7.02(e) and Section 7.02(h), (iv) sales of Qualified Equity Interests of the Parent to Affiliates of the Parent not otherwise prohibited by the Loan Documents and the granting of registration and other customary rights in connection therewith, (v) reasonable and customary director and officer compensation, benefits and indemnification arrangements approved by the Board of Directors (or committee thereof) of the Parent or the applicable Subsidiary, and (vi) Permitted Restricted Payments.

(k) Limitations on Dividends and Other Payment Restrictions Affecting Subsidiaries. Create or otherwise cause, incur, assume, suffer or permit to exist or become effective any consensual encumbrance or restriction of any kind on the ability of any Subsidiary of any Loan Party (i) to pay dividends or to make any other distribution on any Equity Interests of such Subsidiary owned by any Loan Party or any of its Subsidiaries, (ii) to pay or prepay or to subordinate any Indebtedness owed to any Loan Party or any of its Subsidiaries, (iii) to make loans or advances to any Loan Party or any of its Subsidiaries or (iv) to transfer any of its property or assets to any Loan Party or any of its Subsidiaries, or permit any of its Subsidiaries to do any of the foregoing; provided, however, that nothing in any of clauses (i) through (iv) of this Section 7.02(k) shall prohibit or restrict compliance with:

(A) this Agreement and the other Loan Documents and, so long as such documents are not more restrictive than this Agreement and the other Loan Documents, any other document entered into in connection with Permitted Indebtedness;

(B) any agreement in effect on the date of this Agreement and described on Schedule 7.02(k), or any extension, replacement or continuation of any such agreement; provided that any such encumbrance or restriction contained in such extended, replaced or continued agreement is no less favorable to the Agents and the Lenders than the encumbrance or restriction under or pursuant to the agreement so extended, replaced or continued;

(C) any applicable law, rule or regulation (including, without limitation, applicable currency control laws and applicable state corporate statutes restricting the payment of dividends in certain circumstances);

(D) in the case of clause (iv), customary restrictions on the subletting, assignment or transfer of any specified property or asset set forth in a lease, license, asset sale agreement or similar contract for the conveyance of such property or asset;

(E) in the case of clause (iv), any agreement, instrument or other document evidencing a Permitted Lien (or the Indebtedness secured thereby) from restricting on customary terms the transfer of any property or assets subject thereto;

(F) customary restrictions on dispositions of real property interests found in reciprocal easement agreements;

(G) customary restrictions in agreements for the sale of assets on the transfer or encumbrance of such assets during an interim period prior to the closing of the sale of such assets; or

(H) customary restrictions in contracts that prohibit the assignment of such contract.

(l) Limitations on Negative Pledges. Enter into, incur or permit to exist, or permit any Subsidiary to enter into, incur or permit to exist, directly or indirectly, any agreement, instrument, deed, lease or other arrangement that prohibits, restricts or imposes any condition upon the ability of any Loan Party or any Subsidiary of any Loan Party to create, incur or permit to exist any Lien upon any of its property or revenues, whether now owned or hereafter acquired, or that requires the grant of any security for an obligation if security is granted for another obligation, except the following: (i) this Agreement and the other Loan Documents and any other document entered into in connection with any other Permitted Indebtedness, so long as the prohibitions, restrictions and conditions that are set forth in such documents are not more restrictive than this Agreement and the other Loan Documents, (ii) restrictions or conditions imposed by any agreement relating to secured Indebtedness permitted by Section 7.02(b) of this Agreement if such restrictions or conditions apply only to the property or assets securing such Indebtedness, (iii) any customary restrictions and conditions contained in agreements relating to the sale or other disposition of assets or of a Subsidiary pending such sale or other disposition; provided that such restrictions and conditions apply only to the assets or Subsidiary to be sold or disposed of and such sale or disposition is permitted hereunder, (iv) customary provisions in leases restricting the assignment or sublet thereof and (v) provisions of any software and other Intellectual Property licenses pursuant to which any Loan Party or any Subsidiary of any Loan Party is the licensee or licensor of the relevant software or Intellectual Property, as the case may be, provided that such provisions apply only to the assets subject to the applicable license.

(m) Modifications of Indebtedness, Organizational Documents and Certain Other Agreements; Etc.

(i) Amend, modify or otherwise change (or permit the amendment, modification or other change in any manner of) any of the provisions of any of its or its Subsidiaries' Subordinated Indebtedness or any other Indebtedness that is secured by a lien that is subordinated to the liens securing the Obligations or of any instrument or agreement (including, without limitation, any purchase agreement, indenture, loan agreement or security agreement) relating to any such Indebtedness if (in the case of this clause (y) only) such amendment, modification or change would shorten the final maturity or average life to maturity of, or require any payment to be made earlier than the date originally scheduled on, such Indebtedness, would increase the interest rate applicable to such Indebtedness, would add any covenant or event of default, would change the subordination provision, if any, of such Indebtedness, or would otherwise be materially adverse to the Lenders or the issuer of such Indebtedness in any respect unless such amendment, modification or change is permitted under the applicable subordination or intercreditor agreement updated thereto;

(ii) (A) make any payment, prepayment, redemption, defeasance, sinking fund payment or repurchase of any Subordinated Indebtedness or any other Indebtedness that is secured by a lien that is subordinated to the liens securing the Obligations in violation of the subordination provisions thereof or any subordination agreement with respect thereto; provided that, the Loan Parties may (1) make regularly scheduled interest payments and payments of fees, expenses and indemnification obligations as and when due in respect of any such Indebtedness (other than payments prohibited by the subordination provisions thereof or any subordination or intercreditor agreement with respect thereto), (2) refinance or exchange such Indebtedness with Permitted Refinancing Indebtedness, (3) payment with respect to Permitted Intercompany Investments constituting Indebtedness made by a Subsidiary that is not Loan Party to a Loan Party so long as not in violation of the subordination provisions applicable thereto, (4) payment with respect to Permitted Intercompany Investments constituting Indebtedness made by a Loan Party to a Loan Party or a Subsidiary that is not Loan Party, and (5) make such payment with, or convert such Indebtedness to, Equity Interests (other than Disqualified Equity Interests) or otherwise set off obligations owing to a Loan Party or any Subsidiary by the holder of such Subordinated Indebtedness against such Subordinated Indebtedness;

(iii) amend, modify or otherwise change any of its Governing Documents (including, without limitation, by the filing or modification of any certificate of designation, or any agreement or arrangement entered into by it) with respect to any of its Equity Interests (including any shareholders' agreement), or enter into any new agreement with respect to any of its Equity Interests, except any such amendments, modifications or changes or any such new agreements or arrangements pursuant to this clause (iii) that (A) either individually or in the aggregate could not reasonably be expected to have a Material Adverse Effect and (B) could not reasonably be expected to be materially adverse to the Agents or the Lenders;

(iv) amend, modify or otherwise change or waive any of its rights under any Acquisition Document if such amendment, modification, change or waiver could reasonably be expected to have a Material Adverse Effect; or

(v) amend, modify or otherwise change its name, jurisdiction of incorporation or organization, organizational identification number or FEIN, except that a Loan Party may (A) change its name, jurisdiction of incorporation or organization, organizational identification number or FEIN in connection with a transaction permitted by Section 7.02(c) and (B) change its name upon at least 10 days' prior written notice by the Borrower to the Collateral Agent of such change and so long as, at the time of such written notification, such Person provides any financing statements or fixture filings necessary to perfect and continue perfected the Collateral Agent's Liens.

(n) Investment Company Act of 1940. Engage in any business, enter into any transaction, use any securities or take any other action or permit any of its Subsidiaries to do any of the foregoing, that would cause it or any of its Subsidiaries to become subject to the registration requirements of the Investment Company Act of 1940, as amended, by virtue of being an "investment company" or a company "controlled" by an "investment company" not entitled to an exemption within the meaning of such Act.

(o) ERISA. Engage, or permit (to the extent within the control of any Loan Party) any ERISA Affiliate to engage, in any transaction described in Section 4069 of ERISA; (ii) engage in any prohibited transaction described in Section 406 of ERISA or 4975 of the Internal Revenue Code for which a statutory or class exemption is not available or a private exemption has not previously been obtained from the U.S. Department of Labor; (iii) adopt any employee welfare benefit plan within the meaning of Section 3(1) of ERISA which provides benefits to employees after termination of employment other than as required by Section 601 of ERISA or applicable law; (iv) fail to make any contribution or payment to any Multiemployer Plan which it or any ERISA Affiliate may be required to make under any agreement relating to such Multiemployer Plan, or any law pertaining thereto; or (v) fail, or permit (to the extent within the control of any Loan Party) any ERISA Affiliate to fail, to pay any required installment or any other payment required under Section 412 of the Internal Revenue Code on or before the due date for such installment or other payment, in each case, that could, individually or in the aggregate, reasonably be expected to result in liability to the Loan Parties in excess of $1,000,000.

(p) Environmental. Permit the use, handling, generation, storage, treatment, Release or disposal of Hazardous Materials at any property owned or leased by it or any of its Subsidiaries, except in compliance with Environmental Laws (other than any noncompliance that could not reasonably be expected to have a Material Adverse Effect).

(q) Anti-Terrorism Laws.

(i) None of the Loan Parties, nor any of their Affiliates (other than other portfolio companies), shall:

(A) conduct any business or engage in any transaction or dealing with or for the benefit of any Blocked Person, including the making or receiving of any contribution of funds, goods or services to, from or for the benefit of any Blocked Person;

(B) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked or subject to blocking pursuant to the OFAC Sanctions Programs;

(C) use any of the proceeds of the transactions contemplated by this Agreement to finance, promote or otherwise support in any manner any illegal activity, including, without limitation, any violation of the Anti-Terrorism Laws or any specified unlawful activity as that term is defined in the Money Laundering Control Act of 1986, 18 U.S.C. §§ 1956 and 1957; or

(D) violate, attempt to violate, or engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, any of the Anti-Terrorism Laws.

(ii) None of the Loan Parties, nor, to the knowledge of any Loan Party, any Affiliate (other than other portfolio companies) shall be or shall become a Blocked Person.

The Borrower shall deliver to the Lenders any certification or other evidence requested from time to time by any Lender in its reasonable discretion, confirming the Borrower's compliance with this Section 7.02(q).

(r) Anti-Bribery and Anti-Corruption Laws. None of the Loan Parties shall:

(i) offer, promise, pay, give, or authorize the payment or giving of any money, gift or other thing of value, directly or indirectly, to or for the benefit of any Foreign Official for the purpose of: (1) influencing any act or decision of such Foreign Official in his, her, or its official capacity; or (2) inducing such Foreign Official to do, or omit to do, an act in violation of the lawful duty of such Foreign Official, or (3) securing any improper advantage, in order to obtain or retain business for, or with, or to direct business to, any Person;

(ii) otherwise violate, attempt to violate or engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, any Anti-Corruption Law; or

(iii) act or attempt to act in any manner which would subject any of the Loan Parties to liability under any Anti-Corruption Law.

Section 7.03 Financial Covenant. So long as any principal of or interest on any Loan or any other Obligation (whether or not due) shall remain unpaid (other than Contingent Indemnity Obligations) or any Lender shall have any Commitment hereunder, each Loan Party shall not, on each Compliance Date, permit the Leverage Ratio of the Parent and its Subsidiaries for any period of 4 consecutive fiscal quarters of the Parent and its Subsidiaries for which the last fiscal quarter ends on a date set forth below to be greater than the ratio set forth opposite such date:

Date of Fiscal Quarter End	Ratio
December 31, 2017 through and including September 30, 2018	6.25 to 1.00
December 31, 2018	6.00 to 1.00
March 31, 2019 through and including December 31, 2019	5.50 to 1.00
March 31, 2020 through and including December 31, 2020	5.00 to 1.00
March 31, 2021 through and including December 31, 2021	4.50 to 1.00
March 31, 2022 and thereafter	4.00 to 1.00

; provided that Parent shall have the right to issue Permitted Cure Equity for cash or otherwise receive cash contributions to the capital of the Parent, and, in each case, to contribute any such cash to the capital of the Borrower, and apply the amount of the proceeds thereof, consistent with Section 2.05(c)(v), to prepay the principal of any Revolving Loan, in whole or in part (but shall not result in a reduction of the Total Revolving Credit Commitment) in an amount not less than the amount necessary such that Liquidity (which shall be measured as the average Liquidity for the last 10 consecutive days of the applicable fiscal quarter and shall be calculated to give pro forma effect to any such Revolving Loan prepayment) of Parent and its Subsidiaries is not less than $15,000,000 (the "Cure Right"), so long as (a) the Borrower provides the Agents written notice of its expectation to receive proceeds from Permitted Cure Equity, and such proceeds are actually received by the Borrower, no later than 3 Business Days prior to the last day of the applicable fiscal quarter and (b) the aggregate proceeds received in connection with the exercise of all Cure Rights shall not exceed $40,000,000.

ARTICLE VIII

CASH MANAGEMENT ARRANGEMENTS AND OTHER COLLATERAL MATTERS

Section 8.01 Cash Management Arrangements.

(a) The Loan Parties shall (i) establish and maintain cash management services at one or more banks determined by them (each a "Cash Management Bank") and (ii) except as otherwise provided under Section 8.01(b), deposit or cause to be deposited promptly, and in any event no later than the next Business Day after the date of receipt thereof, all proceeds in respect of any Collateral, all Collections (of a nature susceptible to a deposit in a bank account) and all other amounts received by any Loan Party (including payments made by Account Debtors directly to any Loan Party) into a Cash Management Account.

(b) Within 60 days after the Effective Date (or such later date agreed to by the Collateral Agent), the Loan Parties shall, with respect to each Cash Management Account (other than Excluded Accounts), deliver to the Collateral Agent a Control Agreement with respect to such Cash Management Account. From and after the date that is 60 days following the Effective Date, the Loan Parties shall not maintain, and shall not permit any of their Subsidiaries to maintain, cash, Cash Equivalents or other amounts in any deposit account or securities account, unless the Collateral Agent shall have received a Control Agreement in respect of each such Cash Management Account (other than Excluded Accounts); provided that with respect to any deposit account or securities account (other than an Excluded Account) acquired by such Loan Party pursuant to a Permitted Acquisition, the applicable Loan Party shall deliver to Collateral Agent a Control Agreement with respect to such account within 60 days after such Permitted Acquisition or such later date as the Administrative Agent may agree in its sole discretion.

(c) Upon the terms and subject to the conditions set forth in a Control Agreement with respect to a Cash Management Account, all amounts received in such Cash Management Account shall at the Administrative Agent's direction be wired each Business Day into the Administrative Agent's Account, except that, so long as no Event of Default has occurred and is continuing, the Administrative Agent will not direct the Cash Management Bank to transfer funds in such Cash Management Account to the Administrative Agent's Account.

(d) So long as no Default or Event of Default has occurred and is continuing, the Borrower may amend Schedule 8.01 to add or replace a Cash Management Bank or Cash Management Account; provided, however, that within 60 days (or such later date as the Administrative Agent may agree) of the opening of such Cash Management Account, each Loan Party and such prospective Cash Management Bank shall have executed and delivered to the Collateral Agent a Control Agreement.

ARTICLE IX

EVENTS OF DEFAULT

Section 9.01 Events of Default. Each of the following events shall constitute an event of default (each, an "Event of Default"):

(a) the Borrower shall fail to pay, when due (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise), (i) any interest on any Loan, any Agent Advance, or any fee, indemnity or other amount payable under this Agreement (other than any portion thereof constituting principal of the Loans) or any other Loan Document, and such failure continues for a period of 3 Business Days or (ii) all or any portion of the principal of the Loans;

(b) any representation or warranty made or deemed made by or on behalf of any Loan Party or by any officer of the foregoing under or in connection with any Loan Document or under or in connection with any certificate or other writing delivered to any Secured Party pursuant to any Loan Document shall have been incorrect in any material respect (or in any respect if such representation or warranty is qualified or modified as to materiality or "Material Adverse Effect" in the text thereof) when made or deemed made;

(c) (i) any Loan Party shall fail to perform or comply with any covenant or agreement contained Section 7.01(d), Section 7.01(f), Section 7.01(h), Section 7.01(k), Section 7.01(m), Section 7.02 or Section 7.03, (ii) any Loan Party shall fail to perform or comply with in clauses (i) through (iv) of Section 7.01(a) and, solely in the case of this clause (ii), such failure, if capable of being remedied, shall remain unremedied for 5 Business Days after the earlier of the date an Authorized Officer of any Loan Party has knowledge of such failure and the date written notice of such default shall have been given by any Agent to such Loan Party, or (iii) any Loan Party shall fail to perform or comply with Section 7.01(c) or 7.01(n) or any covenant or agreement contained in any Security Document and, solely in the case of this clause (iii), such failure, if capable of being remedied, shall remain unremedied for 10 days after the earlier of the date an Authorized Officer of any Loan Party has knowledge of such failure and the date written notice of such default shall have been given by any Agent to such Loan Party;

(d) any Loan Party shall fail to perform or comply with any other term, covenant or agreement contained in any other Loan Document to be performed or observed by it and, except as set forth in subsections (a), (b) and (c) of this Section 9.01, such failure, if capable of being remedied, shall remain unremedied for 30 days after the earlier of the date a senior officer of any Loan Party has knowledge of such failure and the date written notice of such default shall have been given by any Agent to such Loan Party;

(e) any Loan Party shall fail to pay when due (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise) any principal, interest or other amount payable in respect of Indebtedness (excluding Indebtedness evidenced by this Agreement) having an aggregate amount outstanding in excess of $2,000,000, and such failure shall continue after the applicable grace period, if any, specified in the agreement or instrument relating to such Indebtedness, or any other default under any agreement or instrument relating to any such Indebtedness, or any other event, shall occur and shall continue after the applicable grace period, if any, specified in such agreement or instrument, if the effect of such default or event is to accelerate, or to permit the acceleration of, the maturity of such Indebtedness; or any such Indebtedness shall be declared to be due and payable, or required to be prepaid (other than by a regularly scheduled required prepayment), redeemed, purchased or defeased or an offer to prepay, redeem, purchase or defease such Indebtedness shall be required to be made, in each case, prior to the stated maturity thereof;

(f) ModusLink, any Loan Party or any Subsidiary of a Loan Party (i) shall institute any proceeding or voluntary case seeking to adjudicate it a bankrupt or insolvent, or seeking dissolution, liquidation, winding up, reorganization, arrangement, adjustment, protection, relief or composition of it or its debts under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, or seeking the entry of an order for relief or the appointment of a receiver, trustee, custodian or other similar official for any such Person or for any substantial part of its property, (ii) shall admit in writing its inability to pay its debts generally, (iii) shall make a general assignment for the benefit of creditors, or (iv) shall take any corporate action to authorize or effect any of the actions set forth above in this subsection (f);

(g) any proceeding shall be instituted against ModusLink, any Loan Party or any Subsidiary of a Loan Party seeking to adjudicate it a bankrupt or insolvent, or seeking dissolution, liquidation, winding up, reorganization, arrangement, adjustment, protection, relief of debtors, or seeking the entry of an order for relief or the appointment of a receiver, trustee, custodian or other similar official for any such Person or for any substantial part of its property, and either such proceeding shall remain undismissed or unstayed for a period of 60 days or any of the actions sought in such proceeding (including, without limitation, the entry of an order for relief against any such Person or the appointment of a receiver, trustee, custodian or other similar official for it or for any substantial part of its property) shall occur;

(h) any material provision of any Loan Document shall at any time for any reason (other than pursuant to the express terms thereof) cease to be valid and binding on or enforceable against any Loan Party intended to be a party thereto, or the validity or enforceability thereof shall be contested by any Loan Party, or a proceeding shall be commenced by any Loan Party or any Governmental Authority having jurisdiction over any of them, seeking to establish the invalidity or unenforceability thereof, or any Loan Party shall deny in writing that it has any liability or obligation purported to be created under any Loan Document;

(i) any Security Document, any Mortgage or any other security document, after delivery thereof pursuant hereto, shall for any reason fail or cease to create a valid and perfected and, except to the extent permitted by the terms hereof or thereof, first priority Lien in favor of the Collateral Agent for the benefit of the Agents and the Lenders on any Collateral with a fair market value of more than $1,000,000 in the aggregate purported to be covered thereby;

(j) one or more judgments, orders or awards (or any settlement of any litigation or other proceeding that, if breached, could result in a judgment, order or award) for the payment of money exceeding $2,000,000 in the aggregate (except to the extent fully covered (other than to the extent of customary deductibles) by insurance pursuant to which the insurer has been notified and has not denied coverage) shall be rendered against any Loan Party and remain unsatisfied and (i) enforcement proceedings shall have been commenced by any creditor upon any such judgment, order, award or settlement or (ii) there shall be a period of 10 consecutive days after entry thereof during which (A) a stay of enforcement thereof is not be in effect or (B) the same is not vacated, discharged, stayed or bonded pending appeal;

(k) any Loan Party is enjoined, restrained or in any way prevented by the order of any court or any Governmental Authority from conducting, or otherwise ceases to conduct for any reason whatsoever, all or any material part of the Loan Parties' business, taken as a whole, for more than 15 consecutive days;

(l) any material damage to, or loss, theft or destruction of Collateral, taken as a whole, whether or not insured, or any strike, lockout, labor dispute, embargo, condemnation, act of God or public enemy, or other casualty which causes, for more than 15 consecutive Business Days, the cessation or substantial curtailment of revenue producing activities at any facility of any Loan Party, if any such event or circumstance could reasonably be expected to have a Material Adverse Effect;

(m) [reserved];

(n) the indictment of any Loan Party under any criminal statute, or commencement of criminal or civil proceedings against any Loan Party, pursuant to which statute or proceedings the penalties or remedies sought or available include forfeiture to any Governmental Authority of any material portion of the property of the Loan Parties;

(o) any Loan Party or any of its ERISA Affiliates shall have made a complete or partial withdrawal from a Multiemployer Plan, and, as a result of such complete or partial withdrawal, any Loan Party incurs a withdrawal liability in an annual amount exceeding $1,000,000;

(p) any Termination Event with respect to any Employee Plan shall have occurred, and, 30 days after notice thereof shall have been given to Borrower by any Agent, (i) such Termination Event (if correctable) shall not have been corrected, and (ii) the occurrence of such Termination Event has resulted or could reasonably be expected to result in the incurrence of a liability (including a liability under Section 409, 502(i), 502(l), 515, 4062, 4063, 4064, 4069, 4201, 4204 or 4212 of ERISA or Section 4971 or 4975 of the Internal Revenue Code) to a loan party in excess of $1,000,000;

(q) a Change of Control shall have occurred; or

(r) there shall occur and be continuing any "Event of Default" (or any comparable term) under, and as defined in the documents evidencing or governing any Subordinated Indebtedness, (ii) any of the Obligations for any reason shall cease to be "Senior Debt" or "Designated Senior Indebtedness" (or any comparable terms) under, and as defined in the documents evidencing or governing any Subordinated Indebtedness, (iii) any Indebtedness other than the Obligations shall constitute "Designated Senior Indebtedness" (or any comparable term) under, and as defined in, the documents evidencing or governing any Subordinated Indebtedness, (iv) any holder of Subordinated Indebtedness shall fail to perform or comply with any of the subordination provisions of the documents evidencing or governing such Subordinated Indebtedness, or (v) the subordination provisions of the documents evidencing or governing any Subordinated Indebtedness shall, in whole or in part, terminate, cease to be effective or cease to be legally valid, binding and enforceable against any holder of the applicable Subordinated Indebtedness;

then, and in any such event, the Collateral Agent (and solely with respect to clause (i) below, the Administrative Agent) may, and shall at the request of the Required Lenders, by notice to the Borrower, (i) terminate or reduce all Commitments, whereupon all Commitments shall immediately be so terminated or reduced, (ii) declare all or any portion of the Loans then outstanding to be due and payable, whereupon all or such portion of the aggregate principal of all Loans, all accrued and unpaid interest thereon, all fees and all other amounts payable under this Agreement and the other Loan Documents shall become due and payable immediately, together with the payment of the Applicable Prepayment Premium (if any) with respect to the Commitments so terminated and the Loans so repaid, without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by each Loan Party and (iii) exercise any and all of its other rights and remedies under applicable law, hereunder and under the other Loan Documents; provided, however, that upon the occurrence of any Event of Default described in subsection (f) or (g) of this Section 9.01 with respect to any Loan Party, without any notice to any Loan Party or any other Person or any act by any Agent or any Lender, all Commitments shall automatically terminate and all Loans then outstanding, together with all accrued and unpaid interest thereon, all fees and all other amounts due under this Agreement and the other Loan Documents, including, without limitation, the Applicable Prepayment Premium (if any), shall become due and payable automatically and immediately, without presentment, demand, protest or notice of any kind, all of which are expressly waived by each Loan Party.

ARTICLE X

AGENTS

Section 10.01 Appointment. Each Lender (and each subsequent maker of any Loan by its making thereof) hereby irrevocably appoints, authorizes and empowers the Administrative Agent and the Collateral Agent to perform the duties of each such Agent as set forth in this Agreement and the other Loan Documents, together with such actions and powers as are reasonably incidental thereto, including: (i) to receive on behalf of each Lender any payment of principal of or interest on the Loans outstanding hereunder and all other amounts accrued hereunder for the account of the Lenders and paid to such Agent, and, subject to Section 2.02 of this Agreement, to distribute promptly to each Lender its Pro Rata Share of all payments so received; (ii) to distribute to each Lender copies of all material notices and agreements received by such Agent and not required to be delivered to each Lender pursuant to the terms of this Agreement, provided that the Agents shall not have any liability to the Lenders for any Agent's inadvertent failure to distribute any such notices or agreements to the Lenders; (iii) to maintain, in accordance with its customary business practices, ledgers and records reflecting the status of the Obligations, the Loans, and related matters and to maintain, in accordance with its customary business practices, ledgers and records reflecting the status of the Collateral and related matters; (iv) to execute or file any and all financing or similar statements or notices, amendments, renewals, supplements, documents, instruments, proofs of claim, notices and other written agreements with respect to this Agreement or any other Loan Document; (v) to make the Loans and Agent Advances, for such Agent or on behalf of the applicable Lenders as provided in this Agreement or any other Loan Document; (vi) to perform, exercise, and enforce any and all other rights and remedies of the Lenders with respect to the Loan Parties, the Obligations, or otherwise related to any of same to the extent reasonably incidental to the exercise by such Agent of the rights and remedies specifically authorized to be exercised by such Agent by the terms of this Agreement or any other Loan Document; (vii) to incur and pay such fees necessary or appropriate for the performance and fulfillment of its functions and powers pursuant to this Agreement or any other Loan Document; (viii) subject to Section 10.03, to take such action as such Agent deems appropriate on its behalf to administer the Loans and the Loan Documents and to exercise such other powers delegated to such Agent by the terms hereof or the other Loan Documents (including, without limitation, the power to give or to refuse to give notices, waivers, consents, approvals and instructions and the power to make or to refuse to make determinations and calculations); and (ix) to act with respect to all Collateral under the Loan Documents, including for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Loan Parties to secure any of the Obligations. As to any matters not expressly provided for by this Agreement and the other Loan Documents (including, without limitation, enforcement or collection of the Loans), the Agents shall not be required to exercise any discretion or take any action, but shall be required to act or to refrain from acting (and shall be fully protected in so acting or refraining from acting) upon the instructions of the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), and such instructions of the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents) shall be binding upon all Lenders and all makers of Loans; provided, however, that the Agents shall not be required to take any action which, in the reasonable opinion of any Agent, exposes such Agent to liability or which is contrary to this Agreement or any other Loan Document or applicable law.

Section 10.02 Nature of Duties; Delegation

(a) The Agents shall have no duties or responsibilities except those expressly set forth in this Agreement or in the other Loan Documents. The duties of the Agents shall be mechanical and administrative in nature. The Agents shall not have by reason of this Agreement or any other Loan Document a fiduciary relationship in respect of any Lender. Nothing in this Agreement or any other Loan Document, express or implied, is intended to or shall be construed to impose upon the Agents any obligations in respect of this Agreement or any other Loan Document except as expressly set forth herein or therein. Each Lender shall make its own independent investigation of the financial condition and affairs of the Loan Parties in connection with the making and the continuance of the Loans hereunder and shall make its own appraisal of the creditworthiness of the Loan Parties and the value of the Collateral, and the Agents shall have no duty or responsibility, either initially or on a continuing basis, to provide any Lender with any credit or other information with respect thereto, whether coming into their possession before the initial Loan hereunder or at any time or times thereafter, provided that, upon the reasonable request of a Lender, each Agent shall provide to such Lender any documents or reports delivered to such Agent by the Loan Parties pursuant to the terms of this Agreement or any other Loan Document. If any Agent seeks the consent or approval of the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents) to the taking or refraining from taking any action hereunder, such Agent shall send notice thereof to each Lender. Each Agent shall promptly notify each Lender any time that the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents) have instructed such Agent to act or refrain from acting pursuant hereto.

(b) Each Agent may, upon any term or condition it specifies, delegate or exercise any of its rights, powers and remedies under, and delegate or perform any of its duties or any other action with respect to, any Loan Document by or through any trustee, co-agent, employee, attorney-in-fact and any other Person (including any Lender). Any such Person shall benefit from this Article X to the extent provided by the applicable Agent.

Section 10.03 Rights, Exculpation, Etc. The Agents and their directors, officers, agents or employees shall not be liable for any action taken or omitted to be taken by them under or in connection with this Agreement or the other Loan Documents, except for their own gross negligence or willful misconduct as determined by a final non-appealable judgment of a court of competent jurisdiction. Without limiting the generality of the foregoing, the Agents (i) may treat the payee of any Loan as the owner thereof until the Agents receive written notice of the assignment or transfer thereof, pursuant to Section 12.07 hereof, signed by such payee and in form reasonably satisfactory to the Collateral Agent (and, with respect to Revolving Loans and/or Revolving Credit Commitments, the Administrative Agent); (ii) may consult with legal counsel (including, without limitation, counsel to any Agent or counsel to the Loan Parties), independent public accountants, and other experts selected by any of them and shall not be liable for any action taken or omitted to be taken in good faith by any of them in accordance with the advice of such counsel or experts; (iii) make no warranty or representation to any Lender and shall not be responsible to any Lender for any statements, certificates, warranties or representations made in or in connection with this Agreement or the other Loan Documents; (iv) shall not have any duty to ascertain or to inquire as to the performance or observance of any of the terms, covenants or conditions of this Agreement or the other Loan Documents on the part of any Person, the existence or possible existence of any Default or Event of Default, or to inspect the Collateral or other property (including, without limitation, the books and records) of any Person; (v) shall not be responsible to any Lender for the due execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement or the other Loan Documents or any other instrument or document furnished pursuant hereto or thereto; and (vi) shall not be deemed to have made any representation or warranty regarding the existence, value or collectibility of the Collateral, the existence, priority or perfection of the Collateral Agent's Lien thereon, or any certificate prepared by any Loan Party in connection therewith, nor shall the Agents be responsible or liable to the Lenders for any failure to monitor or maintain any portion of the Collateral. The Agents shall not be liable for any apportionment or distribution of payments made in good faith pursuant to Section 4.03, and if any such apportionment or distribution is subsequently determined to have been made in error, and the sole recourse of any Lender to whom payment was due but not made shall be to recover from other Lenders any payment in excess of the amount which they are determined to be entitled. The Agents may at any time request instructions from the Lenders with respect to any actions or approvals which by the terms of this Agreement or of any of the other Loan Documents the Agents are permitted or required to take or to grant, and if such instructions are promptly requested, the Agents shall be absolutely entitled to refrain from taking any action or to withhold any approval under any of the Loan Documents until they shall have received such instructions from the Required Lenders. Without limiting the foregoing, no Lender shall have any right of action whatsoever against any Agent as a result of such Agent acting or refraining from acting under this Agreement or any of the other Loan Documents in accordance with the instructions of the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents).

Section 10.04 Reliance. Each Agent shall be entitled to rely upon any written notices, statements, certificates, orders or other documents or any telephone message believed by it in good faith to be genuine and correct and to have been signed, sent or made by the proper Person, and with respect to all matters pertaining to this Agreement or any of the other Loan Documents and its duties hereunder or thereunder, upon advice of counsel selected by it.

Section 10.05 Indemnification. To the extent that any Agent is not reimbursed and indemnified by any Loan Party, and whether or not such Agent has made demand on any Loan Party for the same, the Lenders will, within five days of written demand by such Agent, reimburse such Agent for and indemnify such Agent from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses (including, without limitation, client charges and expenses of counsel or any other advisor to such Agent), advances or disbursements of any kind or nature whatsoever which may be imposed on, incurred by, or asserted against such Agent in any way relating to or arising out of this Agreement or any of the other Loan Documents or any action taken or omitted by such Agent under this Agreement or any of the other Loan Documents, in proportion to each Lender's Pro Rata Share, including, without limitation, advances and disbursements made pursuant to Section 10.08; provided, however, that no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses, advances or disbursements for which there has been a final non-appealable judicial determination that such liability resulted from such Agent's gross negligence or willful misconduct. The obligations of the Lenders under this Section 10.05 shall survive the payment in full of the Loans and the termination of this Agreement.

Section 10.06 Agents Individually. With respect to its Pro Rata Share of the Total Commitment hereunder and the Loans made by it, each Agent shall have and may exercise the same rights and powers hereunder and is subject to the same obligations and liabilities as and to the extent set forth herein for any other Lender or maker of a Loan. The terms "Lenders" or "Required Lenders" or any similar terms shall, unless the context clearly otherwise indicates, include each Agent in its individual capacity as a Lender or one of the Required Lenders. Each Agent and its Affiliates may accept deposits from, lend money to, and generally engage in any kind of banking, trust or other business with the Borrower as if it were not acting as an Agent pursuant hereto without any duty to account to the other Lenders.

Section 10.07 Successor Agent.

(a) Any Agent may at any time give at least 30 days prior written notice of its resignation to the Lenders and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the Borrower, to appoint a successor Agent. If no such successor Agent shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Agent gives notice of its resignation (or such earlier day as shall be agreed by the Required Lenders) (the "Resignation Effective Date"), then the retiring Agent may (but shall not be obligated to), on behalf of the Lenders, appoint a successor Agent. Whether or not a successor Agent has been appointed, such resignation shall become effective in accordance with such notice on the Resignation Effective Date.

(b) With effect from the Resignation Effective Date, (i) the retiring Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any Collateral held by such Agent on behalf of the Lenders under any of the Loan Documents, the retiring Agent shall continue to hold such collateral security until such time as a successor Agent is appointed) and (ii) all payments, communications and determinations provided to be made by, to or through such retiring Agent shall instead be made by or to each Lender directly, until such time, if any, as a successor Agent shall have been appointed as provided for above. Upon the acceptance of a successor's Agent's appointment as Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring Agent, and the retiring Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents. After the retiring Agent's resignation hereunder and under the other Loan Documents, the provisions of this Article, Section 12.04 and Section 12.15 shall continue in effect for the benefit of such retiring Agent in respect of any actions taken or omitted to be taken by it while the retiring Agent was acting as Agent.

Section 10.08 Collateral Matters.

(a) If any Default or Event of Default shall have occurred and be continuing, each Agent may from time to time make such disbursements and advances ("Agent Advances") which such Agent, in its sole discretion, deems necessary or desirable to preserve, protect, prepare for sale or lease or dispose of the Collateral or any portion thereof, to enhance the likelihood or maximize the amount of repayment by the Borrower of the Loans and other Obligations or to pay any other amount chargeable to the Borrower pursuant to the terms of this Agreement, including, without limitation, reasonable out-of-pocket documented costs, fees and expenses as described in Section 12.04. The Agent Advances shall be repayable on demand and be secured by the Collateral and shall bear interest at a rate per annum equal to the rate then applicable to Revolving Loans that are Reference Rate Loans. The Agent Advances shall constitute Obligations hereunder which may be charged to the Loan Account in accordance with Section 4.01. The Agent making any Agent Advances shall notify the other Agent, each Lender and the Borrower in writing of each such Agent Advance, which notice shall include a description of the purpose of such Agent Advance. Without limitation to its obligations pursuant to Section 10.05, each Lender agrees that it shall make available to the Agent making any Agent Advances, upon such Agent's demand, in Dollars in immediately available funds, the amount equal to such Lender's Pro Rata Share of each such Agent Advance. If such funds are not made available to such Agent by such Lender, such Agent shall be entitled to recover such funds on demand from such Lender, together with interest thereon for each day from the date such payment was due until the date such amount is paid to such Agent, at the Federal Funds Effective Rate for three Business Days and thereafter at the Reference Rate.

(b) The Lenders hereby irrevocably authorize the Collateral Agent, at its option and in its discretion, to release any Lien granted to or held by the Collateral Agent upon any Collateral upon termination of the Total Commitment and payment and satisfaction of all Loans and all other Obligations (other than Contingent Indemnification Obligations) in accordance with the terms hereof; or constituting property being sold or disposed of in compliance with the terms of this Agreement and the other Loan Documents; or constituting property in which the Loan Parties owned no interest at the time the Lien was granted or at any time thereafter; or if approved, authorized or ratified in writing by the Lenders in accordance with Section 12.02. Upon request by the Collateral Agent at any time, the Lenders will confirm in writing the Collateral Agent's authority to release particular types or items of Collateral pursuant to this Section 10.08(b).

(c) Without in any manner limiting the Collateral Agent's authority to act without any specific or further authorization or consent by the Lenders (as set forth in Section 10.08(b)), each Lender agrees to confirm in writing, upon request by the Collateral Agent, the authority to release Collateral conferred upon the Collateral Agent under Section 10.08(b). Upon receipt by the Collateral Agent of confirmation from the Lenders of its authority to release any particular item or types of Collateral, and upon prior written request by any Loan Party, the Collateral Agent shall (and is hereby irrevocably authorized by the Lenders to) execute such documents as may be necessary to evidence the release of the Liens granted to the Collateral Agent for the benefit of the Agents and the Lenders upon such Collateral; provided, however, that (i) the Collateral Agent shall not be required to execute any such document on terms which, in the Collateral Agent's opinion, would expose the Collateral Agent to liability or create any obligations or entail any consequence other than the release of such Liens without recourse or warranty, and (ii) such release shall not in any manner discharge, affect or impair the Obligations or any Lien upon (or obligations of any Loan Party in respect of) all interests in the Collateral retained by any Loan Party.

(d) Anything contained in any of the Loan Documents to the contrary notwithstanding, the Loan Parties, each Agent and each Lender hereby agree that (i) no Lender shall have any right individually to realize upon any of the Collateral under any Loan Document or to enforce any Guaranty, it being understood and agreed that all powers, rights and remedies under the Loan Documents may be exercised solely by the Collateral Agent for the benefit of the Lenders in accordance with the terms thereof, (ii) in the event of a foreclosure by the Collateral Agent on any of the Collateral pursuant to a public or private sale, the Administrative Agent, the Collateral Agent or any Lender may be the purchaser of any or all of such Collateral at any such sale and (iii) the Collateral Agent, as agent for and representative of the Agents and the Lenders (but not any other Agent or any Lender or Lenders in its or their respective individual capacities unless the Required Lenders shall otherwise agree in writing) shall be entitled (either directly or through one or more acquisition vehicles) for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral to be sold (A) at any public or private sale, (B) at any sale conducted by the Collateral Agent under the provisions of the Uniform Commercial Code (including pursuant to Sections 9-610 or 9-620 of the Uniform Commercial Code), (C) at any sale or foreclosure conducted by the Collateral Agent (whether by judicial action or otherwise) in accordance with applicable law or (D) any sale conducted pursuant to the provisions of any Debtor Relief Law (including Section 363 of the Bankruptcy Code), to use and apply all or any of the Obligations as a credit on account of the purchase price for any Collateral payable by the Collateral Agent at such sale.

(e) The Collateral Agent shall have no obligation whatsoever to any Lender to assure that the Collateral exists or is owned by the Loan Parties or is cared for, protected or insured or has been encumbered or that the Lien granted to the Collateral Agent pursuant to this Agreement or any other Loan Document has been properly or sufficiently or lawfully created, perfected, protected or enforced or is entitled to any particular priority, or to exercise at all or in any particular manner or under any duty of care, disclosure or fidelity, or to continue exercising, any of the rights, authorities and powers granted or available to the Collateral Agent in this Section 10.08 or in any other Loan Document, it being understood and agreed that in respect of the Collateral, or any act, omission or event related thereto, the Collateral Agent may act in any manner it may deem appropriate, in its sole discretion, given the Collateral Agent's own interest in the Collateral as one of the Lenders and that the Collateral Agent shall have no duty or liability whatsoever to any other Lender, except as otherwise provided herein or in the other Loan Documents.

Section 10.09 Agency for Perfection. Each Agent and each Lender hereby appoints each other Agent and each other Lender as agent and bailee for the purpose of perfecting the security interests in and liens upon the Collateral in assets which, in accordance with Article 9 of the Uniform Commercial Code, can be perfected only by possession or control (or where the security interest of a secured party with possession or control has priority over the security interest of another secured party) and each Agent and each Lender hereby acknowledges that it holds possession of or otherwise controls any such Collateral for the benefit of the Agents and the Lenders as secured party. Should the Administrative Agent or any Lender obtain possession or control of any such Collateral, the Administrative Agent or such Lender shall notify the Collateral Agent thereof, and, promptly upon the Collateral Agent's request therefor shall deliver such Collateral to the Collateral Agent or in accordance with the Collateral Agent's instructions. In addition, the Collateral Agent shall also have the power and authority hereunder to appoint such other sub-agents as may be necessary or required under applicable state law or otherwise to perform its duties and enforce its rights with respect to the Collateral and under the Loan Documents. Each Loan Party by its execution and delivery of this Agreement hereby consents to the foregoing.

Section 10.10 No Reliance on any Agent's Customer Identification Program.

(a) Each Lender acknowledges and agrees that neither such Lender, nor any of its Affiliates, participants or assignees, may rely on any Agent to carry out such Lender's, Affiliate's, participant's or assignee's customer identification program, or other requirements imposed by the USA PATRIOT Act or the regulations issued thereunder, including the regulations set forth in 31 C.F.R. §§ 1010.100(yy), (iii), 1020.100, and 1020.220 (formerly 31 C.F.R. § 103.121), as hereafter amended or replaced ("CIP Regulations"), or any other Anti-Terrorism Laws, including any programs involving any of the following items relating to or in connection with any of the Loan Parties, their Affiliates or their agents, the Loan Documents or the transactions hereunder or contemplated hereby: (1) any identity verification procedures, (2) any recordkeeping, (3) comparisons with government lists, (4) customer notices or (5) other procedures required under the CIP Regulations or other regulations issued under the USA PATRIOT Act. Each Lender, Affiliate, participant or assignee subject to Section 326 of the USA PATRIOT Act will perform the measures necessary to satisfy its own responsibilities under the CIP Regulations.

(b) Each Lender or assignee or participant of a Lender that is not incorporated under the laws of the United States of America or a state thereof (and is not excepted from the certification requirement contained in Section 313 of the USA PATRIOT Act and the applicable regulations because it is both (i) an affiliate of a depository institution or foreign bank that maintains a physical presence in the United States or foreign country, and (ii) subject to supervision by a banking authority regulating such affiliated depository institution or foreign bank) shall deliver to each Agent the certification, or, if applicable, recertification, certifying that such Lender is not a "shell" and certifying to other matters as required by Section 313 of the USA PATRIOT Act and the applicable regulations: (A) within ten (10) days after the Effective Date, and (B) as such other times as are required under the USA PATRIOT Act.

(c) The USA PATRIOT Act requires all financial institutions to obtain, verify and record certain information that identifies individuals or business entities which open an "account" with such financial institution. Consequently, any Agent or Lender may from time to time request, and each Loan Party shall provide to such Agent or Lender, such Loan Party's name, address, tax identification number and/or such other identifying information as shall be necessary for such Agent or such Lender to comply with the USA PATRIOT Act and any other Anti-Terrorism Law.

Section 10.11 No Third Party Beneficiaries. The provisions of this Article are solely for the benefit of the Secured Parties, and no Loan Party shall have rights as a third-party beneficiary of any of such provisions.

Section 10.12 No Fiduciary Relationship. It is understood and agreed that the use of the term "agent" herein or in any other Loan Document (or any other similar term) with reference to any Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

Section 10.13 Reports; Confidentiality; Disclaimers. By becoming a party to this Agreement, each Lender:

(a) is deemed to have requested that each Agent furnish such Lender, promptly after it becomes available, a copy of each field audit or examination report with respect to the Parent or any of its Subsidiaries (each, a "Report") prepared by or at the request of such Agent, and each Agent shall so furnish each Lender with each such Report,

(b) expressly agrees and acknowledges that the Agents (i) do not make any representation or warranty as to the accuracy of any Reports, and (ii) shall not be liable for any information contained in any Reports,

(c) expressly agrees and acknowledges that the Reports are not comprehensive audits or examinations, that any Agent or other party performing any audit or examination will inspect only specific information regarding the Parent and its Subsidiaries and will rely significantly upon the Parent's and its Subsidiaries' books and records, as well as on representations of their personnel,

(d) agrees to keep all Reports and other material, non-public information regarding the Parent and its Subsidiaries and their operations, assets, and existing and contemplated business plans in a confidential manner in accordance with Section 12.19, and

(e) without limiting the generality of any other indemnification provision contained in this Agreement, agrees: (i) to hold any Agent and any other Lender preparing a Report harmless from any action the indemnifying Lender may take or fail to take or any conclusion the indemnifying Lender may reach or draw from any Report in connection with any loans or other credit accommodations that the indemnifying Lender has made or may make to the Borrower, or the indemnifying Lender's participation in, or the indemnifying Lender's purchase of, a loan or loans of the Borrower, and (ii) to pay and protect, and indemnify, defend and hold any Agent and any other Lender preparing a Report harmless from and against, the claims, actions, proceedings, damages, costs, expenses, and other amounts (including, attorneys' fees and costs) incurred by any such Agent and any such other Lender preparing a Report as the direct or indirect result of any third parties who might obtain all or part of any Report through the indemnifying Lender.

Section 10.14 Collateral Custodian.

(a) Upon the occurrence and during the continuance of any Event of Default, the Collateral Agent or its designee may at any time and from time to time employ and maintain on the premises of any Loan Party a custodian selected by the Collateral Agent or its designee who shall have full authority to do all acts necessary to protect the Agents' and the Lenders' interests. Each Loan Party hereby agrees to, and to cause its Subsidiaries to, cooperate with any such custodian and to do whatever the Collateral Agent or its designee may reasonably request to preserve the Collateral. All reasonable, documented out-of-pocket costs and expenses incurred by the Collateral Agent or its designee by reason of the employment of the custodian shall be the responsibility of the Borrower and charged to the Loan Account.

Section 10.15 Cerberus as Sub-Agent. The Administrative Agent hereby appoints Cerberus as sub-agent of the Administrative Agent to maintain a Register with respect to the Term Loans as described in Section 12.07(f) and each Term Loan Lender hereby appoints and designates Cerberus as such Term Loan Lender's agent for the purpose of receiving interest payments with respect to such Term Loan Lender's portion of the Term Loans. Each Loan Party by its execution and delivery of this Agreement hereby consents to the foregoing.

Section 10.16 Collateral Agent May File Proofs of Claim. In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Collateral Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether any Agent shall have made any demand on the Borrower) shall be entitled and empowered (but not obligated) by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Secured Parties (including any claim for the compensation, expenses, disbursements and advances of the Secured Parties and their respective agents and counsel and all other amounts due the Secured Parties hereunder and under the other Loan Documents) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Secured Party to make such payments to the Collateral Agent and, in the event that the Collateral Agent shall consent to the making of such payments directly to the Secured Parties, to pay to the Collateral Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Collateral Agent and its agents and counsel, and any other amounts due the Collateral Agent hereunder and under the other Loan Documents.

ARTICLE XI

GUARANTY

Section 11.01 Guaranty. Each Guarantor hereby jointly and severally and unconditionally and irrevocably guarantees the punctual payment when due, whether at stated maturity, by acceleration or otherwise, of all Obligations of the Borrower now or hereafter existing under any Loan Document, whether for principal, interest (including, without limitation, all interest that accrues after the commencement of any Insolvency Proceeding of the Borrower, whether or not a claim for post-filing interest is allowed in such Insolvency Proceeding), fees, commissions, expense reimbursements, indemnifications or otherwise (such obligations, to the extent not paid by the Borrower, being the "Guaranteed Obligations"), and agrees to pay any and all reasonable, documented out-of-pocket expenses (including reasonable counsel fees and expenses) incurred by the Agents and the Lenders (or any of them) in enforcing any rights under the guaranty set forth in this Article XI. Without limiting the generality of the foregoing, each Guarantor's liability shall extend to all amounts that constitute part of the Guaranteed Obligations and would be owed by the Borrower to the Agents and the Lenders under any Loan Document but for the fact that they are unenforceable or not allowable due to the existence of an Insolvency Proceeding involving the Borrower. Notwithstanding any of the foregoing, Guaranteed Obligations shall not include any Excluded Hedge Liabilities. In no event shall the obligation of any Guarantor hereunder exceed the maximum amount such Guarantor could guarantee under any Debtor Relief Law.

Section 11.02 Guaranty Absolute. Each Guarantor jointly and severally guarantees that the Guaranteed Obligations will be paid strictly in accordance with the terms of the Loan Documents, regardless of any law, regulation or order now or hereafter in effect in any jurisdiction affecting any of such terms or the rights of the Secured Parties with respect thereto. Each Guarantor agrees that this Article XI constitutes a guaranty of payment when due and not of collection and waives any right to require that any resort be made by any Agent or any Lender to any Collateral. The obligations of each Guarantor under this Article XI are independent of the Guaranteed Obligations, and a separate action or actions may be brought and prosecuted against each Guarantor to enforce such obligations, irrespective of whether any action is brought against any Loan Party or whether any Loan Party is joined in any such action or actions. The liability of each Guarantor under this Article XI shall be irrevocable, absolute and unconditional irrespective of, and each Guarantor hereby irrevocably waives any defenses it may now or hereafter have in any way relating to, any or all of the following:

(a) any lack of validity or enforceability of any Loan Document or any agreement or instrument relating thereto;

(b) any change in the time, manner or place of payment of, or in any other term of, all or any of the Guaranteed Obligations, or any other amendment or waiver of or any consent to departure from any Loan Document, including, without limitation, any increase in the Guaranteed Obligations resulting from the extension of additional credit to any Loan Party or otherwise;

(c) any taking, exchange, release or non-perfection of any Collateral, or any taking, release or amendment or waiver of or consent to departure from any other guaranty, for all or any of the Guaranteed Obligations;

(d) the existence of any claim, set-off, defense or other right that any Guarantor may have at any time against any Person, including, without limitation, any Secured Party;

(e) any change, restructuring or termination of the corporate, limited liability company or partnership structure or existence of any Loan Party; or

(f) any other circumstance (including, without limitation, any statute of limitations) or any existence of or reliance on any representation by the Secured Parties that might otherwise constitute a defense available to, or a discharge of, any Loan Party or any other guarantor or surety.

This Article XI shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any of the Guaranteed Obligations is rescinded or must otherwise be returned by Secured Parties or any other Person upon the insolvency, bankruptcy or reorganization of the Borrower or otherwise, all as though such payment had not been made.

Section 11.03 Waiver. Each Guarantor hereby waives (i) promptness and diligence, (ii) notice of acceptance and any other notice with respect to any of the Guaranteed Obligations and this Article XI and any requirement that the Secured Parties exhaust any right or take any action against any Loan Party or any other Person or any Collateral, (iii) any right to compel or direct any Secured Party to seek payment or recovery of any amounts owed under this Article XI from any one particular fund or source or to exhaust any right or take any action against any other Loan Party, any other Person or any Collateral, (iv) any requirement that any Secured Party protect, secure, perfect or insure any security interest or Lien on any property subject thereto or exhaust any right to take any action against any Loan Party, any other Person or any Collateral, and (v) any other defense available to any Guarantor. Each Guarantor agrees that the Secured Parties shall have no obligation to marshal any assets in favor of any Guarantor or against, or in payment of, any or all of the Obligations. Each Guarantor acknowledges that it will receive direct and indirect benefits from the financing arrangements contemplated herein and that the waiver set forth in this Section 11.03 is knowingly made in contemplation of such benefits. Each Guarantor hereby waives any right to revoke this Article XI, and acknowledges that this Article XI is continuing in nature and applies to all Guaranteed Obligations, whether existing now or in the future.

Section 11.04 Continuing Guaranty; Assignments. This Article XI is a continuing guaranty and shall (a) remain in full force and effect until the later of the cash payment in full of the Guaranteed Obligations (other than indemnification obligations as to which no claim has been made) and all other amounts payable under this Article XI and the Final Maturity Date, (b) be binding upon each Guarantor, its successors and assigns and (c) inure to the benefit of and be enforceable by the Secured Parties and their successors, pledgees, transferees and assigns. Without limiting the generality of the foregoing clause (c), any Lender may pledge, assign or otherwise transfer all or any portion of its rights and obligations under this Agreement (including, without limitation, all or any portion of its Commitments and its Loans owing to it) to any other Person, and such other Person shall thereupon become vested with all the benefits in respect thereof granted such Lender herein or otherwise, in each case as provided in Section 12.07.

Section 11.05 Subrogation. No Guarantor will exercise any rights that it may now or hereafter acquire against any Loan Party or any other guarantor that arise from the existence, payment, performance or enforcement of such Guarantor's obligations under this Article XI, including, without limitation, any right of subrogation, reimbursement, exoneration, contribution or indemnification and any right to participate in any claim or remedy of the Secured Parties against any Loan Party or any other guarantor or any Collateral, whether or not such claim, remedy or right arises in equity or under contract, statute or common law, including, without limitation, the right to take or receive from any Loan Party or any other guarantor, directly or indirectly, in cash or other property or by set-off or in any other manner, payment or security solely on account of such claim, remedy or right, unless and until all of the Guaranteed Obligations (other than Contingent Indemnity Obligations) and all other amounts payable under this Article XI shall have been paid in full in cash and the Final Maturity Date shall have occurred. If any amount shall be paid to any Guarantor in violation of the immediately preceding sentence at any time prior to the later of the payment in full in cash of the Guaranteed Obligations (other than Contingent Indemnity Obligations) and all other amounts payable under this Article XI and the Final Maturity Date, such amount shall be held in trust for the benefit of the Secured Parties and shall forthwith be paid to the Secured Parties to be credited and applied to the Guaranteed Obligations and all other amounts payable under this Article XI, whether matured or unmatured, in accordance with the terms of this Agreement, or to be held as Collateral for any Guaranteed Obligations or other amounts payable under this Article XI thereafter arising. If (i) any Guarantor shall make payment to the Secured Parties of all or any part of the Guaranteed Obligations, (ii) all of the Guaranteed Obligations and all other amounts payable under this Article XI shall be paid in full in cash and (iii) the Final Maturity Date shall have occurred, the Secured Parties will, at such Guarantor's request and expense, execute and deliver to such Guarantor appropriate documents, without recourse and without representation or warranty, necessary to evidence the transfer by subrogation to such Guarantor of an interest in the Guaranteed Obligations resulting from such payment by such Guarantor.

Section 11.06 Contribution. All Guarantors desire to allocate among themselves, in a fair and equitable manner, their obligations arising under this Guaranty. Accordingly, in the event any payment or distribution is made on any date by a Guarantor under this Guaranty such that its Aggregate Payments exceeds its Fair Share as of such date, such Guarantor shall be entitled to a contribution from each of the other Guarantors in an amount sufficient to cause each Guarantor's Aggregate Payments to equal its Fair Share as of such date. "Fair Share" means, with respect to any Guarantor as of any date of determination, an amount equal to (a) the ratio of (i) the Fair Share Contribution Amount with respect to such Guarantor, to (ii) the aggregate of the Fair Share Contribution Amounts with respect to all Guarantors *multiplied by*, (b) the aggregate amount paid or distributed on or before such date by all Guarantors under this Guaranty in respect of the obligations Guaranteed. "Fair Share Contribution Amount" means, with respect to any Guarantor as of any date of determination, the maximum aggregate amount of the obligations of such Guarantor under this Guaranty that would not render its obligations hereunder subject to avoidance as a fraudulent transfer or conveyance under Section 548 of Title 11 of the United States Code or any comparable applicable provisions of state law; provided, solely for purposes of calculating the "Fair Share Contribution Amount" with respect to any Guarantor for purposes of this Section 11.06, any assets or liabilities of such Guarantor arising by virtue of any rights to subrogation, reimbursement or indemnification or any rights to or obligations of contribution hereunder shall not be considered as assets or liabilities of such Guarantor. "Aggregate Payments" means, with respect to any Guarantor as of any date of determination, an amount equal to (A) the aggregate amount of all payments and distributions made on or before such date by such Guarantor in respect of this Guaranty (including, without limitation, in respect of this Section 11.06), *minus* (B) the aggregate amount of all payments received on or before such date by such Guarantor from the other Guarantors as contributions under this Section 11.06. The amounts payable as contributions hereunder shall be determined as of the date on which the related payment or distribution is made by the applicable Guarantor. The allocation among Guarantors of their obligations as set forth in this Section 11.06 shall not be construed in any way to limit the liability of any Guarantor hereunder. Each Guarantor is a third party beneficiary to the contribution agreement set forth in this Section 11.06.

ARTICLE XII

MISCELLANEOUS

Section 12.01 Notices, Etc.

(a) Notices Generally. All notices and other communications provided for hereunder shall be in writing and shall be delivered by hand, sent by registered or certified mail (postage prepaid, return receipt requested), overnight courier, or telecopier. In the case of notices or other communications to any Loan Party, Administrative Agent or the Collateral Agent, as the case may be, they shall be sent to the respective address set forth below (or, as to each party, at such other address as shall be designated by such party in a written notice to the other parties complying as to delivery with the terms of this Section 12.01):

if to any Loan Party:

c/o IWCO Direct Holdings Inc.
7951 Powers Boulevard
Chanhassen, MN 55317
Attention: Joseph F. Morrison
Telephone: 952.470.6460
Telecopier: 952.474.4057
E-mail: Joe.Morrison@iwco.com

with a copy to (which shall not constitute notice):

Olshan Frome Wolosky LLP
1325 Avenue of the Americas
New York, New York 10019
Attention: Adam W. Finerman
Telephone: 212.451.2289
Telecopier: 212.451.2222
Email: afinerman@olshanlaw.com

if to either Agent, to it at the following address:

CERBERUS BUSINESS FINANCE, LLC
c/o Cerberus California, LLC
11812 San Vicente Blvd., Suite 300
Los Angeles, California 90049
Attention: Kevin F. Cross
Telephone: 310.903.5020
Telecopier: 310.826.9203

in each case, with a copy to (which shall not constitute notice):

SCHULTE ROTH & ZABEL LLP
919 Third Avenue
New York, NY 10022
Attention: Eliot Relles
Telephone: 212.756.2000
Telecopier: 212.756.5955

All notices or other communications sent in accordance with this Section 12.01, shall be deemed received on the earlier of the date of actual receipt or 3 Business Days after the deposit thereof in the mail; provided that (i) notices sent by overnight courier service shall be deemed to have been given when received and (ii) notices by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient), provided further that notices to any Agent pursuant to Articles II and III shall not be effective until received by such Agent, as the case may be.

(b) Electronic Communications.

(i) Each Agent and 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. Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Agents.

(ii) Unless the Administrative Agent otherwise prescribes, (A) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), and (B) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient, at its e-mail address as described in the foregoing clause (A), of notification that such notice or communication is available and identifying the website address therefor; provided that, for both clauses (A) and (B) above, if such notice, email 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.

Section 12.02 Amendments, Etc.

(a) No amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by any Loan Party therefrom, shall in any event be effective unless the same shall be in writing and signed (x) in the case of an amendment, consent or waiver to cure any ambiguity, omission, defect or inconsistency or granting a new Lien for the benefit of the Agents and the Lenders or extending an existing Lien over additional property, by the Agents and the Borrower, (y) in the case of any other waiver or consent, by the Required Lenders (or by the Collateral Agent with the consent of the Required Lenders) and (z) in the case of any other amendment, by the Required Lenders (or by the Collateral Agent with the consent of the Required Lenders) and the Borrower, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that no amendment, waiver or consent shall:

(i) increase the Commitment of any Lender, reduce the principal of, or interest on, the Loans payable to any Lender (excluding mandatory prepayments and the waiver of Post-Default Rate interest), reduce the amount of any fee payable for the account of any Lender, or postpone or extend any scheduled date fixed for any payment of principal of, or interest or fees on, the Loans payable to any Lender (excluding mandatory prepayments), in each case, without the written consent of such Lender;

(ii) change the percentage of the Commitments or of the aggregate unpaid principal amount of the Loans that is required for the Lenders or any of them to take any action hereunder without the written consent of each Lender;

(iii) amend the definition of "Required Lenders" or "Pro Rata Share" without the written consent of each Lender;

(iv) release all or a substantial portion of the Collateral (except as otherwise provided in this Agreement and the other Loan Documents), subordinate any Lien granted in favor of the Collateral Agent for the benefit of the Agents and the Lenders, or release the Borrower or any Guarantor (except in connection with a Disposition of the Equity Interests thereof permitted by Section 7.02(c)(ii)), in each case, without the written consent of each Lender;

(v) amend, modify or waive Section 4.02, Section 4.03 or this Section 12.02 of this Agreement without the written consent of each Lender;

(vi) amend the definition of "Availability," "Excluded Hedge Liability" (or any provision expressly relating to Excluded Hedge Liabilities, including Section 12.24), "Hedge Liabilities," "Maximum Revolving Loan Amount," or "Pro Rata Share" without the written consent of each Agent and each Revolving Loan Lender; or

(vii) amend, modify or waive Section 2.01(b)(i), Section 2.05(c)(vii), Section 5.02 (it being understood, however, that this clause (vii) shall not impact the effectiveness of any waiver of a Default or Event of Default, including, but not limited to, for purposes of Section 5.02), Section 10.08 or Section 12.07(b) (as it relates to the Revolving Loan Lenders or Administrative Agent) without the consent of each Agent and the Revolving Loan Lenders.

Notwithstanding the foregoing, (A) no amendment, waiver or consent shall, unless in writing and signed by an Agent, affect the rights or duties of such Agent (but not in its capacity as a Lender) under this Agreement or the other Loan Documents, (B) except as otherwise provided in Section 12.07, any amendment, waiver or consent to any provision of this Agreement (including Sections 4.01 and 4.02) that permits any Loan Party, any Permitted Holder or any of their respective Affiliates to purchase Loans on a non-pro rata basis, become an eligible assignee pursuant to Section 12.07 and/or make offers to make optional prepayments on a non-pro rata basis shall require the prior written consent of the Required Lenders rather than the prior written consent of each Lender directly affected thereby and (C) the consent of the Borrower shall not be required to change any order of priority set forth in Section 4.03. Notwithstanding anything to the contrary herein, except as otherwise provided in Section 12.07, no Defaulting Lender, Loan Party, Permitted Holder (or other equity holder of the Parent) or any of their respective Affiliates that is a Lender shall have any right to approve or disapprove any amendment, waiver or consent under the Loan Documents and any Loans held by such Person for purposes hereof shall be automatically deemed to be voted pro rata according to the Loans of all other Lenders in the aggregate (other than such Defaulting Lender, Loan Party, Permitted Holder (or other equity holder of the Parent) or Affiliate).

(b) If any action to be taken by the Lenders hereunder requires the consent, authorization, or agreement of all of the Lenders or any Lender affected thereby, and a Lender, other than the Agents and their respective Affiliates and Related Funds (the "Holdout Lender") fails to give its consent, authorization, or agreement, then the Collateral Agent, upon at least 5 Business Days prior irrevocable notice to the Holdout Lender, may permanently replace the Holdout Lender with one or more substitute lenders (each, a "Replacement Lender"), and the Holdout Lender shall have no right to refuse to be replaced hereunder. Such notice to replace the Holdout Lender shall specify an effective date for such replacement, which date shall not be later than 15 Business Days after the date such notice is given. Prior to the effective date of such replacement, the Holdout Lender and each Replacement Lender shall execute and deliver an Assignment and Acceptance, subject only to the Holdout Lender being repaid its share of the outstanding Obligations without any premium or penalty of any kind whatsoever. If the Holdout Lender shall refuse or fail to execute and deliver any such Assignment and Acceptance prior to the effective date of such replacement, the Holdout Lender shall be deemed to have executed and delivered such Assignment and Acceptance. The replacement of any Holdout Lender shall be made in accordance with and subject to the terms of Section 12.07. Until such time as the Replacement Lenders shall have acquired all of the Obligations, the Commitments, and the other rights and obligations of the Holdout Lender hereunder and under the other Loan Documents, the Holdout Lender shall remain obligated to make its Pro Rata Share of Loans.

Section 12.03 No Waiver; Remedies, Etc. No failure on the part of any Agent or any Lender to exercise, and no delay in exercising, any right hereunder or under any other Loan Document shall operate as a waiver thereof; nor shall any single or partial exercise of any right under any Loan Document preclude any other or further exercise thereof or the exercise of any other right. The rights and remedies of the Agents and the Lenders provided herein and in the other Loan Documents are cumulative and are in addition to, and not exclusive of, any rights or remedies provided by law. The rights of the Agents and the Lenders under any Loan Document against any party thereto are not conditional or contingent on any attempt by the Agents and the Lenders to exercise any of their rights under any other Loan Document against such party or against any other Person.

Section 12.04 Expenses; Attorneys' Fees. The Borrower will pay on demand all reasonable and documented out-of-pocket costs and expenses incurred by or on behalf of each Agent (and, in the case of clauses (b) through (n) below, the Lenders), regardless of whether the transactions contemplated hereby are consummated, including, without limitation, reasonable, documented, fees, costs, client charges and expenses of counsel for each Agent (and, in the case of clauses (c) through (n) below, the Lenders), accounting, due diligence, periodic field audits, physical counts, valuations, investigations, searches and filings, monitoring of assets, appraisals of Collateral, the rating of the Loans, title searches and reviewing environmental assessments, miscellaneous disbursements, examination, travel, lodging and meals, arising from or relating to: (a) the negotiation, preparation, execution, delivery, performance and administration of this Agreement and the other Loan Documents (including, without limitation, the preparation of any additional Loan Documents pursuant to Section 7.01(b) or the review of any of the agreements, instruments and documents referred to in Section 7.01(f)), (b) any requested amendments, waivers or consents to this Agreement or the other Loan Documents whether or not such documents become effective or are given, (c) the preservation and protection of the Agents' or any of the Lenders' rights under this Agreement or the other Loan Documents, (d) the defense of any claim or action asserted or brought against any Agent or any Lender by any Person that arises from or relates to this Agreement, any other Loan Document, the Agents' or the Lenders' claims against any Loan Party, or any and all matters in connection therewith, other than in connection with claims or actions brought by any Lender or Agent against one another, (e) the commencement or defense of, or intervention in, any court proceeding arising from or related to this Agreement or any other Loan Document, other than in connection with claims or actions brought by any Lender or Agent against one another, (f) the filing of any petition, complaint, answer, motion or other pleading by any Agent or any Lender, or the taking of any action in respect of the Collateral or other security, in connection with this Agreement or any other Loan Document, (g) the protection, collection, lease, sale, taking possession of or liquidation of, any Collateral or other security in connection with this Agreement or any other Loan Document, (h) any attempt to enforce any Lien or security interest in any Collateral or other security in connection with this Agreement or any other Loan Document, (i) any attempt to collect from any Loan Party, (j) all liabilities and costs arising from or in connection with the past, present or future operations of any Loan Party involving any damage to real or personal property or natural resources or harm or injury alleged to have resulted from any Release of Hazardous Materials on, upon or into such property, (k) any Environmental Liabilities and Costs incurred in connection with the investigation, removal, cleanup and/or remediation of any Hazardous Materials present or arising out of the operations of any facility of any Loan Party, (l) any Environmental Liabilities and Costs incurred in connection with any Environmental Lien, (m) the rating of the Loans by one or more rating agencies in connection with any Lender's Securitization, or (n) the receipt by any Agent or any Lender of any advice from professionals with respect to any of the foregoing. Without limitation of the foregoing or any other provision of any Loan Document: (x) the Borrower agrees to pay all broker fees that may become due in connection with the transactions contemplated by this Agreement and the other Loan Documents, and (y) if the Borrower fails to perform any covenant or agreement contained herein or in any other Loan Document, any Agent may itself perform or cause performance of such covenant or agreement, and the expenses of such Agent incurred in connection therewith shall be reimbursed on demand by the Borrower. Notwithstanding the foregoing, any and all legal fees, costs and expenses incurred pursuant to clauses (b) through (n) above shall be limited to (A) one outside counsel to the Agents and the Lenders, (B) one local counsel in each relevant jurisdiction to the Agents and the Lenders and one regulatory counsel in each relevant regulatory area to the Agents and the Lenders and (C) solely in the case of a conflict of interest, one additional counsel in each relevant jurisdiction to each group of affected Lenders similarly situated taken as a whole. The obligations of the Borrower under this Section 12.04 shall survive the repayment of the Obligations and discharge of any Liens granted under the Loan Documents.

Section 12.05 Right of Set-off. Upon the occurrence and during the continuance of any Event of Default, any Agent or any Lender may, and is hereby authorized to, at any time and from time to time, without notice to any Loan Party (any such notice being expressly waived by the Loan Parties) and to the fullest extent permitted by law, set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other Indebtedness at any time owing by such Agent or such Lender or any of their respective Affiliates to or for the credit or the account of any Loan Party against any and all obligations of the Loan Parties either now or hereafter existing under any Loan Document, irrespective of whether or not such Agent or such Lender shall have made any demand hereunder or thereunder and although such obligations may be contingent or unmatured; provided that in the event that any Defaulting Lender shall exercise any such right of set-off, (a) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 4.04 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Agents and the Lenders, and (b) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of set-off. No Lender shall exercise any such right of set-off without the prior consent of the Agents or the Required Lenders. Each Agent and each Lender agrees to notify such Loan Party promptly after any such set-off and application made by such Agent or such Lender or any of their respective Affiliates, provided that the failure to give such notice shall not affect the validity of such set-off and application. The rights of the Agents and the Lenders under this Section 12.05 are in addition to the other rights and remedies (including other rights of set-off) which the Agents and the Lenders may have under this Agreement or any other Loan Documents of law or otherwise.

Section 12.06 Severability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining portions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

Section 12.07 Assignments and Participations.

(a) This Agreement and the other Loan Documents shall be binding upon and inure to the benefit of each Loan Party and each Agent and each Lender and their respective successors and assigns; provided, however, that none of the Loan Parties may assign or transfer any of its rights hereunder or under the other Loan Documents without the prior written consent of each Lender and any such assignment without the Lenders' prior written consent shall be null and void.

(i) Subject to the conditions set forth in clauses (a)(ii) and (a)(iv) below, any Lender may assign to one or more Eligible Assignees (each, an "Assignee") all or a portion of its Loans, in each case together with all related rights and obligations under this Agreement with the prior written consent (such consent not to be unreasonably withheld or delayed) of:

(A) the Borrower, provided that, except with respect to consents regarding any Disqualified Lender, such consent shall be deemed to have been given if the Borrower has not responded within ten Business Days after written request by any Agent or the respective assigning Lender, provided further that no consent of the Borrower shall be required (x) in the case of any Lender, for an assignment of any Loan or any Commitment to a Lender, an Affiliate of a Lender, or a Related Fund or (y) if an Event of Default has occurred and is continuing, any other Eligible Assignee; or

(B) the Collateral Agent, except for assignments of Loans to a Related Fund, another Lender or an Affiliate of a Lender;

(ii) Assignment Conditions. Assignments shall be subject to the following additional conditions:

(C) except in the case of an assignment to a Lender, an Affiliate of a Lender or an Related 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 Collateral Agent) shall be at least $5,000,000 or a multiple of $1,000,000 in excess thereof in the case of Term Loans or, in each case, if less, all of such Lender's remaining Loans and Commitments of the applicable class and shall be accompanied with a process and recordation fee of $3,500 payable to the Collateral Agent (provided that such fee shall not apply in the case of assignments by a Lender to any of its Affiliates or Related Funds) unless the Administrative Agent and the Borrower otherwise consent;

(D) the parties to each assignment shall execute and deliver to the Collateral Agent (and the Administrative Agent, if applicable), for its acceptance, an Assignment and Acceptance together with any promissory note subject to such assignment;

(E) the Assignee, if it is not already a Lender hereunder, shall deliver to the Agents and the Borrower an administrative questionnaire and the Internal Revenue Service forms described in Section 2.09 (as applicable) and shall comply with the requirements of Section 2.09 as if it were a "Lender"; and

(F) in the absence of a continuing Event of Default, no assignment shall be made to a Disqualified Institution.

(iii) [Reserved]

(iv) Assignments to Affiliated Lenders. Any Lender may, at any time, assign all or a portion of its rights and obligations with respect to Term Loans to an Affiliated Lender (including Affiliated Investment Funds) on a non-pro rata basis through open market purchases, in each case in accordance with the terms of this Agreement (including Section 12.07), subject, to the extent applicable, to the restrictions set forth in the definitions of "Eligible Assignee" and subject to the following further limitations:

(A) [reserved];

(B) for purposes of determining whether the Required Lenders have (1) consented to any amendment, waiver or modification of any Loan Document (including such modifications pursuant to Section 12.02), (2) otherwise acted on any matter related to any Loan Document or (3) directed or required the Administrative Agent, the Collateral Agent or any Lender to undertake any action (or refrain from taking any action) with respect to or under any Loan Document, except in the case of any Affiliated Lender Amendment, the aggregate amount of Term Loans owed to the Affiliated Lenders or Term Loan Commitments of the Affiliated Lenders shall be disregarded (and treated for all purposes as if not outstanding) for purposes of calculating Required Lenders; provided, however, that if the Required Lenders (determined in accordance with the preceding provisions of this clause (B)) shall have consented to such amendment, waiver or modification or otherwise approved such action, then the Term Loans owed to the Affiliated Lenders or Term Loan Commitments of the Affiliated Lenders shall be deemed to have affirmatively consented to such amendment, waiver, modification or other action; provided further that any amendment, waiver or modification of any Loan Document that (1) increases any commitment of such Affiliated Lender, (2) extends the due date for any scheduled installment of principal of any Loan held by such Affiliated Lender (including at maturity), (3) extends the due date for interest under the Loan Documents owed to such Affiliated Lender, (4) reduces any amount owing to such Affiliated Lender under any Loan Document or (5) results in a disproportionate adverse effect to an Affiliated Lender as compared to other Lenders (the foregoing being an "Affiliated Lender Amendment"), in each case, shall require the affirmative consent of each such Affiliated Lender adversely affected thereby;

(C) Restricted Affiliated Lenders shall not be entitled to receive (i) information provided solely to Lenders by the Agents or any Lender and shall not be permitted to attend or participate in meetings attended solely by Lenders and the Agents and their advisors, other than the right to receive Notices of Borrowing, notices of prepayments and other administrative notices in respect of its Term Loans or Term Loan Commitments required to be delivered to Lenders pursuant to Article II and financial statements delivered under Section 7.01 and (ii) advice of counsel to the Lenders or the Agents or challenge the attorney-client privilege afforded to such Persons; provided that Affiliated Investment Funds shall not be subject to such limitation;

(D) at the time any Affiliated Lender is making purchases of Term Loans pursuant to an open market purchase it shall execute and deliver an Assignment and Acceptance to the Agents;

(E) at the time of such open market purchase by a Restricted Affiliated Lender, no Default or Event of Default shall have occurred and be continuing;

(F) any Term Loans acquired by Sponsor or any Affiliated Lender may, with the consent of the Borrower, be contributed to the Parent (whether through any of its direct or indirect parent entities or otherwise) and exchanged for Equity Interests (not Disqualified Equity Interests) of the Parent, provided that any such Term Loans so contributed shall be immediately cancelled, terminated and forgiven;

(G) the aggregate principal amount of all Term Loans which may be assigned through open market purchases shall not exceed (as calculated at the time of the consummation of any aforementioned assignments) in the case of Restricted Affiliated Lenders, 10% of the aggregate principal amount of the Term Loans then outstanding;

(H) Notwithstanding any other provision herein to the contrary, in the event that a Loan Party is the subject of a proceeding of the type described in Section 9.01(f) or 9.01(g) (such proceeding, a "Loan Party Insolvency"), each Restricted Affiliated Lender shall grant to the Collateral Agent a power of attorney, giving the Collateral Agent the right to vote each Restricted Affiliated Lender's claims on all matters submitted to the Lenders for consent in respect of such Loan Party Insolvency, and the Collateral Agent shall vote such claims in the same proportion as the majority (by holdings) of Lenders (other than Restricted Affiliated Lenders) that voted on each matter submitted to such Lenders for approval; provided that (1) the foregoing shall not permit the Collateral Agent to consent to, or refrain from, giving approval in respect of a plan of reorganization pursuant to Title 11 of the Bankruptcy Code of the Loan Party that is the subject of the Loan Party Insolvency (such plan of reorganization being a "Loan Party Plan of Reorganization"), if any Restricted Affiliated Lender would, as a consequence thereof, receive treatment under such Loan Party Plan of Reorganization that, on a ratable basis, would be inferior to that of the Lenders (other than such Restricted Affiliated Lenders) holding the same tranche of Term Loans as the affected Restricted Affiliated Lender (such Lenders being, "Non-Restricted Persons") and any such Loan Party Plan of Reorganization shall require the consent of such Restricted Affiliated Lender and (2) to the extent any Non-Restricted Person would receive superior treatment as part of any Loan Party Plan of Reorganization, as compared to any Restricted Affiliated Lender, pursuant to any investment made, or other action taken, by such Non-Restricted Person in accordance with such Loan Party Plan of Reorganization (but excluding the Term Loan), then such Restricted Affiliated Lender's consent shall not be required, so long as such Restricted Affiliated Lender was afforded the opportunity to ratably participate in such investment or to take such action pursuant to the Loan Party Plan of Reorganization;

(I) no assignment of Term Loans to an Affiliated Lender may be purchased with the proceeds of any Revolving Loan;

(J) none of the Borrower, the Parent, any Subsidiaries of the Parent or any Affiliated Lender shall be required to make any representation that it is not in possession of material non-public information with respect to the Parent, Subsidiaries of the Parent or any of their respective Affiliates.

Notwithstanding anything to the contrary herein, Section 12.07(a)(iv) shall supersede any provisions in Section 4.03 to the contrary.

(b) [Reserved]

(c) [Reserved]

(d) Upon such execution, delivery and acceptance, from and after the effective date specified in each Assignment and Acceptance and recordation on the Register, which effective date shall be at least 3 Business Days after the delivery thereof to the Collateral Agent (or such shorter period as shall be agreed to by the Collateral Agent and the parties to such assignment), (A) the assignee thereunder shall become a "Lender" hereunder and, in addition to the rights and obligations hereunder held by it immediately prior to such effective date, have the rights and obligations hereunder that have been assigned to it pursuant to such Assignment and Acceptance and (B) the assigning Lender thereunder shall, to the extent that rights and obligations hereunder have been assigned by it pursuant to such Assignment and Acceptance, relinquish its rights and be released from its obligations under this Agreement (and, in the case of an Assignment and Acceptance covering all or the remaining portion of an assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto).

(e) By executing and delivering an Assignment and Acceptance, the assigning Lender and the assignee thereunder confirm to and agree with each other and the other parties hereto as follows: (i) other than as provided in such Assignment and Acceptance, the assigning Lender makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with this Agreement or any other Loan Document or the execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement or any other Loan Document furnished pursuant hereto; (ii) the assigning Lender makes no representation or warranty and assumes no responsibility with respect to the financial condition of any Loan Party or any of its Subsidiaries or the performance or observance by any Loan Party of any of its obligations under this Agreement or any other Loan Document furnished pursuant hereto; (iii) such assignee confirms that it has received a copy of this Agreement and the other Loan Documents, together with such other documents and information it has deemed appropriate to make its own credit analysis and decision to enter into such Assignment and Acceptance; (iv) such assignee will, independently and without reliance upon the assigning Lender, any Agent or any Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement and the other Loan Documents; (v) such assignee appoints and authorizes the Agents to take such action as agents on its behalf and to exercise such powers under this Agreement and the other Loan Documents as are delegated to the Agents by the terms hereof and thereof, together with such powers as are reasonably incidental hereto and thereto; and (vi) such assignee agrees that it will perform in accordance with their terms all of the obligations which by the terms of this Agreement and the other Loan Documents are required to be performed by it as a Lender.

(f) The Administrative Agent shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain, or cause to be maintained at the Payment Office, a copy of each Assignment and Acceptance delivered to and accepted by it and a register (the "Register") for the recordation of the names and addresses of the Lenders and the Commitments of, and the principal amount of the Loans (and stated interest thereon) (the "Registered Loans") owing to each Lender from time to time. The entries in the Register shall be conclusive and binding for all purposes, absent manifest error, and the Borrower, the Agents and the Lenders shall treat each Person whose name is recorded in the Register as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Borrower and any Lender at any reasonable time and from time to time upon reasonable prior notice. This Section 12.07(f) shall be construed so that all Loans are at all times maintained in "registered form" within the meaning of Sections 163(f), 871(h)(2) and 881(c)(2) of the Internal Revenue Code and any related Treasury Regulations (or any other relevant or successor provisions of the Internal Revenue Code or of such Treasury Regulations).

(g) Upon receipt by the Administrative Agent of a completed Assignment and Acceptance, and subject to any consent required from the Administrative Agent or the Collateral Agent pursuant to Section 12.07(b) (which consent of the applicable Agent must be evidenced by such Agent's execution of an acceptance to such Assignment and Acceptance), the Administrative Agent shall accept such assignment, record the information contained therein in the Register (as adjusted to reflect any principal payments on or amounts capitalized and added to the principal balance of the Loans and/or Commitment reductions made subsequent to the effective date of the applicable assignment, as confirmed in writing by the corresponding assignor and assignee in conjunction with delivery of the assignment to the Administrative Agent) and provide to the Collateral Agent a copy of the fully executed Assignment and Acceptance.

(h) A Registered Loan (and the registered note, if any, evidencing the same) may be assigned or sold in whole or in part only by registration of such assignment or sale on the Register (and each registered note shall expressly so provide). Any assignment or sale of all or part of such Registered Loan (and the registered note, if any, evidencing the same) may be effected only by registration of such assignment or sale on the Register, together with the surrender of the registered note, if any, evidencing the same duly endorsed by (or accompanied by a written instrument of assignment or sale duly executed by) the holder of such registered note, whereupon, at the request of the designated assignee(s) or transferee(s), one or more new registered notes in the same aggregate principal amount shall be issued to the designated assignee(s) or transferee(s). Prior to the registration of assignment or sale of any Registered Loan (and the registered note, if any, evidencing the same), the Agents shall treat the Person in whose name such Registered Loan (and the registered note, if any, evidencing the same) is registered on the Register as the owner thereof for the purpose of receiving all payments thereon, notwithstanding notice to the contrary.

(i) In the event that any Lender sells participations in a Registered Loan, such Lender shall, acting for this purpose as a non-fiduciary agent on behalf of the Borrower, maintain, or cause to be maintained, a register, on which it enters the name of all participants in the Registered Loans held by it and the principal amount (and stated interest thereon) of the portion of the Registered Loan that is the subject of the participation, complying with the requirements of Sections 163(f), 871(h) and 881(c)(2) of the Internal Revenue Code and the Treasury Regulations (the "Participant Register"). A Registered Loan (and the registered note, if any, evidencing the same) may be participated in whole or in part only by registration of such participation on the Participant Register (and each registered note shall expressly so provide). Any participation of such Registered Loan (and the registered note, if any, evidencing the same) may be effected only by the registration of such participation on the Participant Register. The Participant Register shall be available for inspection by the Borrower and any Lender at any reasonable time and from time to time upon reasonable prior notice.

(j) Any Non-U.S. Secured Party who purchases or is assigned or participates in any portion of such Registered Loan shall comply with Section 2.09(d).

(k) Each Lender may sell participations to one or more banks or other entities (other than the Parent, Subsidiaries of the Parent, Affiliates of the Parent or a natural person) in or to all or a portion of its rights and obligations under this Agreement and the other Loan Documents (including, without limitation, all or a portion of its Commitments and the Loans made by it); provided that (i) such Lender's obligations under this Agreement (including without limitation, its Commitments hereunder) and the other Loan Documents shall remain unchanged; (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, and the Borrower, the Agents 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 the other Loan Documents; and (iii) a participant shall not be entitled to require such Lender to take or omit to take any action hereunder, except (A) action directly effecting an extension of the maturity dates or decrease in the principal amount of the Loans, (B) action directly effecting an extension of the due dates or a decrease in the rate of interest payable on the Loans or the fees payable under this Agreement, or (C) actions directly effecting a release of all or a substantial portion of the Collateral or any Loan Party (except as set forth in Section 10.08 of this Agreement or any other Loan Document). The Loan Parties agree that each participant shall be entitled to the benefits of Section 2.09 and Section 2.11 of this Agreement with respect to its participation in any portion of the Commitments and the Loans as if it was a Lender; provided that such participant agrees to be subject to the provisions of Section 2.09 and 2.13 as if it were an assignee under Section 12.07. A participant shall not be entitled to receive any greater payment under Section 2.09 or 2.11 than the applicable Lender would have been entitled to receive with respect to the participation sold to such participant unless the sale of the participation to such participant is made with the Loan Parties' prior written consent.

(l) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank or loans made to such Lender pursuant to securitization or similar credit facility (a "Securitization"); provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto. The Loan Parties shall cooperate with such Lender and its Affiliates to effect the Securitization including, without limitation, by providing such information as may be reasonably requested by such Lender in connection with the rating of its Loans or the Securitization.

Section 12.08 Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which shall be deemed to be an original, but all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of this Agreement by telecopier or electronic mail shall be equally as effective as delivery of an original executed counterpart of this Agreement. Any party delivering an executed counterpart of this Agreement by telecopier or electronic mail also shall deliver an original executed counterpart of this Agreement but the failure to deliver an original executed counterpart shall not affect the validity, enforceability, and binding effect of this Agreement. The foregoing shall apply to each other Loan Document *mutatis mutandis*.

Section 12.09 GOVERNING LAW. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (UNLESS EXPRESSLY PROVIDED TO THE CONTRARY IN ANOTHER LOAN DOCUMENT IN RESPECT OF SUCH OTHER LOAN DOCUMENT) SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED IN THE STATE OF NEW YORK.

Section 12.10 CONSENT TO JURISDICTION; SERVICE OF PROCESS AND VENUE. ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT MAY BE BROUGHT IN THE COURTS OF THE STATE OF NEW YORK IN THE COUNTY OF NEW YORK OR OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, AND, BY EXECUTION AND DELIVERY OF THIS AGREEMENT, EACH PARTY HERETO HEREBY IRREVOCABLY ACCEPTS IN RESPECT OF ITS PROPERTY, GENERALLY AND UNCONDITIONALLY, THE JURISDICTION OF THE AFORESAID COURTS. EACH PARTY HERETO HEREBY IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS OUT OF ANY OF THE AFOREMENTIONED COURTS AND IN ANY SUCH ACTION OR PROCEEDING BY ANY MEANS PERMITTED BY APPLICABLE LAW, INCLUDING, WITHOUT LIMITATION, BY THE MAILING OF COPIES THEREOF BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, TO THE BORROWER AT ITS ADDRESS FOR NOTICES AS SET FORTH IN SECTION 12.01, SUCH SERVICE TO BECOME EFFECTIVE 10 DAYS AFTER SUCH MAILING. THE PARTIES HERETO AGREE THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING HEREIN SHALL AFFECT THE RIGHT OF THE AGENTS AND THE LENDERS TO SERVICE OF PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO COMMENCE LEGAL PROCEEDINGS OR OTHERWISE PROCEED AGAINST ANY LOAN PARTY IN ANY OTHER JURISDICTION. EACH PARTY HERETO HEREBY EXPRESSLY AND IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE JURISDICTION OR LAYING OF VENUE OF ANY SUCH LITIGATION BROUGHT IN ANY SUCH COURT REFERRED TO ABOVE AND ANY CLAIM THAT ANY SUCH LITIGATION HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. TO THE EXTENT THAT ANY PARTY HERETO HAS OR HEREAFTER MAY ACQUIRE ANY IMMUNITY FROM JURISDICTION OF ANY COURT OR FROM ANY LEGAL PROCESS (WHETHER THROUGH SERVICE OR NOTICE, ATTACHMENT PRIOR TO JUDGMENT, ATTACHMENT IN AID OF EXECUTION OR OTHERWISE) WITH RESPECT TO ITSELF OR ITS PROPERTY, EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES SUCH IMMUNITY IN RESPECT OF ITS OBLIGATIONS UNDER THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS.

Section 12.11 WAIVER OF JURY TRIAL, ETC. EACH LOAN PARTY, EACH AGENT AND EACH LENDER HEREBY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM CONCERNING ANY RIGHTS UNDER THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS, OR UNDER ANY AMENDMENT, WAIVER, CONSENT, INSTRUMENT, DOCUMENT OR OTHER AGREEMENT DELIVERED OR WHICH IN THE FUTURE MAY BE DELIVERED IN CONNECTION THEREWITH, OR ARISING FROM ANY FINANCING RELATIONSHIP EXISTING IN CONNECTION WITH THIS AGREEMENT, AND AGREES THAT ANY SUCH ACTION, PROCEEDINGS OR COUNTERCLAIM SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. EACH PARTY HERETO CERTIFIES THAT NO OFFICER, REPRESENTATIVE, AGENT OR ATTORNEY OF ANY AGENT OR ANY LENDER HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT ANY AGENT OR ANY LENDER WOULD NOT, IN THE EVENT OF ANY ACTION, PROCEEDING OR COUNTERCLAIM, SEEK TO ENFORCE THE FOREGOING WAIVERS. EACH PARTY HERETO HEREBY ACKNOWLEDGES THAT THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE OTHER PARTIES ENTERING INTO THIS AGREEMENT.

Section 12.12 Consent by the Agents and Lenders. Except as otherwise expressly set forth herein to the contrary or in any other Loan Document, if the consent, approval, satisfaction, determination, judgment, acceptance or similar action (an "Action") of any Agent or any Lender shall be permitted or required pursuant to any provision hereof or any provision of any other agreement to which any Loan Party is a party and to which any Agent or any Lender has succeeded thereto, such Action shall be required to be in writing and may be withheld or denied by such Agent or such Lender, in its sole discretion, with or without any reason, and without being subject to question or challenge on the grounds that such Action was not taken in good faith.

Section 12.13 No Party Deemed Drafter. Each of the parties hereto agrees that no party hereto shall be deemed to be the drafter of this Agreement.

Section 12.14 Reinstatement; Certain Payments. If any claim is ever made upon any Secured Party for repayment or recovery of any amount or amounts received by such Secured Party in payment or on account of any of the Obligations, such Secured Party shall give prompt notice of such claim to each other Agent and Lender and the Borrower, and if such Secured Party repays all or part of such amount by reason of (i) any judgment, decree or order of any court or administrative body having jurisdiction over such Secured Party or any of its property, or (ii) any good faith settlement or compromise of any such claim effected by such Secured Party with any such claimant, then and in such event each Loan Party agrees that (A) any such judgment, decree, order, settlement or compromise shall be binding upon it notwithstanding the cancellation of any Indebtedness hereunder or under the other Loan Documents or the termination of this Agreement or the other Loan Documents, and (B) it shall be and remain liable to such Secured Party hereunder for the amount so repaid or recovered to the same extent as if such amount had never originally been received by such Secured Party.

Section 12.15 Indemnification; Limitation of Liability for Certain Damages.

(a) In addition to each Loan Party's other Obligations under this Agreement, each Loan Party agrees to, jointly and severally, defend, protect, indemnify and hold harmless each Secured Party and all of their respective Affiliates, officers, directors, employees, attorneys, consultants and agents (collectively called the "Indemnitees") from and against any and all losses, damages, liabilities, obligations, penalties, fees, reasonable, documented out-of-pocket costs and expenses (including, without limitation, reasonable attorneys' fees, costs and expenses) incurred by such Indemnitees, whether prior to or from and after the Effective Date, whether direct, indirect or consequential, as a result of or arising from or relating to or in connection with any of the following: (i) the negotiation, preparation, execution or performance or enforcement of this Agreement, any other Loan Document or of any other document executed in connection with the transactions contemplated by this Agreement, (ii) any Agent's or any Lender's furnishing of funds to the Borrower under this Agreement or the other Loan Documents, including, without limitation, the management of any such Loans or the Borrower's use of the proceeds thereof, (iii) the Agents and the Lenders relying on any instructions of the Borrower or the handling of the Loan Account and Collateral of the Borrower as herein provided, (iv) any matter relating to the financing transactions contemplated by this Agreement or the other Loan Documents or by any document executed in connection with the transactions contemplated by this Agreement or the other Loan Documents, or (v) any claim, litigation, investigation or proceeding relating to any of the foregoing, whether or not any Indemnitee is a party thereto (collectively, the "Indemnified Matters"); provided, however, that the Loan Parties shall not have any obligation to any Indemnitee under this subsection (a) for any Indemnified Matter caused by the gross negligence or willful misconduct of such Indemnitee, as determined by a final non-appealable judgment of a court of competent jurisdiction or a dispute solely among the Indemnitees.

(b) The indemnification for all of the foregoing losses, damages, fees, costs and expenses of the Indemnitees set forth in this Section 12.15 are chargeable against the Loan Account. To the extent that the undertaking to indemnify, pay and hold harmless set forth in this Section 12.15 may be unenforceable because it is violative of any law or public policy, each Loan Party shall, jointly and severally, contribute the maximum portion which it is permitted to pay and satisfy under applicable law, to the payment and satisfaction of all Indemnified Matters incurred by the Indemnitees.

(c) No Loan Party shall assert, and each Loan Party hereby waives, any claim against the Indemnitees, 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 other 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 each Loan Party hereby waives, releases and agrees not to sue upon any such claim or seek any such damages, whether or not accrued and whether or not known or suspected to exist in its favor.

(d) Notwithstanding anything to the contrary set forth in this Section 12.15, indemnification for any legal fees, costs and expenses shall be limited to (A) one outside counsel to the Agents and the Lenders, (B) one local counsel in each other relevant jurisdiction to the Agents and the Lenders and one regulatory counsel in each relevant regulatory area to the Agents and the Lenders and (C) solely in the case of a conflict of interest, one additional counsel in each relevant jurisdiction to each group of affected Lenders similarly situated taken as a whole.

(e) The indemnities and waivers set forth in this Section 12.15 shall survive the repayment of the Obligations and discharge of any Liens granted under the Loan Documents.

Section 12.16 Records. The unpaid principal of and interest on the Loans, the interest rate or rates applicable to such unpaid principal and interest, the duration of such applicability, the Commitments, and the accrued and unpaid fees payable pursuant to Section 2.06 hereof, including, without limitation, any fees set forth in the Fee Letter and the Applicable Prepayment Premium, if any, shall at all times be ascertained from the records of the Agents, which shall be conclusive and binding absent manifest error.

Section 12.17 Binding Effect. This Agreement shall become effective when it shall have been executed by each Loan Party, each Agent and each Lender and when the conditions precedent set forth in Section 5.01 hereof have been satisfied or waived in writing by the Agents, and thereafter shall be binding upon and inure to the benefit of each Loan Party, each Agent and each Lender, and their respective successors and assigns, except that the Loan Parties shall not have the right to assign their rights hereunder or any interest herein without the prior written consent of each Agent and each Lender, and any assignment by any Lender shall be governed by Section 12.07 hereof.

Section 12.18 Highest Lawful Rate. It is the intention of the parties hereto that each Agent and each Lender shall conform strictly to usury laws applicable to it. Accordingly, if the transactions contemplated hereby or by any other Loan Document would be usurious as to any Agent or any Lender under laws applicable to it (including the laws of the United States of America and the State of New York or any other jurisdiction whose laws may be mandatorily applicable to such Agent or such Lender notwithstanding the other provisions of this Agreement), then, in that event, notwithstanding anything to the contrary in this Agreement or any other Loan Document or any agreement entered into in connection with or as security for the Obligations, it is agreed as follows: (i) the aggregate of all consideration which constitutes interest under law applicable to any Agent or any Lender that is contracted for, taken, reserved, charged or received by such Agent or such Lender under this Agreement or any other Loan Document or agreements or otherwise in connection with the Obligations shall under no circumstances exceed the maximum amount allowed by such applicable law, any excess shall be canceled automatically and if theretofore paid shall be credited by such Agent or such Lender on the principal amount of the Obligations (or, to the extent that the principal amount of the Obligations shall have been or would thereby be paid in full, refunded by such Agent or such Lender, as applicable, to the Borrower); and (ii) in the event that the maturity of the Obligations is accelerated by reason of any Event of Default under this Agreement or otherwise, or in the event of any required or permitted prepayment, then such consideration that constitutes interest under law applicable to any Agent or any Lender may never include more than the maximum amount allowed by such applicable law, and excess interest, if any, provided for in this Agreement or otherwise shall, subject to the last sentence of this Section 12.18, be canceled automatically by such Agent or such Lender, as applicable, as of the date of such acceleration or prepayment and, if theretofore paid, shall be credited by such Agent or such Lender, as applicable, on the principal amount of the Obligations (or, to the extent that the principal amount of the Obligations shall have been or would thereby be paid in full, refunded by such Agent or such Lender to the Borrower). All sums paid or agreed to be paid to any Agent or any Lender for the use, forbearance or detention of sums due hereunder shall, to the extent permitted by law applicable to such Agent or such Lender, be amortized, prorated, allocated and spread throughout the full term of the Loans until payment in full so that the rate or amount of interest on account of any Loans hereunder does not exceed the maximum amount allowed by such applicable law. If at any time and from time to time (x) the amount of interest payable to any Agent or any Lender on any date shall be computed at the Highest Lawful Rate applicable to such Agent or such Lender pursuant to this Section 12.18 and (y) in respect of any subsequent interest computation period the amount of interest otherwise payable to such Agent or such Lender would be less than the amount of interest payable to such Agent or such Lender computed at the Highest Lawful Rate applicable to such Agent or such Lender, then the amount of interest payable to such Agent or such Lender in respect of such subsequent interest computation period shall continue to be computed at the Highest Lawful Rate applicable to such Agent or such Lender until the total amount of interest payable to such Agent or such Lender shall equal the total amount of interest which would have been payable to such Agent or such Lender if the total amount of interest had been computed without giving effect to this Section 12.18.

For purposes of this Section 12.18, the term "applicable law" shall mean that law in effect from time to time and applicable to the loan transaction between the Borrower, on the one hand, and the Agents and the Lenders, on the other, that lawfully permits the charging and collection of the highest permissible, lawful non-usurious rate of interest on such loan transaction and this Agreement, including laws of the State of New York and, to the extent controlling, laws of the United States of America.

The right to accelerate the maturity of the Obligations does not include the right to accelerate any interest that has not accrued as of the date of acceleration.

Section 12.19 Confidentiality. Each Agent and each Lender agrees (on behalf of itself and each of its affiliates, directors, officers, employees and representatives) to use reasonable precautions to keep confidential, in accordance with its customary procedures for handling confidential information of this nature and in accordance with safe and sound practices of comparable commercial finance companies, any non-public information supplied to it by the Loan Parties pursuant to this Agreement or the other Loan Documents which is identified in writing by the Loan Parties as being confidential at the time the same is delivered to such Person (and which at the time is not, and does not thereafter become, publicly available or available to such Person from another source not known to be subject to a confidentiality obligation to such Person not to disclose such information), provided that nothing herein shall limit the disclosure by any Agent or any Lender of any such information (i) to its Affiliates and to its and its Affiliates' respective equityholders (including, without limitation, partners), directors, officers, employees, agents, trustees, counsel, advisors and representatives (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such information and instructed to keep such information confidential in accordance with this Section 12.19); (ii) to any other party hereto; (iii) to any assignee or participant (or prospective assignee or participant) or any party to a Securitization so long as such assignee or participant (or prospective assignee or participant) or party to a Securitization first agrees, in writing, to be bound by confidentiality provisions similar in substance to this Section 12.19; (iv) to the extent required by any Requirement of Law or judicial process or as otherwise requested by any Governmental Authority; (v) to the National Association of Insurance Commissioners or any similar organization, any examiner, auditor or accountant or any nationally recognized rating agency or otherwise to the extent consisting of general portfolio information that does not identify Loan Parties; (vi) in connection with any litigation to which any Agent or any Lender is a party; (vii) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder; or (viii) with the consent of the Borrower.

Section 12.20 Public Disclosure. Each Loan Party agrees that neither it nor any of its Affiliates will now or in the future issue any press release or other public disclosure using the name of an Agent, any Lender or any of their respective Affiliates or referring to this Agreement or any other Loan Document without the prior written consent of such Agent or such Lender, except to the extent that such Loan Party or such Affiliate is required to do so under applicable law (in which event, such Loan Party or such Affiliate will consult with such Agent or such Lender before issuing such press release or other public disclosure). Each Loan Party hereby authorizes each Agent and each Lender, after consultation with the Borrower before issuing such press release or other public disclosure, to advertise the closing of the transactions contemplated by this Agreement, and to make appropriate announcements of the financial arrangements entered into among the parties hereto, as such Agent or such Lender shall deem appropriate, including, without limitation, on a home page or similar place for dissemination of information on the Internet or worldwide web, or in announcements commonly known as tombstones, in such trade publications, business journals, newspapers of general circulation and to such selected parties as such Agent or such Lender shall deem reasonably appropriate.

Section 12.21 Integration. This Agreement, together with the other Loan Documents, reflects the entire understanding of the parties with respect to the transactions contemplated hereby and shall not be contradicted or qualified by any other agreement, oral or written, before the date hereof.

Section 12.22 USA PATRIOT Act. Each Lender that is subject to the requirements of the USA PATRIOT Act hereby notifies the Borrower that pursuant to the requirements of the USA PATRIOT Act, it is required to obtain, verify and record information that identifies the entities composing the Borrower, which information includes the name and address of each such entity and other information that will allow such Lender to identify the entities composing the Borrower in accordance with the USA PATRIOT Act. Each Loan Party agrees to take such action and execute, acknowledge and deliver at its sole cost and expense, such instruments and documents as any Lender may reasonably require from time to time in order to enable such Lender to comply with the USA PATRIOT Act.

Section 12.23 Waiver of Immunity. To the extent that any Loan Party has or hereafter may acquire (or may be attributed, whether or not claimed) any immunity (sovereign or otherwise) from any legal action, suit or proceeding, from jurisdiction of any court or from set-off or any legal process (whether service of process or notice, attachment prior to judgment, attachment in aid of execution of judgment, execution of judgment or otherwise) with respect to itself or any of its property, such Loan Party hereby irrevocably waives and agrees not to plead or claim, to the fullest extent permitted by law, such immunity in respect of (a) its obligations under the Loan Documents, (b) any legal proceedings to enforce such obligations and (c) any legal proceedings to enforce any judgment rendered in any proceedings to enforce such obligations. Each Loan Party hereby agrees that the waivers set forth in this Section 12.23 shall be to the fullest extent permitted under the Foreign Sovereign Immunities Act and are intended to be irrevocable for purposes of the Foreign Sovereign Immunities Act.

Section 12.24 Keepwell. Each Loan Party, if it is a Qualified ECP Loan Party, then jointly and severally, together with each other Qualified ECP Loan Party, hereby absolutely unconditionally and irrevocably (a) guarantees the prompt payment and performance of all Swap Obligations owing by each Non-Qualifying Party (it being understood and agreed that this guarantee is a guaranty of payment and not of collection), and (b) undertakes to provide such funds or other support as may be needed from time to time by any Non-Qualifying Party to honor all of such Non-Qualifying Party's obligations under this Agreement or any other Loan Document in respect of Swap Obligations (provided, however, that each Qualified ECP Loan Party shall only be liable under this Section 12.24 for the maximum amount of such liability that can be hereby incurred without rendering its obligations under this Section 12.24, or otherwise under this Agreement or any other Loan Document, voidable under applicable law, including applicable law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations of each Qualified ECP Loan Party under this Section 12.24 shall remain in full force and effect until payment in full of the Obligations and termination of this Agreement and the other Loan Documents. Each Qualified ECP Loan Party intends that this Section 12.24 constitute, and this Section 12.24 shall be deemed to constitute, a guarantee of the obligations of, and a "keepwell, support, or other agreement" for the benefit of each other Borrower and Guarantor for all purposes of Section 1(a)(18)(A)(v)(II) of the Commodity Exchange Act. Notwithstanding any provision hereof or in any Loan Document to the contrary, in the event that any Guarantor is not an "eligible contract participant" as such term is defined in Section 1(a)(18) of the Commodity Exchange Act, at the time (i) any Swap Obligation is undertaken or (ii) such Guarantor becomes a Guarantor, the Guaranteed Obligations of such Guarantor shall not include (x) in the case of clause (i) above, such Swap Obligation and (y) in the case of clause (ii) above, any transactions outstanding under any Swap Obligation as of such date such Guarantor becomes a Guarantor hereunder.

Section 12.25 Assumption and Acknowledgment. Effective immediately after the consummation of the IWCO Acquisition, the execution and delivery by the Borrower of a counterpart hereto and the funding of the Loans on the Effective Date hereunder, and without affecting any of the obligations of Parent as a Guarantor under any Loan Document, the Borrower hereby assumes all of the Initial Borrower’s rights, title, interests, duties, liabilities and obligations (including the Obligations) under the Loan Documents as a “Borrower” hereunder (collectively, the “Assumption”) including, any claims, liabilities, or obligations arising from Initial Borrower’s failure to perform any of its covenants, agreements, commitments or obligations under the Loan Documents to be performed prior to the date of the Assumption. Initial Borrower hereby acknowledges the Assumption by the Borrower and its effectiveness immediately after the consummation of the Acquisition, the execution and delivery by the Borrower of a counterpart hereto and the funding of the Loans on the Effective Date hereunder. Without limiting the generality of the foregoing, upon its execution and delivery of a counterpart hereto, the Borrower hereby expressly agrees to observe and perform and be bound by all of the terms, covenants, representations, warranties, and agreements contained herein which are binding upon, and to be observed or performed by, a Borrower. The Administrative Agent and each Lender hereby consents to the Assumption.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized, as of the date first above written.

INITIAL BORROWER:

MLGS MERGER COMPANY, INC.

By: /s/ Louis J. Belardi
Name: Louis J. Belardi
Title: Secretary and Treasurer

BORROWER:

INSTANT WEB, LLC

By: /s/ Joseph F. Morrison
Name: Joseph F. Morrison
Title: Chief Financial Officer

PARENT:

IWCO DIRECT HOLDINGS INC.

By: /s/ Joseph F. Morrison
Name: Joseph F. Morrison
Title: Chief Financial Officer

UNITED MAILING, INC.
VICTORY ENVELOPE, INC.
IWCO DIRECT NEW YORK, INC.
IWCO DIRECT NORTH CAROLINA, INC.
IWCO DIRECT TWIN, LLC

By: /s/ Joseph F. Morrison

Name: Joseph F. Morrison
Title: Chief Financial Officer

COLLATERAL AGENT AND ADMINISTRATIVE AGENT:

CERBERUS BUSINESS FINANCE, LLC

By: /s/ Daniel E. Wolf
Name: Daniel E. Wolf
Title: Chief Executive Officer

LENDERS:

CERBERUS LEVERED LOAN OPPORTUNITIES FUND III, L.P.
By: Cerberus Levered Opportunities III GP, LLC
Its: General Partner

By: /s/ Daniel E. Wolf
Name: Daniel E. Wolf
Title: Senior Managing Director

CERBERUS NJ CREDIT OPPORTUNITIES FUND, L.P.
By: Cerberus NJ Credit Opportunities GP, LLC
Its: General Partner

By: /s/ Daniel E. Wolf
Name: Daniel E. Wolf
Title: Senior Managing Director

CERBERUS ASRS HOLDINGS LLC

By: /s/ Daniel E. Wolf
Name: Daniel E. Wolf
Title: Vice President

CERBERUS KRS LEVERED LOAN OPPORTUNITIES FUND, L.P.
By: Cerberus KRS Levered Opportunities GP, LLC
Its: General Partner

By: /s/ Daniel E. Wolf
Name: Daniel E. Wolf
Title: Senior Managing Director

CERBERUS PSERS LEVERED LOAN OPPORTUNITIES FUND, L.P.
By: Cerberus PSERS Levered Opportunities GP, LLC
Its: General Partner

By: /s/ Daniel E. Wolf
Name: Daniel E. Wolf
Title: Senior Managing Director

CERBERUS FSBA HOLDINGS LLC

By: /s/ Daniel E. Wolf
Name: Daniel E. Wolf
Title: Vice President

CERBERUS ND CREDIT HOLDINGS LLC

By: /s/ Daniel E. Wolf
Name: Daniel E. Wolf
Title: Vice President

Schedule 1.01(A)

Lenders and Lenders' Commitments

Lender	Revolving Credit Commitment	Term Loan Commitment	Total Commitment
Cerberus Levered Loan Opportunities Fund III, L.P.	$6,785,162.07	$106,662,747.77	$113,447,909.84
Cerberus NJ Credit Opportunities Fund, L.P.	$2,577,547.49	$40,519,046.51	$43,096,594.00
Cerberus ASRS Holdings LLC	$7,591,686.25	$119,341,307.88	$126,932,994.13
Cerberus KRS Levered Loan Opportunities Fund, L.P.	$854,301.30	$13,429,616.43	$14,283,917.73
Cerberus PSERS Levered Loan Opportunities Fund, L.P.	$3,366,824.99	$52,926,488.87	$56,293,313.86
Cerberus FSBA Holdings LLC	$2,022,628.23	$31,795,715.73	$33,818,343.96
Cerberus ND Credit Holdings LLC	$1,801,849.67	$28,325,076.81	$30,126,926.48
Total	**$25,000,000**	**$393,000,000**	**$418,000,000**

Schedule 1.01(B)

Facilities

(i)
Production Facilities & Warehouses:

Facility	Location	Owned or Leased
Warminster (MailGard)	65 Steamboat Drive Warminster, PA	**Leased**
Hamburg (Lettershop)	100 Industrial Drive Hamburg, PA	**Leased**
Hamburg (Print)	70 Industrial Drive Hamburg, PA	**Leased**
Chanhassen - CH1 (Print)	7951 Powers Blvd Chanhassen, MN	**Leased**
Chanhassen - CH2 (Personalization)	1001 Park Rd Chanhassen, MN	**Leased**
Chanhassen - CH3 (Lettershop)	1000 Park Rd Chanhassen, MN	**Leased**
Little Falls (Lettershop)	1910 Haven Rd Little Falls, MN	**Leased**
Chanhassen (Warehouse)	8145 Century Blvd Chanhassen, MN	**Leased**
Auburn (Warehouse)	2033 Market Street Auburn, PA, 17922	**Leased**

Sales Offices:

Sales Office	Location	Owned or Leased
Bill Wicka - Curtis Treiser	2335 Tamiami Trail No Naples, FL 34103	**Leased**
Bob McIllyar - B&J Myers LLC	9602 Iron Bridge Road Chesterfield, VA 23832	**Leased**

Brian Ridenour - Overton Leasing, LTD	2405 Forest Park Blvd Fort Worth, Tx 76104	**Leased**
Deborah Challoner - Boulevard Investment Co.	9909 Clayton Road Office Bldg St. Louis, MO 63124	**Leased**
Hank Andersen - Safe Harbor Retirement, LLC	1000 Bridgeport Ave, Suite 2D Shelton, CT 06484	**Leased**
Mike Logar – Greg Barrow	2383 Kimberton Road Phoenixville, PA 19460	**Leased**
Andy Littleton – Thomas Abraham Properties, LLC	43000 Nine Mile Road, Suite 203 Novi, MI 48375	**Leased**

(ii)

United Mailing Inc. owns three parcels of land adjacent in Chanhassen, MN located immediately adjacent to its Chanhassen operations.

1. 25.1900220 Section 14 Township 116 Range 023 Chanhassen Lakes Bus. Park Lot 002 - Block 005
2. 25.1900210 Section 14 Township 116 Range 023 Chanhassen Lakes Bus. Park Lot 001 - Block 005
3. 25.1900231 Section 14 Township 116 Range 023 Chanhassen Lakes Bus. Park Lot 003 - Block 005 EXC Swly 65’ Measured Parallel to the Swly Lot Line

Schedule 1.01(D)

Immaterial Subsidiaries and Certain Other Excluded Subsidiaries

Subsidiary	Owner
United Mailing Inc.	Instant Web, LLC
Victory Envelope, Inc.	Instant Web, LLC
IWCO Direct New York, Inc.	Instant Web, LLC
IWCO Direct North Carolina, Inc.	Instant Web, LLC
IWCO Direct Twin, LLC	Instant Web, LLC

Schedule 6.01(e)

Capitalization; Subsidiaries

(a). **Capitalization**

Loan Party	Holder	Equity	Authorized	Outstanding
MLGS Merger Company, Inc.*	ModusLink Global Solutions, Inc.	Common Stock	100	100
Parent * (IWCO Direct Holdings Inc.)	ModusLink Global Solutions, Inc.	Class A Common Stock	880,000 shares	100
Instant Web, LLC	IWCO Direct Holdings Inc.	Membership Interests	NA	100%
United Mailing Inc.	Instant Web, LLC	Common Stock	250,000 shares	37,500
Victory Envelope, Inc.	Instant Web, LLC	Common Stock	100,000 shares	1,000
IWCO Direct New York, Inc.	Instant Web, LLC	Common Stock	100 shares	100
IWCO Direct North Carolina, Inc.	Instant Web, LLC	Common Stock	10,000 shares	1,000
IWCO Direct Twin, LLC	Instant Web, LLC	Membership Interests	NA	100%

*MLGS Merger Company, Inc. will be merged with and into IWCO Direct Holdings Inc. on the day of Closing.

(b). **Equity Obligations**
None.

(c). **Debt**
None.

Schedule 6.01(f)

Litigation

None.

Schedule 6.01(i)

ERISA

None.

Schedule 6.01(l)

Nature of Business

The Loan Parties (other than MLGS Merger Company, Inc.) are engaged in direct marketing services and other activities rated or otherwise incidental thereto.

MLGS Merger Company, Inc. formed for purposes of merging with and into IWCO Direct Holdings Inc.

Schedule 6.01(q)

Environmental Matters

(i), (ii) (iii), (iv), (v) and (vi)

1. The Company discloses the events and conditions described in the following:

   a. Phase I Environmental Site Assessment, IWCO Direct Inc., 7951 Powers Boulevard, 1000 Park Road, 1001 Park Road, Chanhassen, MN, by ERM dated January 2015

   b. Phase I Environmental Site Assessment, Mail-Gard Inc., 65 Steamboat Drive, Warminster, PA, by ERM dated January 2015

   c. Phase I Environmental Site Assessment, IWCO Direct Inc., 70 Industrial Drive, Hamburg, PA, by ERM dated January 2015

   d. Phase I Environmental Site Assessment, IWCO Direct Inc., 100 Industrial Drive, Hamburg, PA, by ERM dated January 2015

   e. Phase I Environmental Site Assessment, IWCO Direct Inc., 1910 Haven Road, Little Falls, MN, by ERM dated January 2015

   f. Site Characterization Report, 65 Steamboat Drive, Warminster Township, Bucks County, PA 18974, by Environmental Consulting, Inc. dated May 28, 2013

   g. Phase I Environmental Site Assessment Report, 1000 Park Road, 1001 Park Road, and 7951 Powers Boulevard, Chanhassen, MN, by Nova Consulting Group, Inc. dated December 10, 2004

   h. Phase One Environmental Site Assessment, IWCO Direct, 1910 Haven Road, Little Falls, MN, by Liesch Associates, Inc. dated December 13, 2004

(vii)

No exceptions.

(viii)

No exceptions.

Schedule 6.01(r)

Insurance

Policy Type	Policy Dates	Premium	Carrier	Policy Number	Coverage Detail	Limits/Terms	DED/SIR
Property	8-01-17 to 8-01-18	$ 341,548	Travelers	6300F001608	Blanket Bldg & BPP	$321,605,525	$10,000
					Blanket BI & EE	$273,611,000	48 Hours
Equipment Breakdown	8-01-17 to 8-01-18	$ 35,207	Travelers	BME12F42523A	Equipment Breakdown	$175,000,000	$10,000
General Liability	8-01-17 to 8-01-18	$ 95,495	Travelers	6300F001608	General Aggregate	$10,000,000	$0
					Products/Completed Operations Aggregate	$2,000,000	$0
					Each Occurrence	$1,000,000	$0
					Personal Injury/ Advertising Injury	$1,000,000	$0
					Fire Damage (Any One Fire)	$100,000	$0
					Medical Expense	$10,000	$0
					Printers E&O - Aggregate	$2,000,000	$25,000
					Printers E&O - Each Wrongful Act	$1,000,000	$25,000
					Product Recall & Correction of Work-Aggregate	$1,000,000	$25,000
					Product Recall & Correction of Work-Each Wrongful Act	$500,000	$25,000
					Employee Benefits Liability-Aggregate Limit	$2,000,000	$0
					Employee Benefits Liability- each employee	$1,000,000	$0
Automobile	8-01-17 to 8-01-18	$ 24,530	Travelers	8100F001608	Combined Single Limit - Any Auto	$1,000,000	$0
					Personal Injury - No Fault	Statutory	$0
					Uninsured/Underinsured Motorist Liability	$1,000,000	$0
					Physical Damage - Owned	ACV	
					Comprehensive Deductible		$1,000
					Collision Deductible		$1,000
					Physical Damage - Hired/Leased	ACV	
					Comprehensive Deductible		$100
					Collision Deductible		$1,000
Work Comp	8-01-17 to 8-01-18	$ 582,929	North River	4067254557	Statutory Coverage	Included	$250,000
					Employers' Liability		
					Each Accident	$1,000,000	$250,000
					Disease - Policy Limit	$1,000,000	$250,000
					Disease - Each Employee	$1,000,000	$250,000
Umbrella	8-01-17 to 8-01-18	$ 74,319	Chubb	79888129	Each Occurrence - Umbrella/Excess	$25,000,000	$0
					Aggregate - Umbrella/Excess	$25,000,000	$0

Schedule 6.01(u)

Intellectual Property

1. Copyrights

None.

2. Patents

None.

3. Trademarks

Mark	Country	Serial No.	Filing Date	Reg. No.	Reg. Date	Owner
BREACH + GARD and Design	Canada	1444064	7/8/2009	799631	6/9/2011	Instant Web, LLC (formerly known as Instant Web, Inc.)
MAIL + GARD and Design	Canada	1444063	7/8/2009	TMA815684	1/18/2012	Instant Web, LLC (formerly known as Instant Web, Inc.)
MAIL-GARD	Canada	1208651	5/4/2001	TMA638093	4/21/2005	Instant Web, LLC (formerly known as Instant Web, Inc.)
DOCPROOF	United States of America	76/264180	5/30/2001	2772206	10/7/2003	Instant Web, LLC (formerly known as Instant Web, Inc.)
MAIL-GARD	United States of America	74/674998	5/17/1995	2002521	9/24/1996	Instant Web, LLC (formerly known as Instant Web, Inc.)
DIRECT MARKETING LIKE NO ONE ELSE	United States of America	78/946,427	8/7/2006	3249608	6/5/2007	Instant Web, LLC (formerly known as Instant Web, Inc.)
IWCO Direct	United States of America	78/946,446	8/7/2006	3249610	6/5/2007	Instant Web, LLC (formerly known as Instant Web, Inc.)
IWCO DIRECT	United States of America	78/946,464	8/7/2006	3249611	6/5/2007	Instant Web, LLC (formerly known as Instant Web, Inc.)
IWCO DIRECT	United States of America	78/946,469	8/7/2006	3249613	6/5/2007	Instant Web, LLC (formerly known as Instant Web, Inc.)

4. Domain Names

Domain Name	Expiration Date Status	Registrant
CC3.COM	4/18/2019 Active	Instant Web, LLC dba IWCO Direct
DGISERVICES.COM	6/9/2018 Active	Instant Web, LLC dba IWCO Direct
DGMARKETINGSOLUTIONS.NET	2/10/2019 Active	Instant Web, LLC dba IWCO Direct
DMACTION.COM	2/14/2020 Active	Instant Web, LLC dba IWCO Direct
DMDRIVER.COM	2/14/2020 Active	Instant Web, LLC dba IWCO Direct
DMFINITY.COM	2/14/2020 Active	Instant Web, LLC dba IWCO Direct
DMKISMET.COM	2/14/2020 Active	Instant Web, LLC dba IWCO Direct
DMSDIRECT.ORG	2/13/2020 Active	Instant Web, LLC dba IWCO Direct
DOCPROOF.COM	1/20/2022 Active	Instant Web, LLC dba IWCO Direct
FALA.COM	5/28/2021 Active	Instant Web, LLC dba IWCO Direct
INSTANTWEBCOS.COM	1/6/2019 Active	Instant Web, LLC dba IWCO Direct
INTUITIVEDM.COM	2/14/2020 Active	Instant Web, LLC dba IWCO Direct
IWCO-DIRECT.COM	2/10/2019 Active	Instant Web, LLC dba IWCO Direct
IWCO-DIRECT.US	2/9/2019 Active	Instant Web, LLC dba IWCO Direct
IWCO.COM	9/3/2018 Active	Instant Web, LLC dba IWCO Direct
IWCODIRECT.COM	2/10/2019 Active	Instant Web, LLC dba IWCO Direct
IWCODIRECT.US	2/9/2019 Active	Instant Web, LLC dba IWCO Direct
IWSONIC.COM	2/13/2020 Active	Instant Web, LLC dba IWCO Direct
JETSON.COM	11/29/2020 Active	Instant Web, LLC dba IWCO Direct
MAIL-GARD.COM	2/10/2019 Active	Instant Web, LLC dba IWCO Direct

MAIL-GARD.NET	2/10/2019 Active	Instant Web, LLC dba IWCO Direct
MAIL-GARD.ORG	3/10/2019 Active	Instant Web, LLC dba IWCO Direct
MAILGARD.COM	10/13/2020 Active	Instant Web, LLC dba IWCO Direct
MAILGARD.NET	2/10/2019 Active	Instant Web, LLC dba IWCO Direct
MAILGARD.ORG	3/10/2019 Active	Instant Web, LLC dba IWCO Direct
MYAACASHSHIPPING.COM	9/4/2020 Active	Instant Web, LLC dba IWCO Direct
NRDLDM.COM	3/4/2019 Active	Instant Web, LLC dba IWCO Direct
POWERDM.COM	2/14/2020 Active	Instant Web, LLC dba IWCO Direct
TCDUS.BIZ	8/4/2019 Active	Instant Web, LLC dba IWCO Direct
TCDUS.COM	2/10/2019 Active	Instant Web, LLC dba IWCO Direct
TCDUS.NET	2/10/2019 Active	Instant Web, LLC dba IWCO Direct
UNITEDMAILING.COM	1/6/2019 Active	Instant Web, LLC dba IWCO Direct
USARMYCOI.COM	2/10/2019 Active	Instant Web, LLC dba IWCO Direct
USARMYSUPPORT.COM	2/10/2019 Active	Instant Web, LLC dba IWCO Direct
VICTORYENVELOPE.COM	1/6/2019 Active	Instant Web, LLC dba IWCO Direct
YOURINFOPORT.COM	7/21/2021 Active	Instant Web, LLC dba IWCO Direct
YOURINFOPORT.NET	7/21/2021 Active	Instant Web, LLC dba IWCO Direct

Schedule 7.02(a)

Existing Liens

None.

Schedule 7.02(b)

Existing Indebtedness

None.

Schedule 7.02(e)

Existing Investments

None.

Schedule 7.02(k)

Limitations on Dividends and Other Payment Restrictions

None.

Schedule 8.01

Cash Management Banks and Cash Management Accounts

Grantor	Name and Address of Institution Maintaining Account	Account Number	Purpose of Account
Instant Web, LLC	Wells Fargo 420 Montgomery Street, San Francisco, CA 94104	**********	Collection Account
Instant Web, LLC	Wells Fargo 420 Montgomery Street, San Francisco, CA 94104	**********	Operating Account
Instant Web, LLC	Wells Fargo 420 Montgomery Street, San Francisco, CA 94104	**********	Payroll
Instant Web, LLC	Wells Fargo 420 Montgomery Street, San Francisco, CA 94104	**********	Controlled Disbursement Account

EXHIBIT A

FORM OF JOINDER AGREEMENT

THIS JOINDER AGREEMENT, dated as of _____ (this "Agreement"), to the Financing Agreement referred to below is entered into by and among IWCO Direct Holdings Inc., a Delaware corporation (the "Parent"), MLGS Merger Company, Inc., a Delaware corporation (the "Initial Borrower") and immediately upon the consummation of the IWCO Acquisition (as defined in the Financing Agreement), Instant Web, LLC, a Delaware corporation (the "Borrower"), each subsidiary of the Parent listed as a "Guarantor" on the signature pages thereto (together with the Parent and each other Person that executes a joinder agreement and becomes a "Guarantor" thereunder or otherwise guaranties all or any part of the Obligations (as defined therein), each a "Guarantor" and collectively, the "Guarantors"), [NAME OF ADDITIONAL BORROWER OR GUARANTOR], a _____ _____ (the "Additional [Borrower][Guarantor]"), the lenders from time to time party thereto (each a "Lender" and, collectively, the "Lenders"), Cerberus Business Finance, LLC ("Cerberus"), a Delaware limited liability company, as collateral agent for the Lenders (in such capacity, together with its successors and assigns in such capacity, the "Collateral Agent"), and Cerberus, as administrative agent for the Lenders (in such capacity, together with its successors and assigns in such capacity, the "Administrative Agent" and together with the Collateral Agent, each an "Agent" and collectively, the "Agents").

WHEREAS, the Parent, the Borrower [(other than the Additional Borrower)], the Guarantors [(other than the Additional Guarantor)], the Lenders and the Agents have entered into that certain Financing Agreement, dated as of December 15, 2017 (such agreement, together with all exhibits and schedules thereto, as amended, restated, supplemented or otherwise modified from time to time, including any replacement agreement therefor, the "Financing Agreement"), pursuant to which the Lenders have agreed to make certain term loans and revolving loans (each a "Loan" and collectively the "Loans"), to the Borrower;

WHEREAS, the Borrower's obligation to repay the Loans and all other Obligations are guaranteed, jointly and severally, by the Guarantors;

WHEREAS, pursuant to Section 7.01(b) of the Financing Agreement, the Additional [Borrower][Guarantor] is required to become a [Borrower][Guarantor] by, among other things, executing and delivering this Agreement to the Collateral Agent; and

WHEREAS, the Additional [Borrower][Guarantor] has determined that the execution, delivery and performance of this Agreement directly benefit, and are within the corporate purposes and in the best interests of, the Additional [Borrower][Guarantor].

NOW THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto hereby agree as follows:

SECTION 1. Definitions. Reference is hereby made to the Financing Agreement for a statement of the terms thereof. All terms used in this Agreement which are not otherwise defined herein shall have the same meanings herein as set forth in the Financing Agreement.

SECTION 2. Joinder of Additional [Borrower][Guarantor].

(a) Pursuant to Section 7.01(b) of the Financing Agreement, by its execution of this Agreement, the Additional [Borrower][Guarantor] hereby (i) confirms that, as to the Additional [Borrower][Guarantor], the representations and warranties contained in Article VI of the Financing Agreement are true and correct in all material respects as of the effective date of this Agreement (except that such materiality qualifier shall not be applicable to any representations or warranties that already are qualified or modified as to "materiality" or "Material Adverse Effect" in the text thereof, which representations and warranties shall be true and correct in all respects subject to such qualification) on and as of such date as though made on and as of such date, except to the extent that any such representation or warranty expressly relates solely to an earlier date (in which case such representation or warranty shall be true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations or warranties that already are qualified or modified as to "materiality" or "Material Adverse Effect" in the text thereof, which representations and warranties shall be true and correct in all respects subject to such qualification) on and as of such earlier date), and (ii) agrees that, from and after the effective date of this Agreement, the Additional [Borrower][Guarantor] shall be a party to the Financing Agreement and shall be bound, as a [Borrower][Guarantor], by all the provisions thereof and shall comply with and be subject to all of the terms, conditions, covenants, agreements and obligations set forth therein and applicable to the [Borrowers] [Guarantors], [including, without limitation, the guaranty of the Obligations made by the Guarantors, jointly and severally with the other Loan Parties, in favor of the Agents and the Lenders pursuant to Article XI of the Financing Agreement]. The Additional [Borrower][Guarantor] hereby agrees that from and after the effective date of this Agreement, each reference to a ["Borrower"]["Guarantor"] or a "Loan Party" and each reference to the ["Borrowers"] ["Guarantors"] or the "Loan Parties" in the Financing Agreement shall include the Additional [Borrower][Guarantor]. The Additional [Borrower][Guarantor] acknowledges that it has received a copy of the Financing Agreement and each other Loan Document and that it has read and understands the terms thereof.

(b) Attached hereto are supplements to each Schedule to the Financing Agreement revised to include all information required to be provided therein with respect to, and only with respect to, the Additional [Borrower][Guarantor]. The Schedules to the Financing Agreement shall, without further action, be amended to include the information contained in each such supplement.

SECTION 3. Effectiveness. This Agreement shall become effective upon its execution by the Additional [Borrower][Guarantor], the Borrower, each Guarantor and each Agent and receipt by the Agents of the following, in each case in form and substance reasonably satisfactory to the Agents:

(a) original counterparts to this Agreement, duly executed by the Borrower, each Guarantor, the Additional [Borrower][Guarantor] and the Agents, together with the Schedules referred to in Section 2(b) hereof;

(b) a Supplement to the Security Agreement, substantially in the form of Exhibit C to the Security Agreement (the "Security Agreement Supplement"), duly executed by the Additional [Borrower][Guarantor], and any instruments of assignment or other documents reasonably required to be delivered to the Agents pursuant to the terms thereof;

(c) a Pledge Amendment to the Security Agreement to which the parent company of the Additional [Borrower][Guarantor] is a party, in substantially the form of Exhibit A thereto, duly executed by such parent company and providing for all Equity Interest of the Additional [Borrower] [Guarantor] to be pledged to the Collateral Agent pursuant to the terms thereof;

(d) (i) certificates, if any, representing 100% of the issued and outstanding Equity Interests of the Additional [Borrower][Guarantor] required to be pledged pursuant to the Security Agreement and each Subsidiary of the Additional [Borrower][Guarantor] and (ii) all original promissory notes of such Additional [Borrower][Guarantor], if any, in each case, that are reasonably required to be delivered under the Loan Documents, in each case, accompanied by instruments of assignment and transfer in such form as the Collateral Agent may reasonably request;

(e) to the extent required under the Financing Agreement, a Mortgage (the "Additional Mortgage"), duly executed by the Additional [Borrower][Guarantor], with respect to the real property owned or leased, as applicable, by the Additional [Borrower][Guarantor], together with all other applicable Real Property Deliverables, agreements, instruments and documents as the Collateral Agent may reasonably require, whether comparable to the documents required under Section 7.01(m) of the Financing Agreement or otherwise;

(f) (i) appropriate financing statements on Form UCC-1 duly filed in such office or offices as may be necessary or, in the opinion of the Collateral Agent, desirable to perfect the security interests purported to be created by the Security Agreement Supplement and any Mortgage and (ii) evidence reasonably satisfactory to the Collateral Agent of the filing of such UCC-1 financing statements;

(g) a written opinion of counsel to the Loan Parties as to such matters as the Agents may reasonably request; and

(h) such other agreements, instruments or other documents reasonably requested by the Collateral Agent in order to create, perfect, establish the first priority (subject to Permitted Liens) of or otherwise protect any Lien purported to be covered by the Security Agreement Supplement or any Additional Mortgage or otherwise to effect the intent that the Additional [Borrower][Guarantor] shall become bound by all of the terms, covenants and agreements applicable to [Borrower][Guarantors] contained in the Loan Documents and that all property and assets (other than Excluded Property (as defined in the Security Agreement)) of such Subsidiary shall become Collateral for the Obligations free and clear of all Liens other than Permitted Liens.

SECTION 4. Notices, Etc. All notices and other communications provided for hereunder shall be in writing and shall be mailed (by certified mail, postage prepaid and return receipt requested), telecopied or delivered by hand, Federal Express or other reputable overnight courier, if to the Additional [Borrower][Guarantor], to it at its address set forth below its signature to this Agreement, and if to the Borrower, any Guarantor, any Lender or any Agent, to it at its address specified in the Financing Agreement or Joinder Agreement (as applicable); or as to any such Person at such other address as shall be designated by such Person in a written notice to such other Person, complying as to delivery with the terms of this Section 4. All such notices and other communications shall be effective in accordance with Section 12.01 of the Financing Agreement.

SECTION 5. General Provisions. (a) The Borrower, each Guarantor and the Additional [Borrower][Guarantor] hereby confirms that each representation and warranty made by it under the Loan Documents (after giving effect to any updated schedules to the Loan Documents delivered hereunder or any supplement to any of the Loan Documents delivered in connection herewith) is true and correct in all material respects on and as of such date as though made on and as of such date, except to the extent that any such representation or warranty expressly relates solely to an earlier date (in which case such representation or warranty shall be true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations or warranties that already are qualified or modified as to "materiality" or "Material Adverse Effect" in the text thereof, which representations and warranties shall be true and correct in all respects subject to such qualification) on and as of such earlier date), and that no Default or Event of Default has occurred or is continuing under the Financing Agreement. The Borrower and each Guarantor and the Additional [Borrower][Guarantor] hereby represents and warrants that as of the date hereof there are no claims or offsets against or defenses or counterclaims to their respective obligations under the Financing Agreement or any other Loan Document.

(b) Except as supplemented hereby, the Financing Agreement and each other Loan Document shall continue to be, and shall remain, in full force and effect. This Agreement shall not be deemed (i) to be a waiver of, or consent to, or a modification or amendment of, any other term or condition of the Financing Agreement or any other Loan Document or (ii) to prejudice any right or rights which the Agents or the Lenders may now have or may have in the future under or in connection with the Financing Agreement or the other Loan Documents or any of the instruments or agreements referred to therein, as the same may be amended, restated, supplemented or otherwise modified from time to time, including any replacement instrument or agreement therefor.

(c) The Additional [Borrower][Guarantor] hereby expressly (i) authorizes the Collateral Agent to file appropriate financing statements or continuation statements, and amendments thereto, (including without limitation, any such financing statements that indicate the Collateral as "all assets" or words of similar import) in such office or offices as may be necessary or, in the opinion of the Collateral Agent, desirable to perfect the Liens to be created by the Security Agreement Supplement and each of the other Loan Documents and (ii) ratifies such authorization to the extent that the Collateral Agent has filed any such financing or continuation statements or amendments thereto prior to the date hereof. A photocopy or other reproduction of the Security Agreement Supplement or any financing statement covering the Collateral or any part thereof shall be sufficient as a financing statement where permitted by law.

(d) The Borrower agrees to pay on demand all reasonable, documented, out-of-pocket costs and expenses incurred by or on behalf of each Agent in connection with the negotiation, preparation, execution, delivery and performance of this Agreement, including, without limitation, the reasonable, documented, out-of-pocket fees, costs, client charges and expenses of counsel for each Agent to the extent set forth in Section 12.04 of the Financing Agreement.

(e) This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which shall be deemed to be an original, but all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of this Agreement by telecopier or electronic transmission shall be equally as effective as delivery of an original executed counterpart of this Agreement. Any party delivering an executed counterpart of this Agreement by telecopier or electronic transmission also shall deliver an original executed counterpart of this Agreement but the failure to deliver an original executed counterpart shall not affect the validity, enforceability, and binding effect of this Agreement.

(f) Section headings in this Agreement are included herein for the convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

(g) ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THIS AGREEMENT MAY BE BROUGHT IN THE COURTS OF THE STATE OF NEW YORK IN THE COUNTY OF NEW YORK OR OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, AND, BY EXECUTION AND DELIVERY OF THIS AGREEMENT, THE ADDITIONAL [BORROWER][GUARANTOR] AND EACH OTHER LOAN PARTY HEREBY IRREVOCABLY ACCEPTS IN RESPECT OF ITS PROPERTY, GENERALLY AND UNCONDITIONALLY, THE JURISDICTION OF THE AFORESAID COURTS. THE ADDITIONAL [BORROWER][GUARANTOR] AND EACH OTHER LOAN PARTY HEREBY IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS OUT OF ANY OF THE AFOREMENTIONED COURTS AND IN ANY SUCH ACTION OR PROCEEDING BY THE MAILING OF COPIES THEREOF BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, TO THE BORROWER AT ITS ADDRESS FOR NOTICES AS SET FORTH IN THE FINANCING AGREEMENT AND TO THE SECRETARY OF STATE OF THE STATE OF NEW YORK, SUCH SERVICE TO BECOME EFFECTIVE TEN (10) DAYS AFTER SUCH MAILING. THE ADDITIONAL [BORROWER][GUARANTOR] AND EACH OTHER LOAN PARTY AGREE THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING HEREIN SHALL AFFECT THE RIGHT OF THE AGENTS AND THE LENDERS TO SERVICE OF PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO COMMENCE LEGAL PROCEEDINGS OR OTHERWISE PROCEED AGAINST THE ADDITIONAL [BORROWER][GUARANTOR] OR ANY OTHER LOAN PARTY IN ANY OTHER JURISDICTION. THE ADDITIONAL [BORROWER][GUARANTOR] AND EACH OTHER LOAN PARTY HEREBY EXPRESSLY AND IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE JURISDICTION OR LAYING OF VENUE OF ANY SUCH LITIGATION BROUGHT IN ANY SUCH COURT REFERRED TO ABOVE AND ANY CLAIM THAT ANY SUCH LITIGATION HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. TO THE EXTENT THAT ANY LOAN PARTY HAS OR HEREAFTER MAY ACQUIRE ANY IMMUNITY FROM JURISDICTION OF ANY COURT OR FROM ANY LEGAL PROCESS (WHETHER THROUGH SERVICE OR NOTICE, ATTACHMENT PRIOR TO JUDGMENT, ATTACHMENT IN AID OF EXECUTION OR OTHERWISE) WITH RESPECT TO ITSELF OR ITS PROPERTY, EACH LOAN PARTY HEREBY IRREVOCABLY WAIVES SUCH IMMUNITY IN RESPECT OF ITS OBLIGATIONS UNDER THIS AGREEMENT.

(h) THIS AGREEMENT (UNLESS EXPRESSLY PROVIDED TO THE CONTRARY IN ANOTHER LOAN DOCUMENT IN RESPECT OF SUCH OTHER LOAN DOCUMENT) SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED IN THE STATE OF NEW YORK.

(i) THE ADDITIONAL [BORROWER][GUARANTOR], EACH OTHER LOAN PARTY, EACH AGENT AND EACH LENDER HEREBY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM CONCERNING ANY RIGHTS UNDER THIS AGREEMENT, OR UNDER ANY AMENDMENT, WAIVER, CONSENT, INSTRUMENT, DOCUMENT OR OTHER AGREEMENT DELIVERED OR WHICH IN THE FUTURE MAY BE DELIVERED IN CONNECTION THEREWITH, OR ARISING FROM ANY FINANCING RELATIONSHIP EXISTING IN CONNECTION WITH THIS AGREEMENT, AND AGREES THAT ANY SUCH ACTION, PROCEEDINGS OR COUNTERCLAIM SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. THE ADDITIONAL [BORROWER][GUARANTOR] CERTIFIES THAT NO OFFICER, REPRESENTATIVE, AGENT OR ATTORNEY OF ANY AGENT OR ANY LENDER HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT ANY AGENT OR ANY LENDER WOULD NOT, IN THE EVENT OF ANY ACTION, PROCEEDING OR COUNTERCLAIM, SEEK TO ENFORCE THE FOREGOING WAIVERS. EACH PARTY HERETO HEREBY ACKNOWLEDGES THAT THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE OTHER PARTIES ENTERING INTO THIS AGREEMENT.

(j) This Agreement, together with the Financing Agreement and the other Loan Documents, reflects the entire understanding of the parties with respect to the transactions contemplated hereby and thereby and shall not be contradicted or qualified by any other agreement, oral or written, before the date hereof.

[*Remainder of Page Intentionally Left Blank*]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized, as of the date first above written.

BORROWER:

[____]

By: _____
Name:
Title:

GUARANTORS:

[____]

By: _____
Name:
Title:

[Additional Guarantors]

By: _____
Name:
Title:

COLLATERAL AGENT:

CERBERUS BUSINESS FINANCE, LLC

By: _____
Name: _____
Title: _____

ADDITIONAL [BORROWER][GUARANTOR]:

[_____]

By:
Name:
Title:

Address:

EXHIBIT B

FORM OF ASSIGNMENT AND ACCEPTANCE AGREEMENT

This ASSIGNMENT AND ACCEPTANCE AGREEMENT ("Assignment Agreement") is entered into as of _____ __, 20__ between _____ ("Assignor") and _____ ("Assignee"). Reference is made to the agreement described in Item 2 of Annex I annexed hereto (together with all exhibits and schedules thereto, as amended, restated, modified or otherwise supplemented from time to time, the "Financing Agreement"). Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Financing Agreement.

1. In accordance with the terms and conditions of Section 12.07 of the Financing Agreement, the Assignor hereby irrevocably sells, transfers, conveys and assigns without recourse, representation or warranty (except as expressly set forth herein) to the Assignee, and the Assignee hereby irrevocably purchases and assumes from the Assignor, that interest in and to the Assignor's rights and obligations under the Loan Documents with respect to the Obligations owing to the Assignor, and the Assignor's portion of the Commitments and the Loans as specified on Annex I.

2. The Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of the interest being assigned by it hereunder and that such interest is free and clear of any adverse claim, and (ii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment Agreement and to consummate the transactions contemplated hereby; (b) makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with the Loan Documents or the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Documents or any other instrument or document furnished pursuant thereto; and (c) makes no representation or warranty and assumes no responsibility with respect to the financial condition of any Loan Party or the performance or observance by any Loan Party of any of its obligations under the Loan Documents or any other instrument or document furnished pursuant thereto.

3. The Assignee (a) confirms that it has received copies of the Financing Agreement and the other Loan Documents, together with copies of the financial statements referred to therein and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Assignment Agreement; (b) agrees that it will, independently and without reliance upon the Administrative Agent, the Collateral Agent, the Assignor, or any other Lender, based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan Documents; (c) confirms that it is eligible as an assignee under the terms of the Financing Agreement; (d) appoints and authorizes each of the Administrative Agent and the Collateral Agent to take such action as the Administrative Agent or the Collateral Agent (as the case may be) on its behalf and to exercise such powers under the Loan Documents as are delegated to the Administrative Agent or the Collateral Agent (as the case may be) by the terms thereof, together with such powers as are reasonably incidental thereto; (e) agrees that it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender; and (f) attaches the forms prescribed by the Internal Revenue Service of the United States certifying as to the Assignee's status for purposes of determining exemption from United States withholding taxes with respect to all payments to be made to the Assignee under the Financing Agreement or such other documents as are necessary to indicate that all such payments are subject to such rates at a rate reduced by an applicable tax treaty.

4. [The Assignee confirms that the aggregate principal amount of all Term Loans assigned to it hereunder (together with all other Term Loans currently held by all of the Restricted Affiliated Lenders does not exceed (calculated as of the date hereof after giving effect to all such assignments) 10% of the aggregate principal amount of the Term Loans currently outstanding.][1]

5. Following the execution of this Assignment Agreement by the Assignor and the Assignee, it will be delivered by the Assignor to the Agents for recording by the Administrative Agent. The effective date of this Assignment Agreement (the "Settlement Date") shall be the latest of (a) the date of the execution hereof by the Assignor and the Assignee, (b) the date this Assignment Agreement has been accepted by the Collateral Agent (and the Administrative Agent if required by the Financing Agreement) and recorded in the Register by the Administrative Agent, (c) the date of receipt by the Collateral Agent of a processing and recordation fee in the amount of $3,500,[2] (d) the settlement date specified on Annex I, and (e) the receipt by Assignor of the Purchase Price specified in Annex I.

6. As of the Settlement Date (a) the Assignee shall be a party to the Financing Agreement and, to the extent of the interest assigned pursuant to this Assignment Agreement, have the rights and obligations of a Lender thereunder and under the other Loan Documents, and (b) the Assignor shall, to the extent of the interest assigned pursuant to this Assignment Agreement, relinquish its rights and be released from its obligations under the Financing Agreement and the other Loan Documents.

7. Upon recording by the Administrative Agent, from and after the Settlement Date, the Administrative Agent shall make all payments under the Financing Agreement and the other Loan Documents in respect of the interest assigned hereby (including, without limitation, all payments of principal, interest and commitment fees (if applicable) with respect thereto) to the Assignee. The Assignor and the Assignee shall make all appropriate adjustments in payments under the Financing Agreement and the other Loan Documents for periods prior to the Settlement Date directly between themselves on the Settlement Date.

8. THIS ASSIGNMENT AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

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[1] Delete if Assignee is not a Restricted Affiliated Lender.

[2] The payment of such fee shall not be required in connection with an assignment by a Lender to a Lender, an Affiliate of such Lender or a Related Fund of such Lender.

9. EACH PARTY HERETO HEREBY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BASED UPON OR ARISING OUT OF THIS ASSIGNMENT AGREEMENT OR ANY OF THE TRANSACTIONS RELATED HERETO, AND AGREES THAT ANY SUCH ACTION, PROCEEDING OR COUNTERCLAIM SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

10. This Assignment Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of this Assignment Agreement by facsimile or electronic mail shall be equally effective as delivery of an original executed counterpart.

[Remainder of page left intentionally blank.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered by their respective officers thereunto duly authorized, as of the date first above written.

[ASSIGNOR]

By: _____

Name:
Title:
Date:

[ASSIGNEE]

By: _____

Name:
Title:
Date:

ACCEPTED AND CONSENTED TO this ___ day
of _____, 20__

CERBERUS BUSINESS FINANCE, LLC,
as Collateral Agent and Administrative Agent

By: _____
Name:
Title:

[_____],[3]
as Borrower

By: _____
Name:
Title:

[3] Any Lender may assign to one or more Eligible Assignees all or a portion of its Loans with the prior written consent of the Borrower, provided that, except with respect to consents regarding any Disqualified Lender, such consent shall be deemed to have been given if the Borrower has not responded within ten Business Days after written request by any Agent or the respective assigning Lender, provided further that no consent of the Borrower shall be required (i) in the case of any Lender, for an assignment of any Loan or any Commitment to a Lender, an Affiliate of a Lender, or a Related Fund or (ii) if an Event of Default has occurred and is continuing, any other Eligible Assignee.

ANNEX FOR ASSIGNMENT AND ACCEPTANCE

ANNEX I

1. Borrowers: MLGS Merger Company, Inc., a Delaware corporation (the "Initial Borrower") and immediately upon the consummation of the IWCO Acquisition (as defined in the Financing Agreement), Instant Web, LLC, a Delaware corporation (the "Borrower")

2. Name and Date of Financing Agreement:

Financing Agreement, dated as of December 15, 2017 (as the same may be amended, restated, supplemented or otherwise modified from time to time, including any replacement agreement therefor, the "Financing Agreement"), by and among IWCO Direct Holdings Inc., a Delaware corporation (the "Parent"), the Initial Borrower, the Borrower, each subsidiary of the Parent listed as a "Guarantor" on the signature pages thereto (together with the Parent and each other Person that executes a joinder agreement and becomes a "Guarantor" thereunder or otherwise guaranties all or any part of the Obligations (as thereinafter defined), each a "Guarantor" and collectively, the "Guarantors"), the lenders from time to time party thereto (each a "Lender" and collectively, the "Lenders"), Cerberus Business Finance LLC, a Delaware limited liability company ("Cerberus"), as collateral agent for the Lenders (in such capacity, together with its successors and assigns in such capacity, the "Collateral Agent"), and Cerberus, as administrative agent for the Lenders (in such capacity, together with its successors and assigns in such capacity, the "Administrative Agent" and together with the Collateral Agent, each an "Agent" and collectively, the "Agents").

3. Date of Assignment Agreement: _____

4. Amount of Revolving Credit Commitment Assigned: $_____

5. Amount of Term Loan Commitment Assigned: $_____

6. Amount of Term Loan Assigned: $_____

7. Amount of Revolving Loan Assigned: $_____

8. Purchase Price: $_____

9. Settlement Date: _____

10.Notice and Payment Instructions, etc.

Assignee:	Assignor:
_____	_____
_____	_____
_____	_____
Attn: _____	Attn: _____
Fax No.: _____	Fax No.: _____
Bank Name:	Bank Name:
ABA Number:	ABA Number:
Account Name:	Account Name:
Account Number:	Account Number:
Sub-Account Name:	Sub-Account Name:
Sub-Account Number:	Sub-Account Number:
Reference:	Reference:
Attn:	Attn:

EXHIBIT C

FORM OF NOTICE OF BORROWING

[LETTERHEAD OF THE BORROWER]

_____ __, 201_

Cerberus Business Finance, LLC
as Administrative Agent for the Lenders
party to the Financing Agreement referred to below
875 Third Avenue
New York, New York 10022
Attention: Kevin Cross

Ladies and Gentlemen:

The undersigned, MLGS Merger Company, Inc., a Delaware corporation (the "Initial Borrower") and immediately upon the consummation of the IWCO Acquisition (as defined in the Financing Agreement), Instant Web, LLC, a Delaware corporation (the "Borrower") (i) refer to the Financing Agreement, dated as of December 15, 2017 (as the same may be amended, restated, supplemented or otherwise modified from time to time, including any replacement agreement therefor, the "Financing Agreement"), by and among IWCO Direct Holdings Inc., a Delaware corporation (the "Parent"), the Initial Borrower, the Borrower, the lenders from time to time party thereto (collectively, the "Lenders"), Cerberus Business Finance, LLC, as collateral agent for the Lenders (in such capacity, together with its successors and assigns, the "Collateral Agent"), and Cerberus Business Finance, LLC as administrative agent for the Lenders (in such capacity, together with its successors and assigns, the "Administrative Agent" and together with the Collateral Agent, each an "Agent" and, collectively, the "Agents") and (ii) hereby give you notice pursuant to Section 2.02 of the Financing Agreement that the undersigned hereby requests a Loan under the Financing Agreement (the "Proposed Loan"), and in connection therewith sets forth below the information relating to such Proposed Loan as required by Section 2.02 of the Financing Agreement. All capitalized terms used but not defined herein have the same meanings herein as set forth in the Financing Agreement.

a. The borrowing date of the Proposed Loan is _____.

b. The Proposed Loan is a [Term Loan] [Revolving Loan].

c. The aggregate principal amount of the Proposed Loan is $_____.

d. The Proposed Loan shall be a [Reference Rate Loan][LIBOR Rate Loan with an Interest Period of [1][2][3] month(s)].

e. The proceeds of the Proposed Loan are to be disbursed pursuant to the instructions set forth on Exhibit A attached hereto.

The undersigned certifies as of the date of this notice and as of the date the Proposed Loan is made that (i) the representations and warranties contained in Article VI of the Financing Agreement and in each other Loan Document, certificate or other writing delivered to any Secured Party on or prior to the date of such Loan are true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations or warranties that already are qualified or modified as to materiality or "Material Adverse Effect" in the text thereof, which representations and warranties shall be true and correct in all respects subject to such qualification) on and as of such date as though made on and as of such date, except to the extent that any such representation or warranty expressly relates solely to an earlier date (in which case such representation or warranty shall be true and correct on and as of such earlier date), (ii) at the time of and after giving effect to the making of such Proposed Loan and the application of the proceeds thereof, no Default or Event of Default has occurred and is continuing or would result from the making of the Proposed Loan to be made on such date and (iii) all applicable conditions set forth in Section 5.02 of the Financing Agreement shall have been satisfied or waived in writing by the applicable Lenders as of the date of the Proposed Loan.

[SIGNATURE PAGES FOLLOW]

Very truly yours,

MLGS MERGER COMPANY, INC.[4]

By:_____
Name:
Title:

INSTANT WEB, LLC

By:_____
Name:
Title:

[4] For initial borrowing on Effective Date

EXHIBIT A

WIRING INSTRUCTIONS

Payee	Wiring Instructions
_____	**Bank:** **[City/State] ABA #** **Account # Ref:**

EXHIBIT D

FORM OF LIBOR NOTICE

[LETTERHEAD OF BORROWER]

Cerberus Business Finance, LLC
as Administrative Agent for the Lenders
party to the Financing Agreement referred to below
875 Third Avenue
New York, New York 10022
Attention: Kevin Cross

Ladies and Gentlemen:

Reference is made to the Financing Agreement, dated as of December 15, 2017 (together with all exhibits and schedules thereto, as the same may be amended, restated, supplemented or otherwise modified from time to time, including any replacement agreement therefor, the "Financing Agreement"), by and among IWCO Direct Holdings Inc., a Delaware corporation (the "Parent"), MLGS Merger Company, Inc., a Delaware corporation (the "Initial Borrower") and immediately upon the consummation of the IWCO Acquisition (as defined in the Financing Agreement), Instant Web, LLC, a Delaware corporation (the "Borrower"), each subsidiary of the Parent listed as a "Guarantor" on the signature pages thereto (together with the Parent and each other Person that executes a joinder agreement and becomes a "Guarantor" thereunder or otherwise guaranties all or any part of the Obligations (as defined therein), each a "Guarantor" and, collectively, the "Guarantors"), the lenders from time to time party thereto (each a "Lender" and, collectively, the "Lenders"), Cerberus Business Finance, LLC, as collateral agent for the Lenders (in such capacity, together with its successors and assigns in such capacity, the "Collateral Agent"), and Cerberus Business Finance, LLC, as administrative agent for the Lenders (in such capacity, together with its successors and assigns in such capacity, the "Administrative Agent" and together with the Collateral Agent, each an "Agent" and, collectively, the "Agents"). Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to them in the Financing Agreement.

This LIBOR Notice represents the Borrower's request to [convert into] [continue as] [LIBOR Rate Loans] [Reference Rate Loans] $[_____] of the outstanding principal amount of the [Term Loan] [Revolving Loans] (the "Requested LIBOR Rate Loan"), and is a written confirmation of the telephonic notice of such election previously given to the Administrative Agent.

[Such Requested LIBOR Rate Loan will have an Interest Period of [1] [2] [3] month(s), commencing on _____.]

[This LIBOR Notice further confirms the Borrower's acceptance, for purposes of determining the rate of interest based on the LIBOR Rate under the Financing Agreement, of the LIBOR Rate as determined pursuant to the Financing Agreement.]

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

The undersigned certifies that no Default or Event of Default has occurred and is continuing or would result from the [conversion] [continuation] of the Requested LIBOR Rate Loan.

Dated:

[____]

By: _____
Name:
Title:

LIBOR NOTICE

EXHIBIT E

FORM OF TERM LOAN NOTE

$[_____] [_____], 2017

FOR VALUE RECEIVED, MLGS Merger Company, Inc., a Delaware corporation (the "Initial Borrower") and immediately upon the consummation of the IWCO Acquisition (as defined in the Financing Agreement), Instant Web, LLC, a Delaware corporation (the "Borrower"), hereby unconditionally promise to pay to [_____] (the "Lender") the principal amount of [_____] ($[_____]) or, if less, the aggregate unpaid principal amount of the Term Loans made by the Lender to the Borrower under the Financing Agreement, dated as of December 15, 2017 (including all annexes, exhibits and schedules thereto, as from time to time amended, restated, supplemented or otherwise modified from time to time, including any replacement agreement therefor, being hereinafter referred to as the "Financing Agreement"), by and among IWCO Direct Holdings Inc., a Delaware corporation (the "Parent"), the Initial Borrower, the Borrower, each subsidiary of the Parent listed as a "Guarantor" on the signature pages thereto (together with the Parent and each other Person that executes a joinder agreement and becomes a "Guarantor" thereunder or otherwise guaranties all or any part of the Obligations (as defined therein), each a "Guarantor" and, collectively, the "Guarantors"), the lenders from time to time party thereto (each a "Lender" and, collectively, the "Lenders"), Cerberus Business Finance, LLC, a Delaware limited liability company ("Cerberus"), as collateral agent for the Lenders (in such capacity, together with its successors and assigns in such capacity, the "Collateral Agent"), and Cerberus, as administrative agent for the Lenders (in such capacity, together with its successors and assigns in such capacity, the "Administrative Agent" and together with the Collateral Agent, each an "Agent" and collectively, the "Agents"). This Note is one of the promissory notes referred to in the Financing Agreement. Any capitalized term used herein and not defined herein shall have the meaning assigned to it in the Financing Agreement.

Until maturity (whether by acceleration or otherwise), interest shall accrue and be payable on the outstanding principal balance hereof at the per annum rates of interest set forth in the Financing Agreement. In accordance with the provisions of the Financing Agreement, upon the occurrence and during the continuance of an Event of Default, interest shall accrue at a rate per annum equal at all times to the Post-Default Rate. The Post-Default Rate shall apply both before and after any judgment or arbitration decision, until the Lender receives full payment in costs. All amounts payable by the Borrower hereunder shall be paid in accordance with the terms and conditions of the Financing Agreement in immediately available funds.

The Borrower hereby waives the requirements of demand, presentment, protest, notice of protest and dishonor, notice of intent to accelerate, notice of acceleration, and all other demands or notices of any kind in connection with the delivery, acceptance, performance, default, dishonor or enforcement of this Note. No failure on the part of the Lender to exercise, and no delay in exercising, any right, power or privilege hereunder shall operate as a waiver thereof or a consent thereto; nor shall a single or partial exercise of any such right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

This Note and all provisions hereof shall be binding upon the Borrower and all persons claiming under or through the Borrower, and shall inure to the benefit of the Lender, together with its successors and assigns, including each owner and holder from time to time of this Note.

The Borrower promises and agrees to pay, in addition to the principal, interest and other sums due and payable hereon, all costs of collecting or attempting to collect this Note, including all reasonable and documented out-of-pocket attorneys' fees and disbursements, as described in the Financing Agreement.

This Note may be executed in any number of counterparts and by different parties hereto or thereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

To the extent of any inconsistency between any of the terms and conditions of this Note and the terms and conditions of the Financing Agreement, the terms and conditions of the Financing Agreement shall control.

This Note is secured by the Collateral described in the Financing Agreement and the other Loan Documents, to which reference is hereby made for a more complete statement of the terms and conditions under which the Term Loan evidenced hereby is made and is to be prepaid or accelerated, and is hereby entitled to all the benefits and rights of the Financing Agreement and such other Loan Documents (including, without limitation, any guarantees delivered in connection therewith).

The provisions of Sections 12.09, 12.10, 12.11, 12.12, 12.13, 12.14, 12.15 and 12.21 of the Financing Agreement are hereby incorporated by reference herein, *mutatis mutandis*, as to apply to this Note.

IN WITNESS WHEREOF, and intending to be legally bound hereby, each Borrower has caused this Note to be executed by its duly authorized officer as of the day and year first above written.

Very truly yours,

MLGS MERGER COMPANY, INC.

By:_____
Name:
Title:

INSTANT WEB, LLC

By:_____
Name:
Title:

EXHIBIT F

FORM OF REVOLVING LOAN NOTE

$[_____] [__], 2017

FOR VALUE RECEIVED, MLGS Merger Company, Inc., a Delaware corporation (the "Initial Borrower") and immediately upon the consummation of the IWCO Acquisition (as defined in the Financing Agreement), Instant Web, LLC, a Delaware corporation (the "Borrower"), hereby unconditionally promises to pay to Cerberus Business Finance, LLC (the "Lender") the principal amount of [_____] ($[_____]) or, if less, the aggregate unpaid principal amount of the Revolving Loans made by the Lender to the Borrower under the Financing Agreement, dated as of December 15, 2017 (including all annexes, exhibits and schedules thereto, as from time to time amended, restated, supplemented or otherwise modified from time to time, including any replacement agreement therefor, being hereinafter referred to as the "Financing Agreement"), by and among IWCO Direct Holdings Inc., a Delaware corporation (the "Parent"), the Initial Borrower, the Borrower each subsidiary of the Parent listed as a "Guarantor" on the signature pages thereto (together with the Parent and each other Person that executes a joinder agreement and becomes a "Guarantor" thereunder or otherwise guaranties all or any part of the Obligations (as defined therein), each a "Guarantor" and, collectively, the "Guarantors"), the lenders from time to time party thereto (each a "Lender" and, collectively, the "Lenders"), Cerberus Business Finance, LLC, a Delaware limited liability company ("Cerberus"), as collateral agent for the Lenders (in such capacity, together with its successors and assigns in such capacity, the "Collateral Agent"), and Cerberus, as administrative agent for the Lenders (in such capacity, together with its successors and assigns in such capacity, the "Administrative Agent" and together with the Collateral Agent, each an "Agent" and, collectively, the "Agents"). This Note is one of the promissory notes referred to in the Financing Agreement. Any capitalized term used herein and not defined herein shall have the meaning assigned to it in the Financing Agreement.

Until maturity (whether by acceleration or otherwise), interest shall accrue and be payable on the outstanding principal balance hereof at the per annum rates of interest set forth in the Financing Agreement. In accordance with the provisions of the Financing Agreement, upon the occurrence and during the continuance of an Event of Default, interest shall accrue at a rate per annum equal at all times to the Post-Default Rate. The Post-Default Rate shall apply both before and after any judgment or arbitration decision, until the Lender receives full payment in costs. All amounts payable by the Borrower hereunder shall be paid in accordance with the terms and conditions of the Financing Agreement in immediately available funds.

The Borrower hereby waives the requirements of demand, presentment, protest, notice of protest and dishonor, notice of intent to accelerate, notice of acceleration, and all other demands or notices of any kind in connection with the delivery, acceptance, performance, default, dishonor or enforcement of this Note. No failure on the part of the Lender to exercise, and no delay in exercising, any right, power or privilege hereunder shall operate as a waiver thereof or a consent thereto; nor shall a single or partial exercise of any such right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

This Note and all provisions hereof shall be binding upon the Borrower and all persons claiming under or through the Borrower, and shall inure to the benefit of the Lender, together with its successors and assigns, including each owner and holder from time to time of this Note.

The Borrower promises and agrees to pay, in addition to the principal, interest and other sums due and payable hereon, all costs of collecting or attempting to collect this Note, including all reasonable and documented out-of-pocket attorneys' fees and disbursements, as described in the Financing Agreement.

This Note may be executed in any number of counterparts and by different parties hereto or thereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

To the extent of any inconsistency between any of the terms and conditions of this Note and the terms and conditions of the Financing Agreement, the terms and conditions of the Financing Agreement shall control.

This Note is secured by the Collateral described in the Financing Agreement and the other Loan Documents, to which reference is hereby made for a more complete statement of the terms and conditions under which the Revolving Loans evidenced hereby are made and are to be prepaid or accelerated, and is hereby entitled to all the benefits and rights of the Financing Agreement and such other Loan Documents (including, without limitation, any guarantees delivered in connection therewith).

The provisions of Sections 12.09, 12.10, 12.11, 12.12, 12.13, 12.14, 12.15 and 12.21 of the Financing Agreement are hereby incorporated by reference herein, *mutatis mutandis*, as to apply to this Note.

IN WITNESS WHEREOF, and intending to be legally bound hereby, the Borrower has caused this Note to be executed by its duly authorized officer as of the day and year first above written.

Very truly yours,

MLGS MERGER COMPANY, INC.[5]

By:_____
Name:
Title:

INSTANT WEB, LLC

By:_____
Name:
Title:

[5] For initial borrowing on Effective Date

EXHIBIT G

FORM OF
SOLVENCY CERTIFICATE

December 15, 2017

This Solvency Certificate is delivered pursuant to Section 5.01(d)(xii) of the Financing Agreement, dated as of the date hereof (together with all exhibits an schedules thereto, as amended, restated, supplemented or otherwise modified from time to time, the "Financing Agreement"), by and among IWCO Direct Holdings Inc., a Delaware corporation (the "Parent"), MLGS Merger Company, Inc., a Delaware corporation (the "Initial Borrower") and immediately upon the consummation of the IWCO Acquisition (as defined in the Financing Agreement), Instant Web, LLC, a Delaware corporation (the "Borrower"), each subsidiary of the Parent listed as a "Guarantor" on the signature pages thereto (together with the Parent and each other Person that executes a joinder agreement and becomes a "Guarantor" thereunder or otherwise guaranties all or any part of the Obligations (as thereinafter defined), each a "Guarantor" and, collectively, the "Guarantors"), the lenders from time to time party thereto (each a "Lender" and, collectively, the "Lenders"), Cerberus Business Finance, LLC, a Delaware limited liability company ("Cerberus"), as collateral agent for the Lenders (in such capacity, together with its successors and assigns in such capacity, the "Collateral Agent"), and Cerberus, as administrative agent for the Lenders (in such capacity, together with its successors and assigns in such capacity, the "Administrative Agent" and together with the Collateral Agent, each an "Agent" and, collectively, the "Agents"). Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to such terms in the Financing Agreement.

The undersigned hereby certifies as of the date hereof, solely in his capacity as an officer of the Parent and not in his individual capacity, as follows:

1. I am the [Chief Financial Officer] of the Parent as of the date hereof. I am familiar with the Acquisition and the other transactions contemplated by the Financing Agreement (collectively, the "Transactions") and have reviewed (or caused to be reviewed) the Financing Agreement, financial statements referred to in Section 6.01(g) of the Financing Agreement and such documents and made (or caused to be made) such investigation as I deemed relevant for the purposes of this Solvency Certificate.

2. As of the date hereof, after giving effect to the consummation of the Transactions (including the Acquisition and the incurrence of indebtedness under the Financing Agreement), (i) the present fair value of the assets of the Parent and its subsidiaries on a consolidated basis and measured on a going concern basis, is not less than the total liabilities of the Parent and its subsidiaries on a consolidated basis; (ii) the present fair saleable value of the property of the Parent and its subsidiaries on a consolidated basis and measured on a going concern basis, will be greater than the amount that will be required to pay the probable liability of the Parent and its subsidiaries on a consolidated basis as they become absolute and matured in the ordinary course of business; (iii) the Parent and its subsidiaries on a consolidated basis will be able to pay their debts and liabilities, contingent obligations and other commitments as they mature in the ordinary course of business; (iv) the Parent and its subsidiaries on a consolidated basis do not intend to, and do not believe that they will, incur debts or liabilities beyond their ability to pay as such debts and liabilities mature in the ordinary course of business and (v) the Parent and its subsidiaries on a consolidated basis are not engaged in business or a transaction, and are not about to engage in business or a transaction, for which the Parent and its subsidiaries' property on a consolidated basis would constitute unreasonably small capital.

For purposes of this Solvency Certificate, the amount of any contingent obligation at any time shall be computed as the amount that would reasonably be expected to become an actual and matured liability.

This Solvency Certificate is being delivered by the undersigned officer only in his capacity as [Chief Financial Officer] of the Parent and not individually and the undersigned shall have no personal liability to the Agent or the Lenders with respect thereto.

IN WITNESS WHEREOF, the undersigned has executed this Solvency Certificate on the date first written above.

[____]

By: _____
Name: Title:

ModusLink Announces Acquisition of IWCO Direct for $476 Million in Cash

- ***Transaction Provides Profitable Growth Platform, Significant Free Cash Flow and Earnings***
- ***Steel Partners Holdings to Increase Ownership Stake in ModusLink with $35 Million Investment***
- ***Jack L. Howard and William T. Fejes, Jr. Join ModusLink Board of Directors***

New York and Waltham, MA — December 18, 2017 — ModusLink Global Solutions™, Inc. (NASDAQ: MLNK) and Steel Partners Holdings (NYSE: SPLP) today announced that ModusLink has completed the acquisition of privately-held IWCO Direct, a leading provider of data-driven direct marketing solutions, for $476 million in cash.

Warren Lichtenstein, Executive Chairman of ModusLink, said, "We have been looking to acquire a profitable business with attractive operations and financials, and with a strong management team in order to leverage our approximately $2.1 billion in net operating loss carryforwards (NOLs) and cash. We found a great fit in IWCO Direct. We essentially double the size of our Company and add significant earnings and free cash flow. We add a market leader with industry-leading solutions, a client base consisting of Fortune 500 companies, and significant opportunities to drive both top- and bottom-line results. We intend to aggressively grow IWCO Direct, organically and through acquisitions, and will look to leverage Steel Partners' vast relationships and resources to drive operational excellence and enhance stakeholder value."

With this transaction completed, IWCO Direct becomes a wholly-owned subsidiary of ModusLink Global Solutions. IWCO Direct will continue to be run by Jim Andersen, who has been CEO since 1999. ModusLink Corporation, the Company's digital and physical supply chain business, will continue to be run by Jim Henderson.

For the last 12 months through October 2017, IWCO Direct had net revenue of $470.6 million, net income of $18.9 million and Earnings Before Interest, Taxes, Depreciation and Amortization ("EBITDA") of $82.2 million. For the last 12 months through October 2017, ModusLink had net revenue of $417.8 million, a net loss of $22.5 million and negative EBITDA of $3.8 million, although net loss and EBITDA improved by $32.5 million and $28.0 million year-over-year, respectively, as a result of the corporate turnaround plan launched in May 2016. Select financial statements will be included on Form 8-K/A, which will be filed with the Securities and Exchange Commission within 75 days following closing.

IWCO Direct has consistently delivered highly-effective data-driven marketing solutions for its customers, which represent some of the largest and most respected brands in the world. Its full range of services includes strategy, creative and production for multichannel marketing campaigns, along with one of the industry's most sophisticated postal logistics programs for direct mail. Through its Mail-Gard® product, IWCO Direct also offers business continuity and disaster recovery services to protect against unexpected business interruptions, along with providing print and mail outsourcing services. IWCO Direct is the largest direct mail production provider in North America, with the largest platform of continuous digital print technology and a growing direct marketing agency service. Their solutions enable customers to improve Customer Lifetime Value (CLV), which in turn, has led to increased revenue and longer customer relationships.

"We are excited to join forces with ModusLink," said Jim Andersen. "Their commitment and expertise, combined with our advanced data-driven marketing solutions, make this new combination advantageous for IWCO Direct's customers and employees as well as our new shareholders. The future of data-driven direct marketing has never been stronger. The flexibility of becoming part of a global organization will allow us to continue to invest in new technologies and service offerings, further driving value and a greater return on marketing investment for our customers to strengthen their customer relationships and increase revenue."

Funding for the acquisition of IWCO Direct was provided through cash and debt financing provided by Cerberus Business Finance, LLC, as the Administrative Agent and Collateral Agent, and consists of a term loan in the principal amount of $393.0 million and a borrowing in the amount of up to $25.0 million under a revolving credit facility.

Additionally, it was announced today that Steel Partners Holdings L.P. (NYSE: SPLP) increased its investment in ModusLink through its affiliate SPH Group Holdings, LLC, with a $35.0 million convertible preferred stock investment, which together with its affiliates, brings its beneficial ownership in ModusLink to approximately 52%. Proceeds from the $35.0 million convertible preferred stock investment will be used for working capital and general corporate purposes. The preferred stock transaction was approved by a special committee consisting of independent directors of ModusLink who are not affiliated with Steel Partners.

It was also announced today that Jack L. Howard, President of Steel Partners, and William T. Fejes, Jr., President of Steel Services Ltd., will join the ModusLink board of directors, expanding the board to seven members and filling one existing vacancy.

ModusLink's advisors on the transactions included the law firms of Ice Miller LLP, Littman Krooks LLP, and Olshan Frome Wolosky LLP, while Stout Advisory served as financial advisor.

About ModusLink Global Solutions, Inc.
ModusLink Global Solutions, Inc. (NASDAQ: MLNK) is a leading global provider of digital and physical supply chain solutions. The Company helps its clients drive growth, lower costs and improve profitability, while simultaneously enhancing the customer experience. With operations supported by 21 sites across North America, Europe, and the Asia-Pacific region, ModusLink partners with the world's leading brands across a diverse range of industries, including consumer electronics, telecommunications, computing and storage, software and content, consumer packaged goods, retail and luxury, among others. Our solutions and services are designed to help global brands and companies expand their share, across geographies and channels, while continuously improving their end-to-end supply chains. For further details on ModusLink's solutions visit www.moduslink.com, read the Company's blog for supply chain professionals, and follow us on LinkedIn, Twitter, Facebook and YouTube.

About IWCO Direct
IWCO Direct (www.iwco.com) is a leading provider of data-driven direct marketing solutions that help clients drive response across all marketing channels to create new and more loyal customers. The company's full range of services includes strategy, creative, and production for multichannel marketing campaigns, along with one of the industry's most sophisticated postal logistics strategies for direct mail. Through Mail-Gard®, IWCO Direct also offers business continuity and disaster recovery services to protect against unexpected business interruptions, along with providing print and mail outsourcing services. Learn more by subscribing to IWCO Direct's SpeakingDIRECT blog, or follow the company on LinkedIn and Twitter.

About Steel Partners
Steel Partners Holdings L.P. (www.steelpartners.com) is a diversified global holding company that owns and operates businesses and has significant interests in leading companies in various industries, including diversified industrial products, energy, defense, supply chain management and logistics, banking and youth sports.

Additional Information about the Preferred Stock
The Preferred Stock will not be and has not been registered under the Securities Act of 1933, as amended, and may not be offered or sold in the United States absent registration or an applicable exemption from registration requirements.

Forward-Looking Statements
This press release contains certain "forward-looking statements" within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended, that reflect Steel Partners Holdings' and ModusLink's current expectations and projections about their future results, performance, prospects and opportunities. Steel Partners Holdings and ModusLink have tried to identify these forward-looking statements by using words such as "may," "should," "expect," "hope," "anticipate," "believe," "intend," "plan," "estimate" and similar expressions. These forward-looking statements are based on information currently available to Steel Partners Holdings and ModusLink and are subject to a number of risks, uncertainties and other factors that could cause their actual results, performance, prospects or opportunities in 2017 and beyond to differ materially from those expressed in, or implied by, these forward-looking statements. These factors include, without limitation, Steel Partners Holdings and ModusLink's subsidiaries' need for additional financing and the terms and conditions of any financing that is consummated, their respective customers' acceptance of their new and existing products, the risk that Steel Partners Holdings or ModusLink or their respective subsidiaries will not be able to compete successfully, the possible volatility of Steel Partners Holdings common or preferred unit prices or ModusLink's stock price and the potential fluctuation in their respective operating results. Although Steel Partners Holdings and ModusLink believe that the expectations reflected in these forward-looking statements are reasonable and achievable, such statements involve significant risks and uncertainties, and no assurance can be given that the actual results will be consistent with these forward-looking statements. Investors should read carefully the factors described in the "Risk Factors" section of Steel Partners Holdings and ModusLink's filings with the SEC, including Steel Partners Holdings Form 10-K for the year ended December 31, 2016 and ModusLink's Form 10-K for the year ended July 31, 2017, and in any interim quarterly reports, for information regarding risk factors that could affect Steel Partners Holdings' or ModusLink's results. Except as otherwise required by federal securities laws, neither Steel Partners Holdings nor ModusLink undertakes any obligation to publicly update or revise any forward-looking statements, whether as a result of new information, future events, changed circumstances or any other reason.

ModusLink Investor Relations Contact:
GW Communications
Glenn Wiener
Tel: 212-786-6011
Email: gwiener@GWCco.com

Steel Partners Investor Relations Contact:
PondelWilkinson Inc.
Roger S. Pondel
Tel: 310-279-5965
Email: rpondel@pondel.com

Use of Non-GAAP Financial Measures

In addition to the financial measures prepared in accordance with generally accepted accounting principles, ModusLink Global Solutions, Inc. (the “Company”) uses EBITDA a non-GAAP financial measure, to assess its performance. EBITDA represents earnings before interest income, interest expense, income tax expense, depreciation, and amortization of intangible assets.

We believe that providing EBITDA to investors is useful, as the measure provides important supplemental information relating to our performance to investors and permits investors and management to evaluate the operating performance of our core supply chain business. We use EBITDA in internal forecasts and models when establishing internal operating budgets, supplementing the financial results and forecasts reported to our Board of Directors, determining a component of incentive compensation for executive officers and other key employees based on operating performance and evaluating short-term and long-term operating trends in our core supply chain business. We believe that the EBITDA financial measure assists in providing an enhanced understanding of our underlying operational measures to manage the core supply chain business, to evaluate performance compared to prior periods and the marketplace, and to establish operational goals. We believe that this non-GAAP financial adjustment is useful to investors because it allows investors to evaluate the effectiveness of the methodology and information used by management in our financial and operational decision-making.

EBITDA is a non-GAAP financial measure and should not be considered in isolation or as a substitute for financial information provided in accordance with U.S. GAAP. These non-GAAP financial measures may not be computed in the same manner as similarly titled measures used by other companies.

Reconciliation of Non-GAAP Financial Measures

(Unaudited)

(in millions)

ModusLink		**12 Months Ended October 31, 2017**
Net Loss	$	(22.5)
Interest	$	7.9
Taxes	$	2.7
Depreciation	$	8.1
Amortization	$	—
EBITDA	$	(3.8)

IWCO		**12 Months Ended October 31, 2017**
Net Income	$	18.9
Interest	$	36.4
Taxes	$	6.1
Depreciation	$	13.9
Amortization	$	7.0
EBITDA	$	82.2